

# Attachment B

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# Monterey County Planning Commission

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Salinas, CA 93901  
831.755.5066

## Agenda Item No. 3

Legistar File Number: PC 17-052

July 26, 2017

Introduced: 7/14/2017

Version: 1

Current Status: Agenda Ready

Matter Type: Planning Item

### **PLN170488/PLN170489 - APPEAL OF ADMINISTRATIVE INTERPRETATION - PRINCIPALLY PERMITTED VITICULTURE USE**

Consider:

- a. Appeal of the Administrative Interpretation dated May 16, 2017 relative to uses allowed as part of a commercial vineyard located in a residential zone filed by Anthony Lombard representing Dean Hatfield and Karolyn Stone on behalf of Nancy Burnett, Bryan Jaeger, Dock and Lynda Williams, David Berta, Liana Olson, Edward and Peggy Dickson, Edward Mellinger, and Pamela Hopkins;
- b. Appeal of the Administrative Interpretation dated May 16, 2017 relative to uses allowed as part of a commercial vineyard located in a residential zone filed by Molly Erickson representing Carmel Valley Association (CVA); and
- c. Fee waiver request by CVA.

#### RECOMMENDATION:

It is recommended that the Planning Commission continue this matter to August 30, 2017. Staff will re-notice the matter in all manners required by Code.

If the Commission elects to proceed on this matter, staff recommends adopting a Motion of Intent to:

- a. Deny the Appeal of the Administrative Interpretation dated May 16, 2017 relative to uses allowed as part of a commercial vineyard located in a residential zone filed by Anthony Lombard on behalf of surrounding property owners (Dean Hatfield and Karolyn Stone on behalf of Nancy Burnett, Bryan Jaeger, Dock and Lynda Williams, David Berta, Liana Olson, Edward and Peggy Dickson, Edward Mellinger, and Pamela Hopkins);
- b. Deny the Appeal of the Administrative Interpretation dated May 16, 2017 relative to uses allowed as part of a commercial vineyard located in a residential zone filed by Molly Erickson on behalf of Carmel Valley Association (CVA);
- c. Deny the fee waiver request by CVA; and
- d. Uphold the RMA Director's Administrative Interpretation dated May 16, 2017, pending completion of an events ordinance.

Staff will return with a draft resolution with findings and evidence for consideration based on the Commission's direction.

#### SUMMARY:

This matter comes before the Planning Commission as an appeal of a Director's Administrative Interpretation pursuant to Monterey County Code (MCC) Chapter 21.82 (**Attachment B**). On April 11, 2017, a Director's Interpretation was issued (**Attachment C**) in response to a written request from Mr. John Bridges dated March 16, 2017 (**Attachment D**) seeking information

about what types of activities may be allowed within a commercial vineyard. No appeal was filed within the appeal period. On May 10, 2017, Mr. Tony Lombardo submitted a written request to clarify several points (**Attachment E**). On May 16, 2017, the Director issued an addendum to the April 11th letter (**Attachment C**). On May 26, 2017, timely appeals were filed by Mr. Tony Lombardo and Ms. Molly Erickson, on behalf of the Carmel Valley Association, (**Attachments F and G, respectively**).

Cima Collina (aka Hilltop Ranch) established a commercial vineyard 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 if associated marketing events should be allowed within the vineyard, which in this case is located in the LDR zone. MCC Section 21.14.030 (**Attachment H**) specially allows vineyards and sales of agricultural products, but does not identify auxiliary uses with the vineyard.

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. 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 actions/comments by the Planning Commission and/or Board of Supervisors. Based on all of the information available, the Director's interpretation determined that certain marketing activities could occur as part of the commercial vineyard use within limitations.

The appeals contest the authority and process by which this interpretation was processed. Generally, appellants contend that the marketing events outlined in the Administrative Interpretation should require a discretionary permit or be prohibited. Appellants also request a waiver of the appeal fees.

Projects are required to notice hearings three ways: publication (legal ad), mailing, and posting. Notices of this hearing were sent to owners abutting Hilltop Ranch as well as parties that have requested notice relative to this property. Notice was also published in the Monterey County Weekly on July 13, 2017. Notice did not get posted at the subject property in time to meet the 10-day requirement since Hilltop Ranch had concerns about the description in the notice and the project manager was out of the office. A zoning ordinance type matter requires publication (display ad) if it could affect more than 1000 people. While an Administrative Interpretation is not legislative like a Code amendment, it also is not a project. As such, the Commission could continue the matter and direct staff to renote the hearing for August 30, 2017.

#### DISCUSSION:

Staff interprets Codes every day with every customer and every project. Codes cannot be completely exhaustive since new ideas present new challenges not addressed in the code. Monterey County Code (MCC) Chapter 21.82 establishes a process whereby a person aggrieved by an administrative decision may appeal the decision. In addition, County Code (Chapter 2) authorizes the Director of Planning to interpret the Zoning Codes.

Customer service is a matter of County staff understanding what people want to do and then, based on our knowledge of the Codes, provide guidance toward that end. An administrative interpretation is a mechanism to help provide consistent application of the regulations, such that

each person under similar conditions receives similar information.

Interpretations clarify what is allowed based on how the Codes are written, and also take into account actions/directions from decision makers such as the Planning Commission and Board of Supervisors. It is not intended for the Director to establish policy, which is why there is an appeal process to the Planning Commissions and ultimately the Board of Supervisors. Some requests may require or result in a Code amendment.

A detailed discussion is provided in **Attachment A**.

OTHER AGENCY INVOLVEMENT:

RMA has consulted with county counsel on this matter, and counsel has reviewed this report.

