



Monterey County

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Board Report

Legistar File Number: RES 17-176

November 14, 2017

Introduced: 11/2/2017

Current Status: Agenda Ready

Version: 1

Matter Type: BoS Resolution

Public hearing to:

- a. Consider and take action on the appeal by Hilltop Ranch LLC (Richard Lumpkin) of the Monterey County Planning Commission's Administrative Interpretation relative to allowed uses for a commercial vineyard located in a non-coastal Low Density Residential zone; and
- b. Consider and take action on Hilltop Ranch's request to waive the appeal fee.

Proposed CEQA Action: Statutorily exempt per CEQA Guidelines section 15378(b)(5)

RECOMMENDATION:

It is recommended that the Board of Supervisors adopt a resolution to:

- a. Deny an Appeal by Hilltop Ranch (Richard Lumpkin) of the July 26, 2017 Planning Commission Administrative Interpretation relative to allowed uses for a commercial vineyard located in a non-coastal Low Density Residential zone;
- b. Uphold the July 26, 2017 Planning Commission interpretation relative to allowed uses for a commercial vineyard located in a non-coastal Low Density Residential zone;
- c. Find that interpreting existing code, not approving or changing anything, is an administrative activity that does not result in direct or indirect physical change in the environment, which is Statutorily exempt per CEQA Guidelines section 15378(b)(5).
- d. Approve the request by Hilltop Ranch to waive the appeal fee and authorize refund of the appeal fee.

A draft resolution with findings and evidence is attached for Board consideration (**Attachment A**, draft BOS resolution).

SUMMARY:

On July 26, 2017, the Planning Commission considered two appeals of a Director's Administrative Interpretation pursuant to Monterey County Code (MCC) Chapter 21.82 (**Attachment B**, 7/26/17 Planning Commission staff report with attachments). The Planning Commission upheld the appeals and approved a waiver of appeal fees (**Attachment C**, PC resolution). In general, the Commission determined that events in conjunction with a commercial vineyard should be subject to a permit process when the vineyard located in a residential zone. The Planning Commission found that large scale marketing events are more of a commercial type of use that can change the character of a neighborhood and cause noise and traffic impacts without opportunity for the public to participate and therefore beyond the scope of uses allowed without a permit.

On August 10, 2017, Mr. John Bridges, representing Hilltop Ranch LLC (Richard Lumpkin) timely filed an appeal of the Planning Commission action (**Attachment D**, Hilltop appeal). The appeal contends that the Planning Commission exceeded their legal authority, arguing that the Commission could consider only certain points of clarification the RMA Director issued May 16, 2017, and not the

Administrative Interpretation issued April 11, 2017. County Code establish a 10-day appeal timeline. Both appeals to the Planning Commission were filed May 26, 2017. The Commission determined that it has authority to interpret the zoning ordinance regardless of any appeal of Administrative Interpretation. Moreover, the May 16th letter clarified the April 11th letter, thus incorporating the April 11th opinion and making them inseparable, as they raise the same issue for interpretation.

Appellant also requests a waiver of the appeal fees similar to fee waivers granted by the Planning Commission in this matter. The Planning Commission determined that a Fee Waiver was appropriate in this case because the appeal conferred a broader public benefit, beyond a specific property or the specific appellant, relative to vineyards in the LDR zone. Staff required this appellant to pay the fees until/unless the Board finds that the same conditions apply.

DISCUSSION:

Hilltop Ranch, which is located at 62 East Carmel Valley Road in Carmel Valley, established a commercial vineyard (produces grapes for Cima Collina winery) on about 3.5 acres, which consist of four (4) parcels (totaling 19.99 acres) that have a Low Density Residential (LDR) zoning designation. The issue revolves around a question of whether associated marketing events are allowed as an allowed use within the vineyard, which in this case is located in the LDR zone. Monterey County Code (MCC) Section 21.14.030 specially allows vineyards and sales of agricultural products, but does not identify auxiliary uses with the vineyard. Also, there is a related issue about establishing a limit on intensity (size) and frequency if events/activities are allowed without a permit.

On April 11, 2017, a Director's Interpretation was issued in response to a written request from Mr. John Bridges dated March 16, 2017 seeking information about what types of activities may be allowed within a commercial vineyard. On May 10, 2017, Mr. Tony Lombardo submitted a written request requesting clarification of several points of the April 11 Director's Interpretation. On May 16, 2107, the Director issued an Addendum to the April 11th letter. (See Attachments C, D, and E of the 7/26 Planning Commission staff report, included as Attachment B of this report.) The base premise of this interpretation is that it is a commercial vineyard, and as such should be allowed certain activities associated with marketing that product similar to other commercial uses.

Based on all of the information available, the Director's interpretation issued on April 11, 2017 with clarifications issued on May 16, 2017 interpreted the County Code to allow certain marketing activities as part of the commercial vineyard use within limitations. In developing an interpretation for this matter, the Director took into account existing code language, historic uses, relevant policies (i.e. General Plan), as well as prior actions/comments by the Planning Commission and/or Board of Supervisors.

In November/December 2016, the Director processed a report through the Planning Commission and Board of Supervisors respectively, seeking actions/comments relative to events. A draft interpretation was attached wherein events in commercial vineyards would be allowed as part of the vineyard use, except when the vineyard is in a residential zone. The Board direction was to *not* approve the interpretation and continue "status quo." Since staff had interpreted that events were part of a commercial vineyard, this was taken to include vineyards in residential zones.

No appeal was filed of the April 11th letter within the appeal period. On May 26, 2017, timely appeals were filed by Mr. Tony Lombardo, on behalf of a group of neighbors, and Ms. Molly Erickson, on behalf of the Carmel Valley Association.

Zoning codes cannot be completely exhaustive since new ideas present new challenges not addressed in the code. Customer service is a matter of County staff understanding what people want to do and then, based on our knowledge of the Codes, providing guidance toward that end. This involves staff interpreting Codes every day with every customer and every project. An administrative interpretation is a mechanism to help provide consistent application of the regulations, such that each person under similar conditions receives similar information.

Monterey County Code (MCC) Chapter 21.82 establishes a process whereby a person aggrieved by an administrative decision may appeal the decision. Interpretations clarify what is allowed based on how the Codes are written, and also takes into account actions/directions from decision makers such as the Planning Commission and Board of Supervisors. It is not intended for the Director to have the final say on interpretations, which is why there is an appeal process to the Planning Commissions and ultimately the Board of Supervisors. Moreover, the administrative interpretation process is not intended to establish policy but rather to interpret existing policy as set forth in County regulations. A change in policy would require a Code amendment processed in accordance with procedures for amending zoning.

OTHER AGENCY INVOLVEMENT:

RMA has consulted with County Counsel on this matter.

Prepared/Approved by: Carl P. Holm, AICP, Resource Management Agency Director

The following attachments are on file with the Clerk of Board:

Attachment A - Draft BOS Resolution

Attachment B - 7/26/17 PC staff report with attachments

Attachment C - PC resolution

Attachment D - Hilltop appeal

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