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

The following attachments are on file with the RMA:

- Attachment A - Discussion
- Attachment B - MCC Chapter 21.82- Administrative Interpretation (Inland)
- Attachment C - Letter C. Holm, dated 5/16/17 (Admin Interpretation, with 4/11/17 Interpretation attached)
- Attachment D - Letter from J. Bridges, dated 3/16/17 (Request interpretation re Cima Collina)
- Attachment E - Email from T. Lombardo, dated 5/10/17 (Clarifications)
- Attachment F - Lombardo appeal, dated 5/26/17
- Attachment G - Erickson appeal, dated 5/26/17
- Attachment H - MCC Section 21.14.030-LDR Principally Permitted Uses
- Attachment I - Fee Waiver Resolution/Policy

cc: County Counsel, Molly Erickson (Erickson@stamplaw.us), CV Interest List (email: PrisWalton@sbcglobal.net, Chris\_Dale@comcast.net, eric.sand@icloud.com, foxrich@aol.com) Tony Lombardo, John Bridges, District 5, Vintners and Growers Association, Maureen Wruck Planning Consultants, Cima Collina



# Attachment A

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**ATTACHMENT A - DISCUSSION**  
**PLN170488/PLN170489**  
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**APPEALS**

Two appeals were filed:

1. Tony Lombardo representing Dean Hatfield and Karolyn Stone on behalf of Nancy Burnett, Bryan Jaeger, Dock and Lynda Williams, David Berta, Liana Olson, Edward and Peggy Dickson, Edward Mellinger, and Pamela Hopkins; 13-page appeal filed May 26, 2017 (**Attachment F**).
2. Molly Erickson representing Carmel Valley Association (CVA); 89-page appeal filed May 26, 2017 (**Attachment G**).

One interpretation was issued on April 11, 2017. There was no appeal filed within the appeal period; however, the Carmel Valley Association sent a letter to the Board of Supervisors on April 21, 2017 requesting that County not issue an administrative interpretation applicable to the site; CVA was offered the opportunity to convert the letter to an appeal and did not do so. Subsequently Mr. Lombardo emailed a series of questions concerning the April 11, 2017 interpretation. The Director, with Mr. Lombardo's concurrence, treated the email as another request for interpretation. The response was issued May 16, 2017, which initiated a new appeal period. As referenced above, two appeals were filed on May 26, 2017.

One could argue that the letter of April 11 cannot be subject to an appeal since no appeal was filed timely. Staff followed the same process for interpretations that have been followed for decades, which was to respond only to the requesting party. The May 16 letter notified additional parties who had specifically requested notification in this matter. The May 16<sup>th</sup> letter responded to 11 questions of which staff feels only Questions 2-6 were interpretations versus simply answering questions:

- Q2- Is the 75 person limit for an individual event or cumulative throughout the day?
- Q3- Can there be multiple events at the same time?
- Q4- Could there be events every day?
- Q5- Does "invitation" mean a direct personal invitation and not an invitation by mass media?
- Q6- What would constitute a "wine pick up activity"?

Mr. Bridges, representing Cima Colina (aka Hilltop Ranch), contends that the Commission is limited to considering the interpretive issues from the May 16<sup>th</sup> letter only.

The appeal is of the May 16 letter, which provides clarification of the April 11, 2017 letter.

- Per section 21.82.050, the "Planning Commission may, after its consideration of the administrative interpretation, affirm, reverse, or modify the interpretation." The Planning Commission "shall indicate the reasons for its affirmation, reversal or modification" of the administrative interpretation.

**FEE WAIVER**

The Board of Supervisors, by resolution, has granted limited authority to the Director to waive fees if certain criteria are met (**Attachment I**). The Director determined that this request does not fit within any of the criteria established in that Board resolution, and as such the request was denied and the appellants had to pay the fees. This Fee Waiver policy grants authority to the Planning

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Commission to consider fee waivers denied by the Director. If the Commission wishes to grant the waiver, staff would process a refund to the appellants that paid the fee.

Fees are set by resolution, including the fee for appeals. The current fee for an appeal is \$2,678.08.

**CONTENTIONS**

A lot of information is provided in the appeal applications for consideration. Staff finds that the following contentions are the main points of the appeal:

Process/Authority. RMA Director's letter is illegal because it creates a private zoning allowance. There are significant impacts created that should be evaluated through a permit process.

Zoning. The intent of zoning is to ensure that allowable land uses are compatible in the area. Low Density Residential zone should be limited to planting, growing and harvesting of grapes. The General Plan allows limited agricultural activities that are incidental and subordinate to the residential use.

Inconsistent uses – prohibited. The Zoning ordinances lists uses that are allowed. If a use is not listed, then it is prohibited. Carmel Valley Master Plan is not in the Agricultural Winery Corridor Plan (AWCP), so the interpretation should not ref to that Plan.

Piecemeal Development. Hilltop Ranch LLC has filed three applications demonstrating intent to be an event center.

Precedent. This interpretation could provide an avenue for residents to plant a vineyard in order to become an event center.

**STAFF RESPONSES**

**Process**

With the evolving nature of land use, Zoning Codes cannot contemplate every permissible or prohibited use of property. Therefore, staff makes interpretations of the codes when a use is sought. County staff should not advocate for projects, but customer service is a matter of County staff understanding what people want to do and then, based on our knowledge of the Codes, provide guidance toward that end.

Interpretations are based on current code. As such, interpretations do not change what is allowed, but rather contemplate if something being requested is consistent with the existing policy/regulatory framework. An interpretation is a mechanism to help provide consistent application of the regulations, such that each person under similar conditions receives similar information. As needed, staff may also consider historical use, and what is permitted or legal non-conforming as it pertains to a specific site.

Some interpretations result in uses involving ministerial permits where there is no notice, others involve discretionary permit where a hearing is noticed. It is common for staff to consult the Planning Chief and/or RMA Director on matters that are not clear in the Code. Occasionally, the Director is requested to make a written interpretation.

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Chapter 20.88 of Title 20 (coastal zoning) and Chapter 21.82 (inland zoning, **Attachment C**) establish a procedure whereby any person may make a written request for a written administrative decision or interpretation by the Director of Planning of a County zoning regulation. County's inland subdivision ordinance (Chapter 19.17, inland and coastal versions) also similarly provides for any person to make a request for a written administrative decision or interpretation of the subdivision ordinance.

A key consideration is that while an interpretation may be generated relative to use of a specific property, interpretations are based on zoning regulations that apply to all properties under similar conditions. As such, an interpretation is not limited to a specific property, but would also apply to other properties under similar circumstances/conditions. These interpretations followed the same process that has been used for decades, which has been to respond to the party making the request. That Code specifically sets forth the process where a person aggrieved by an Administrative Interpretation may appeal to the Planning Commission.

Staff finds that process/notification can be improved, but that does not mean that the process was flawed in this case. On July 11, 2017, the Board considered if there should be amendments to the Code sections (inland and coastal) addressing the process for Administrative Interpretations. The Board directed that RMA implement certain enhanced noticing procedures immediately and return to the Board within 120 days with an ordinance amending the procedures.

Issues:

The LDR zone (inland, Chapter 21.14) allows a number of agricultural uses such as "crop farming (specifically viticulture)" and "stands for the sale of Ag products" as "uses allowed", meaning no permit is required. As such, Hilltop Ranch LLC was able to establish a commercial vineyard (provides grapes to Cima Colina Winery) without any permit required.

In November and December 2016, RMA took reports about events to the Planning Commission and Board, respectively. These 2016 report(s) included discussion regarding stand-alone vineyards, recognizing that marketing events in vineyards are a typical part of that use/operation (stand-alone or not). At that time, the practice was to allow a certain level of marketing-type events in vineyards. Staff suggested that commercial vineyards in residential zones be treated different than those in an Ag zone, which is a type of commercial/industrial zoning. The Board direction (by consensus) was simply "status quo" until an events ordinance is adopted. Staff interprets this as not changing the practice up to that point, which allowed a certain level of use within vineyards without a permit. Events will be addressed following short term rentals, unless the Board changes the priorities of the long range planning work program, which has been scheduled to go to the Board on July 11, 2017.

In 2010, the Board adopted the Agriculture and Winery Corridor Plan (AWCP) as part of the 2010 General Plan. AWCP does not apply to Carmel Valley where Hilltop Ranch is located. However, the Glossary includes definitions for uses related to the wine industry. While the definitions have not been codified, they were used as reference in this interpretation for how similar uses may be treated, not as regulatory control.

Hilltop Ranch LLC has submitted applications for long-term use of their property for general events (e.g. Weddings). A primary question/issue is defining what is part of an allowed use versus when

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discretionary permit is required. This interpretation limited use for events related to the commercial vineyard.

What is allowed is a different question than if they are following the criteria established, which is an enforcement issue. Advertisement, weddings, etc are not allowed without a permit. Reference in the appeals to notification and weddings occurred prior to the interpretation and was basis for a code enforcement (CE) case. The case was closed provided follow interpretation criteria. Staff is not aware of any violations since the interpretation was issued, no complaints had been filed/justified.

Staff's premise for this interpretation is to define what is uses are allowed as part of a commercial vineyard. The interpretation was based largely on defining what the Board meant by status quo when an event item was presented to them in December 2016. It was clear that status quo only applied until an event ordinance was drafted.

Hilltop Ranch LLC has planted a portion of the property in vineyard. The grapes are used by the Cima Colina Winer, making it a commercial vineyard in staff's opinion. There is no winery located on the subject site and the tasting room is located separate from the vineyard in Carmel Valley.

Some questions that the Commisison may consider as pat of this matter include, but are not limited to:

- Should there be an acreage threshold for commercial vineyards when marketing events would be allowed?
- Should stand-alone commercial vineyards be allowed a certain level of marketing-type events?
- Should marketing-type events, if allowed, have some (other) limit to size and frequency?

# Attachment B

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## Chapter 21.82 - APPEALS TO ADMINISTRATIVE INTERPRETATION OF THE ZONING ORDINANCE

### Sections:

#### 21.82.010 - Purpose.

The purpose of this Chapter is to provide a process whereby a person aggrieved by an administrative decision may appeal the decision.

#### 21.82.020 - Applicability.

The provisions of this Chapter are applicable only to administrative decisions and interpretations.

#### 21.82.030 - Appropriate Authority.

The Planning Commission of the County of Monterey is the Appropriate Authority to consider appeals of the administrative decisions and interpretations of this Title.

#### 21.82.040 - Application.

- A. Appeals pursuant to this Chapter may only be taken from the written decision or opinion of the Director of Planning.
- B. Requests for a written decision or opinion from the Director of Planning shall be made in writing. Requests must be specific and in sufficient detail to provide a clear basis for issuing the requested decision or opinion.
- C. Upon receipt of an appropriate request, the Director of Planning shall respond in writing within ten (10) days setting forth the decision of the Director of Planning. Said response shall also include the statement "Should you wish to appeal this decision, the appeal must be filed with the Secretary to the Planning Commission no later than 5:00 p.m. on \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_, or no subsequent appeal on this issue may be heard." The Director of Planning shall provide a minimum of ten (10) days from the date of mailing the letter for filing an appeal.
- D. The appeal shall set forth in detail:
  1. The identity of the appellant and interest in the decision;
  2. The identity of the decision appealed;
  3. A clear, complete, but brief statement of the reasons why, in the appellant's opinion, the administrative decision or interpretation is unjustified or inappropriate because:
    - a. The findings, interpretation and decision are not supported by the evidence, or
    - b. The decision or interpretation is contrary to law.
  4. The specific reasons the appellant disagrees with the decision or interpretation.
- E. The appeal shall not be accepted by the Secretary to the Planning Commission unless it is complete and complies with all requirements.

(Ord. No. 5135, § 157, 7-7-2009)

#### 21.82.050 - Action by the Planning Commission.

- A. The Planning Commission shall consider the appeal and render a decision thereon within sixty (60) days after the receipt thereof.

- B. The Planning Commission may, after its consideration of the administrative decision or interpretation, affirm, reverse or modify the interpretation.
- C. In so acting on an administrative decision or interpretation, the Planning Commission shall indicate the reasons for its affirmation, reversal or modification of the administrative decision or interpretation.
- D. The decision of the Planning Commission may be appealed to the Board of Supervisors pursuant to Chapter 21.80.

21.82.060 - Fees.

The fee for such appeal shall be set from time to time by the Board of Supervisors, by resolution. No part of such fee shall be refundable.

# Attachment C

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# MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY

Carl P. Holm, AICP, Director



LAND USE & COMMUNITY DEVELOPMENT | PUBLIC WORKS & FACILITIES | PARKS

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May 16, 2017

Anthony Lombardo & Associates  
Attn: Anthony L. Lombardo  
144 W. Gabilan Street  
Salinas, CA 93901

**Subject: Request for Director's Decision – Addendum to April 11<sup>th</sup> letter  
Principally Permitted Viticulture Use (Section 21.14.030.N MCC)**

Dear Mr. Lombardo:

This is in response to the email you sent May 10 requesting clarifications of several points of the interpretation regarding my April 11<sup>th</sup> Director's opinion issued on Cima Collina's activities in the Hilltop Ranch vineyards.

1. Is this interpretation site specific or does it apply to other vineyards in residential districts that are associated with a winery?

RESPONSE: Director Interpretations are based broadly for how I interpret certain section(s) of the Code. While this was generated for a specific site, the interpretation would be applied similarly to other properties with similar conditions. Farming is a principally permitted use in the LDR zone and a vineyard is farming. In this case, there is a commercial vineyard in a residential zone. My interpretation is meant to distinguish between a commercial vineyard in the LDR zone and a vineyard as part of a residential property, as it would be applied in all such cases. I included some site-specific criteria to define a threshold of allowable use.

2. Is the 75 person limit for an individual event or cumulative throughout the day (e.g., is there a daily limit on the total number of people who can be hosted at events)?

RESPONSE: This would be a daily limit on the total number of people who can be hosted at an event.

3. Can there be multiple events at the same time (for example, a corporate dinner and a wine pick up party) on the property?

RESPONSE: There cannot be multiple events at the same time, but it is a matter of how an event is defined. For example, I could see a dinner for wine members where they can also pick up their wine. The point is that it should be the same set of people involved.

4. Could there be events every day?

RESPONSE: As an allowed use, there could be an event every day. However, as specified in my April 11 Interpretation, there are limits on events and criteria for the size and nature.

5. Does “invitation” mean a direct personal invitation and not an invitation by mass media?

RESPONSE: The Director’s Interpretation is meant to apply to private events, meaning a direct personal initiation. However, a person that is invited may bring a guest. It cannot be used as a public venue where people drive up and attend uninvited or in response to mass media.

6. What would constitute a “wine pick up activity?”

RESPONSE: A scheduled day or period of time for wine club members to pick up their wine. I did not intend this to mean sending people up from the tasting room ad hoc. The standard to use shuttles and park entirely on the property was meant to help in this regard.

7. How will “tasting at a certain level” be determined and enforced?

RESPONSE: Invited guests having wine from the Cima Collina Winery is what is meant by “tasting at a certain level.” A tasting room, where people can arrive any time during operating hours, would require a discretionary permit. Similarly, this is intended to market the wines of Cima Collina so serving wines from other wineries would require a discretionary permit. This interpretation identifies what is allowed, and is not an entitlement with conditions. County handles code enforcement on a reactive basis. We will investigate complaints we receive in order of priority with an emphasis for life-safety issues.

8. Has there been a determination of whether or not there are adequate toilet facilities on the property for the events that anticipated?

RESPONSE: This interpretation that is limited to Title 21 (Zoning Code), and is specific to allowing what is considered to be private events. Chapter 15.20.050 MCC addresses public assemblages, but is not covered under this interpretation. Environmental Health generally does not regulate private events. If Environmental Health determines there is a requirement for toilet facilities, this interpretation does not exempt Cima Collina from meeting other regulatory requirements.

9. How will the shuttle system be monitored to assure that the passengers are parking in a location approved for public parking and not using spaces intended for businesses or other uses.

RESPONSE: These are private events and parking should be consistent with private events on private property. Also, this Interpretation is not an entitlement with conditions. County handles code enforcement on a reactive basis. We will investigate complaints we receive in order of priority with an emphasis for life-safety issues.

10. Will the events be subject to the Carmel Valley Traffic Impact fees?

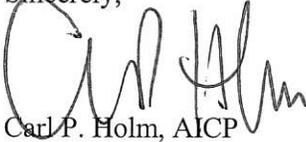
RESPONSE: Traffic impact fees are incurred when an entitlement is required. As an allowed use, the Carmel Valley Traffic Impact fee would not apply to permitted events at the vineyard.

11. Will the Cima Collina vineyard, barn and related event facilities be required to be ADA compliant?

RESPONSE: ADA requires that all people be allowed to have a similar level of experience. That would not require the entire vineyard to be ADA compliant. However, people with ADA needs must be able to participate in these events.

This letter includes some new interpretive information that was not in my April 11<sup>th</sup> letter to Mr. Bridges. Therefore, I will initiate a new appeal period. Should any aggrieved party wish to appeal this decision, the appeal must be filed with the Secretary to the Planning Commission within 10 days from the date of this letter, no later than 5:00 pm on May 26, 2017, or no subsequent appeal on this issue may be heard. The fee for Appeals of Administrative Determinations in the amount of \$2,678.08 is due at the time of filing an appeal.

Sincerely,



Carl P. Holm, AICP

Director

Monterey County Resource Management Agency

Attachment: J Bridges letter for Director's Decision 4.11.17

cc (via email):

[jbridges@fentonkeller.com](mailto:jbridges@fentonkeller.com)

[Erickson@stamplaw.us](mailto:Erickson@stamplaw.us)

[PrisWalton@sbcglobal.net](mailto:PrisWalton@sbcglobal.net)

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# MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY

Carl P. Holm, AICP, Director

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Salinas, California 93901 [www.co.monterey.ca.us/rma](http://www.co.monterey.ca.us/rma)



April 11, 2017

Fenton & Keller  
Attn: John S. Bridges  
Post Office Box 791  
Monterey CA, 93942-0791

**Subject: Request for Director's Decision  
Principally Permitted Viticulture Use (Section 21.14.030.N MCC)**

Dear Mr. Bridges:

This letter is in response to your request for a Director's determination pursuant to Monterey County Code 21.88 regarding the Board of Supervisors' direction on December 13, 2016 generally related to events in vineyards. Hilltop Ranch and Vineyard is requesting confirmation of specific application for the vineyard property as it pertains to vineyard/viticulture operations and product related education and activities, including:

- Wine club member/guest wine tasting
- Schedule wine pick up/activities
- Vineyard tour and educational activities
- Owner-invited corporate lunches, dinner and pairings related to vineyard/viticulture
- Product education, marketing and fundraising

The property initiating this question is located at 62 E. Carmel Valley Road (APNs 197-011-012, 013, 014 & 015). Current zoning designation of this property is low density residential (LDR), which is located in the Carmel Valley Master Plan area. This vineyard has about three acres of wine grapes produced commercially for Cima Collina Winery, which has a tasting room located at 19 E. Carmel Valley Road, within the White Oaks Center (APN: 189-291-006-000). The following is a summary of actions that relate to this matter:

- |         |  |
|---------|--|
| 02/2013 | Application filed requesting permits to allow up to 25 wine hospitality and viticulture functions per year with up to 75 attendees; and up to 10 social events in a vineyard setting including engagement parties, wedding ceremonies and/or wedding receptions with 75-250 guests and staff at each gathering (PLN130041)   |
| 04/2014 | Application filed requesting permits to allow assemblages of people including corporate wine educational dinners and social events for up to 250 people at a time, not exceeding 10 events per year located both within an existing 2,400 square foot barn and outdoors on existing lawn areas and within the vineyard. Also request for a Planning Commission determination of what constitutes an allowed ancillary use within a vineyard. (PLN140234) |
| 06/2014 | PLN130041 withdrawn  |

08/2014	Zoning Administrator continued PLN140234 to a date uncertain.
11/2015	A Notice of Violation (NOV) was sent for “ <i>Rental of a property for events (e.g. weddings) in the Low Density Residential zoning district without proper permit/approval.</i> ” Code Enforcement Case 15CE00348.
02/2016	Code Enforcement Case 15CE00348 was closed
03/2016	PLN140234 Tabled.
10/2016	Planning Commission hearing to discuss what constitutes an event generally in Monterey County.
12/2016	Application filed requesting permits to allow the vineyard (Hilltop Ranch) to operate in relation to the tasting room (Cima Collina), permitting routine vineyard activities (i.e., wine business dinners/meetings, members tastings, educational programs, etc.) (PLN160833)
12/2016	Board of Supervisors hearing to discuss what constitutes an event generally in Monterey County.
01/2017	PLN160833 deemed incomplete.

**Question # 1:** What uses should be considered ancillary or accessory to a vineyard in a residential zone without other development?

**Response #1:** Row crops, such as vineyards, are an allowed use in the residential zoning district. However, there is a difference between a commercial vineyard and having vines with a residence.

A vineyard is often associated with a winery or tasting room and is a desirable place for clients to tour. The dominant feature of a vineyard is as an agricultural setting, many times in picturesque locations. Vineyards (without other development) typically are not characterized by large groups of people. It is expected that a grape grower may want to show clients or prospective clients the vineyard, and this would be considered an appropriate accessory activity to the vineyard. It may even be that a grower would want to offer some form of refreshment to guests. This would be acceptable within the context of the vineyard. The question becomes at what point does an expanding number of people, visiting a vineyard and being provided refreshments and perhaps entertainment grow outside of an acceptable accessory use to the vineyard. A number of Cottage Industry permits have been approved in the residential zone for boutique wineries/breweries in the LDR zone.

Monterey County Zoning Code (Title 21) does not include a definition of what may be allowed under these circumstances. The purpose of the Low Density Residential District states: *The purpose of this Chapter is to provide a district to accommodate low density and intensity uses in the rural and suburban areas of the County of Monterey and to insure that allowable land uses are compatible in the area.* This district includes the idea of ensuring compatibility. The manner in which we consider what is acceptable in this area for a vineyard needs to be sensitive to this idea of compatibility. This is contrasted to the purpose of the Farmlands district which states: *The purpose of this Chapter is to provide a district to preserve and enhance the use of the prime, productive and unique farmlands in the County of Monterey while also providing opportunity to establish necessary support facilities for those agricultural uses.* The Farmlands district clearly encourages many more activities on the property as it is viewed as more of a commercial-type of district.

The 2010 General Plan includes an Agriculture and Winery Corridor Plan (AWCP). Although this property is not located in the AWCP, it can help provide some guidance as to policy language accepted for similar uses. Based on policy in the AWCP, it is my determination that a

vineyard would include the agricultural activities associated with growing and harvesting grapes, including limited tours of the site as part of the marketing efforts. However, for compatibility we must balance the commercial use with being in a residential zone. There needs to be some limitation to the size in order to retain balance of consistency with a residential neighborhood.

Certain uses otherwise considered part of a vineyard may not be appropriate where the vineyard is located in a residential zone. Events that showcase and/or market the product could also be associated with the vineyard. Picking up bottled wine is part of the winery or wine tasting facility, and could also be associated with the vineyard.

**Question #2:** What uses are previously permitted on the subject site?

**Response #2:** Between the 1930s through 1953, there were a series of ranching related uses on the site including: a ranch for girls, guest ranch and a dude ranch. Currently, there are three residences on the site, including a barn and watering hole. The vineyard was established in the 1990s.

On November 25, 2016, County issued a Notice of Violation (NOV) for “*Rental of a property for events (e.g. weddings) in the Low Density Residential zoning district without proper permit/approval.*” Code Enforcement Case 15CE00348 was closed on February 25, 2017 based on an understanding that the owner agreed to the following parameters outlined in an email by Carl Holm (2/11/16) for using the property with until event regulations get sorted out:

- Non-family related weddings are subject to a permit.
- No advertised events or tents (festivals, concerts or other larger, special events) without a permit. Use of existing facilities (e.g. barn) is allowed within applicable occupancy limits. Promotion limited to; email, direct correspondence and personal communications.
- Activities by invitation of owner only.
- No non-member wine tasting. Tasting to a certain level is acceptable as long as it does not become an event.
- No outdoor amplified music.
- Toilet facilities must be provided in accordance with Health Department requirements.
- Shuttle is allowable to reduce vehicle trips. If people drive individually, they must park entirely on the property and not block the roadway.

Communications provided by County staff state that people can go up to the vineyard to pick up wine. If Hilltop operates within these guidelines, County stated that we would not view it as a violation and Code Enforcement Case 15CE00348 would remain closed.

Staff presented interpretive guidelines to the Planning Commission and then the Board of Supervisors on October 26 and December 13, 2016, respectively. The Commission identified a need to define what is reasonable based on scale and frequency and the importance of defining when the public can engage. The Board directed staff to remain with “status quo” relative to events until an ordinance is adopted.

**Conclusion:**

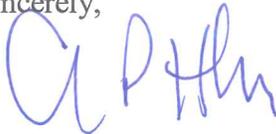
Hilltop Ranch has a commercial vineyard that is allowed in the LDR zone. This vineyard/viticulture operation is allowed product-related education and activities (e.g. marketing), including: limited wine club member wine tasting (guests of a member can be included, but this is not a tasting room); scheduled wine pick-up activities; vineyard tour and

educational activities; owner-invited corporate lunches, dinners and pairings related to vineyard/viticulture; and product education and marketing.

Originally, staff determined the applicant could process a permit to relate the vineyard with the tasting room similar to where winery operations have the tasting room connected to/with the vineyard. Following the BOS direction on 12/13/16, it is my determination that such a permit is not required if the operation remains within these parameters, including the parameters outlined above relative to my email dated 2/11/16. These activities must be by appointment only and limited to 75 people. The owner can apply for a permit to include/address any of these areas to be part of the operation.

Should you wish to appeal this decision, the appeal must be filed with the Secretary to the Planning Commission within 10 days from the date of this letter, no later than 5:00 pm on April 21, 2017, or no subsequent appeal on this issue may be heard. The fee for Appeals of Administrative Determinations in the amount of \$2,678.08 is due at the time of filing an appeal.

Sincerely,



Carl P. Holm, AICP

Director

Monterey County Resource Management Agency

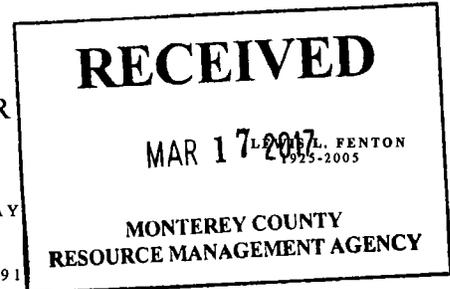
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# Attachment D

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MARK A. CAMERON  
JOHN S. BRIDGES  
DENNIS G. MCCARTHY  
CHRISTOPHER E. PANETTA  
DAVID C. SWEIGERT  
SARA B. BOYNS  
BRIAN D. CALL  
TROY A. KINGSHAVEN  
JOHN E. KESECKER  
ELIZABETH R. LEITZINGER  
SHARILYN R. PAYNE  
CAROL S. HILBURN  
CHRISTINA J. BAGGETT  
ELIAS E. SALAMEH  
KENNETH S. KLEINKOPF  
DERRIC G. OLIVER  
LAURA L. FRANKLIN  
EVAN J. ALLEN  
ANDREW B. KREEFT

FENTON & KELLER  
A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW  
2801 MONTEREY-SALINAS HIGHWAY  
POST OFFICE BOX 791  
MONTEREY, CALIFORNIA 93942-0791  
TELEPHONE (831) 373-1241  
FACSIMILE (831) 373-7219  
www.FentonKeller.com



OF COUNSEL \_\_\_\_\_  
CHARLES R. KELLER  
THOMAS H. JAMISON

March 16, 2017

JOHN S. BRIDGES

JBridges@FentonKeller.com  
ext. 238

**VIA U.S. MAIL and EMAIL (holmCP@co.monterey.ca.us)**

Monterey County RMA  
Attn: Carl Holm, RMA Director/Planning Director  
168 W. Alisal Street, 2nd Floor  
Salinas, CA 93901

Re: Request for Director of Planning Opinion Regarding Principally Permitted  
Viticulture Use (ref. 21.14.030.N)  
Our File: 33799.31683

Dear Mr. Holm:

Please accept this letter as a formal request from the owners of the Hilltop Ranch and Vineyard (62 E. Carmel Valley Road; APNs 197-011-012, 013, 014 & 015) pursuant to Monterey County zoning ordinance section 21.82.040.B and consistent with the Board of Supervisors' direction last December that the status quo should be maintained at present with regard to vineyard related events and activities, for confirmation that the below described activities, which Hilltop Ranch has long been engaged in on the property, are within the scope and definition of viticulture as an allowed use under section 21.14.030 .N.

Vineyard/viticulture operations and product related education and activities including the following: wine club member/guest wine tastings, scheduled wine pick-up activities, vineyard tour and educational activities; owner invited corporate lunches, dinners and pairings related to vineyard/viticulture; and product education, marketing and fundraising. (Note: These activities specifically do not include non-family related weddings, festivals, concerts or other larger "special events" that may require a use permit under section 21.14.050.S.)

These activities have been and will continue to be by appointment only and limited to 80 guests. No large tents will be erected for these activities (though some activities may be held in the existing barn on the property subject, of course, to compliance with applicable occupancy requirements). These activities will not be advertised to the general public in local newspapers

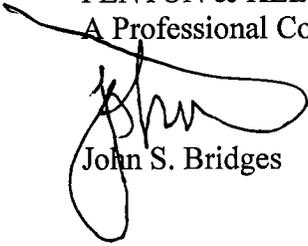
Carl Holm  
March 16, 2017  
Page 2

but instead promotion will be limited to web-site, email, direct correspondence and personal communications. Fees may be charged for the activities, depending on the circumstance, to cover the cost of providing food, amenities, staff, etc. No outdoor amplified music will be associated with these activities. Toilet facilities will be provided for all activities in accordance with Health Department requirements. Depending on the circumstance, guest shuttle service may be provided.

Thank you in advance for your confirmation.

Very truly yours,

FENTON & KELLER  
A Professional Corporation



John S. Bridges

JSB:kmc  
cc: Hilltop Ranch

# Attachment E

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**From:** [Tony Lombardo](#)  
**To:** [Holm, Carl P. x5103](#)  
**Cc:** [Dale Ellis; "Dean Hatfield"](#)  
**Subject:** Cima Collina  
**Date:** Wednesday, May 10, 2017 8:25:13 AM

---

Carl:

This follows up on our conversation May 8<sup>th</sup> regarding your April 11<sup>th</sup> Director's opinion issued on Cima Collina's activities in the Hilltop Ranch vineyards. We would like clarifications of several points of the interpretation:

1. Is this interpretation site specific or does it apply to other vineyards in residential districts that are associated with a winery?
2. Is the 75 person limit for an individual event or cumulative throughout the day (e.g., is there a daily limit on the total number of people who can be hosted at events)?
3. Can there be multiple events at the same time (for example, a corporate dinner and a wine pick up party) on the property?
4. Could there be events every day?
5. Does "invitation" mean a direct personal invitation and not an invitation by mass media?
6. What would constitute a "wine pick up activity"?
7. How will "tasting at a certain level" be determined and enforced?
8. Has there been a determination of whether or not there are adequate toilet facilities on the property for the events that anticipated?
9. How will the shuttle system be monitored to assure that the passengers are parking in a location approved for public parking and not using spaces intended for businesses or other uses.
10. Will the events be subject to the Carmel Valley Traffic Impact fees?
11. Will the Cima Collina vineyard, barn and related event facilities be required to be ADA compliant?

Once a response to our clarification request is received, my client will review that response and my client will have 10 days to appeal the Director's determination as clarified by your response if they desire to do so.

If I have misunderstood the process going forward, please let me know.

**Sincerely,**

**Anthony Lombardo**  
ANTHONY LOMBARDO & ASSOCIATES  
A Professional Corporation  
144 W. Gabilan Street  
[Salinas, CA 93901](#)  
Phone [\(831\) 751-2330](#)  
Fax [\(831\) 751-2331](#)

Email [tony@alombardolaw.com](mailto:tony@alombardolaw.com)

**PRIVILEGED & CONFIDENTIAL -- ATTORNEY CLIENT PRIVILEGE --  
ATTORNEY WORK PRODUCT**

The information contained in this electronic transmission is legally privileged and confidential, and it is intended for the sole use of the individual or entity to whom it is addressed. If you are not the intended recipient, please take notice that any form of dissemination, distribution or photocopying of this electronic transmission is strictly prohibited. If you have received this electronic transmission in error, please immediately contact Anthony Lombardo at [\(831\) 751-2330](tel:8317512330) or [tony@alombardolaw.com](mailto:tony@alombardolaw.com) and immediately delete the electronic transmission.

# Attachment F

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# ***NOTICE OF APPEAL***

## ***To Administrative Interpretation of the Zoning Ordinance***

***Monterey County Code***  
***Title 20.88 (Coastal Zoning)***  
***Title 21.82 (Non-Coastal Zoning)***

No appeal will be accepted until a written interpretation of the Zoning Ordinance is provided by the Director of the RMA-Planning Department. If you wish to file an appeal, pursuant to Monterey County Code Section 20.88.040.C (Coastal Zoning Ordinance) or Monterey County Code Section 21.82.040.C, you must do so no later than 5:00 P.M. on the date specified in the written decision or interpretation provided by the Director. For assistance in completing this form, please contact Carol Allen or Linda Rotharmel at (831) 755-5025.

Submit to: Secretary to the Monterey County Planning Commission  
c/o Carol Allen or Linda Rotharmel  
Monterey County RMA-Planning Department  
168 West Alisal Street, Second Floor  
Salinas, CA 93901

1. Please give the following information:

- a) Your name: Anthony Lombardo
- b) Address: Anthony Lombardo & Associates, 144 W. Gabilan, Salinas, CA 93901
- c) Phone Number: (831) 751-2330

2. Indicate your interest in the interpretation by checking the appropriate box:

- Applicant
- Neighbor
- Other (please state) Attorney for appellants

3. What administrative decision or interpretation do you wish to appeal? Please attach a copy of the written response from the Director of Planning.

Letter attached.



# ANTHONY LOMBARDO & ASSOCIATES

A PROFESSIONAL CORPORATION

ANTHONY L. LOMBARDO  
KELLY MCCARTHY SUTHERLAND  
CODY J. PHILLIPS

144 W. GABILAN STREET  
SALINAS, CA 93901  
(831) 751-2330  
FAX (831) 751-2331

May 26, 2017

3147.001

Carl Holm, Director  
Monterey County RMA  
168 W. Alisal Street  
Salinas, CA 93901

Appeal of Director's Decision re Hilltop Ranch/Cima Collina

Dear Carl:

I represent Dean Hatfield and Karolyn Stone who are filing this appeal on behalf of Nancy Burnett, Bryan Jaeger, Dock and Lynda Williams, David Berta, Liana Olson, Edward and Peggy Dickson, Edward Mellinger, and Pamela Hopkins all of whom are property owners adjoining and surrounding Hilltop Ranch. After careful review and consideration of your April 11<sup>th</sup> letter to John Bridges and your letter May 16<sup>th</sup> letter to me my clients appeal your decision for the following reasons:

## Zoning

The interpretation essentially allows without a permit or any level of public review the hosting of daily events for up to 75 people, not including employees, caterers, party planners, musicians, security and others who would typically be part of the event. Realistically, 75 person events easily become 90-100 person events. Those events do not have to be related to the vineyard as long as they are somehow determined to be connected to the remotely located tasting room (Carmel Valley Village) and winery (Marina) and are under the guise of being by the invitation of the owner.

The LDR (Low Density Residential) District does allow, within certain limits related to slopes, viticulture and would also allow accessory uses ("...use accessory to and customarily a part of the permitted use, clearly incidental and secondary to the permitted use and which does not change the character of the permitted use (21.06.013, MCC)" as a matter of right. Viticulture is not wine making or the marketing of wine. It is "the cultivation or culture of grapes especially for wine making. (Merriam Webster)." The Wine Spectator defines viticulture as "the science, study and production of grapes." So, in the LDR district, the planting, growing and harvesting of grapes and accessory uses to that (barns, water systems, equipment and materials storage) are allowed. Any other uses, such as events, would either require discretionary permits or not be allowed at all.

The LDR district is first and foremost a residential district which is intended to "...provide a district to accommodate low density and intensity uses in the rural and suburban areas of the County of Monterey and to insure that allowable land uses are compatible in the area" (Section 21.14.010, MCC). Daily events with up to 75 persons plus associated staff for the event cannot

be considered to be a “low intensity” use and is certainly not compatible with a residential district or the residential nature of the area nor is it in any way accessory and incidental to the vineyard.

Uses that are Inconsistent with the Monterey County General Plan and  
Carmel Valley Master Plan Are Prohibited

MCC Section 21.02.040 states “Those listed uses [in zoning districts] and other uses which are consistent with the Monterey County General Plan and applicable area plans may be allowed subject to appropriate permits. Other uses are prohibited.”

The Hilltop Ranch properties consist of 4 residentially zoned and designated lots ranging in size from 4.03 to 5.71 acres. The properties total 19.99 acres, including 6.37 acres in scenic easement. There are only about 3.5 acres in vineyards<sup>1</sup>. They are in an area that is zoned for residential use and is designated as Low Density Residential/2.5 acres per unit by the Carmel Valley Master Plan. MCGP 2010 Policy LU-2.34 states “...Low Density Residential areas are appropriate for residential (1-5 acres/unit) recreational, public and quasi-public and limited agricultural activities that are incidental and subordinate to the residential use.” The level of activity that would be allowed without permit or public review under this interpretation is clearly not “incidental and subordinate” to the residential use or even to the production capacity of the vineyards. It is unclear if the proposed uses are in any way connected to or reliant on the residences.

Carmel Valley is Not in the Agricultural Wine Corridor Plan

References were made in the interpretations that the uses proposed at Hilltop Ranch are uses that are typically found in areas of vineyards and wineries and these could be somehow looked at as an extension of the County’s Agricultural and Winery Corridor Plan (AWCP). That is incorrect. The 2010 MCGP specifically designates AWCP areas. The designated AWCP areas are the Central/Arroyo Seco/River Road segment, the Metz Road segment and the Jolon Road segment. There are no AWCP areas in Carmel Valley.

Given the extreme level of detail and scrutiny that was given the 2010 MCGP and the AWCP in their development and adoption, it is clear that it has been decided that AWCP were found to be not appropriate in Carmel Valley. That decision was undoubtedly in recognition of the limited traffic capacity, water constraints and primarily residential nature of Carmel Valley

Piecemeal Development

The three separate applications have been made for activities at Hilltop Ranch.

---

<sup>1</sup> A high yield would be about 5 tons of grapes/acre. The grape yield from the vineyards would be about 17 tons. A ton of grapes will yield about 65 cases of wine. So, the production capacity from a high yield in these vineyards is expected to be about 1100 cases. (Source: UC Davis).

- PLN160833: Administrative Permit to allow the vineyard (Hilltop Ranch) to operate in relation to the tasting room (Cima Collina), permitting routine vineyard activities (i.e., wine business dinners/meetings, members tastings, educational programs, etc.).
- PLN140234: Use Permit to allow assemblages of people including corporate wine educational dinners and social events for up to 250 people at a time, not exceeding ten events per year located both within an existing 2,400 square foot barn and outdoors on existing lawn areas and within the vineyard.
- PLN130041: Combined Development Permit consisting of: 1) Use Permit to allow the use of the property to include: a) up to 25 wine hospitality and viticultural functions per year with up to 75 attendees; and b) up to 10 social events in a vineyard setting including engagement parties, wedding ceremonies, and/or wedding receptions with 75-250 guests and staff at each gathering; and 2) an Administrative Permit for transient occupancy to allow the use of an existing 1,200 square foot dwelling in conjunction with events or to rent to customers and members on an occasional basis.

The owners' intent is clear. They want Hilltop Ranch to be an event center set in a small vineyard. Allowing daily events and activities for up to 75 people is will aide in their classic attempt to piecemeal a project.

So that the public and decision makers can have a full understanding of the scope and scale of the proposals, a single application for all the intended activities should be required.

#### The Interpretation Establishes a Precedent with Unknown Impacts

These applications seek to create highly intensified commercial uses in a residential neighborhood. If allowed to proceed, any resident could most likely justify becoming an "event center" so that they, too, could make more money from their property investment no matter how large or small. The serene rural nature of particularly Carmel Valley would be permanently destroyed. Therefore, to maintain the serene rural nature of Carmel Valley's and Monterey County's residential areas, the interpretation should be vacated.

#### The Interpretations Fails to Address the Impacts to Neighbors and Carmel Valley and Denies the Neighbors the Right to Participate in the Decision Making Process

There are significant impacts associated with the interpretations allowed level of use in a residential neighborhood that will not be analyzed or addressed.

The properties are accessed by a narrow, 12' wide single lane, private residential driveway that was built to serve a limited number of residential lots and to be maintained by them. It is not designed or constructed to accommodate the large volume of auto, truck and bus traffic that would be associated with the proposed uses. We could find no evidence in the record that the applicants have rights to use this right of way for other than the residential and limited agricultural uses consistent with the residential zoning. That right should have been substantiated prior to any application moving forward.

Carl Holm, RMA Director

May 26, 2017

Page 4

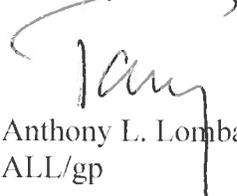
The interpretation allows for these daily events with no consideration of the lack of facilities for events. It is already known the road and buildings are inadequate for fire purposes. Some correspondence in the files indicates there will have to be significant improvements for road access, water storage, and fire sprinklers. Restroom availability and capacity is unknown. Increased water demand is unknown. Impacts to Carmel Valley Road are unknown.

A traffic analysis was prepared in 2014. It is not clear from a cursory review of that report if it addressed both the 2013 and 2014 applications or just the 2014 application. The analysis does state however that "The proposed project will generate new vehicle trips on the segment of State Highway 1 between Ocean Avenue and Carmel Valley Road that currently operates at LOS F. Therefore, the project may have a potentially significant impact on State Highway 1." Based on numerous applications throughout the County the standard has been that if one trip is being added to roads that operate at LOS F, an EIR is required.

There is no information on the noise levels that would be expected to be generated by these uses. Prior documented unpermitted gatherings on Hilltop have generated disturbing levels of crowd and vehicle noise before, during and after the event. The noise impacts of these activities on a quiet rural residential area are intrusive to the surrounding countryside and its inhabitants. There are reasons for the LDR zoning classification and limits on exposure to noise is one of them.

For the forgoing reasons, we hereby appeal the Director's Interpretations of April 11<sup>th</sup> and May 16<sup>th</sup> to the Planning Commission. We also ask that any the interpretation be set aside until the appeal process is completed.

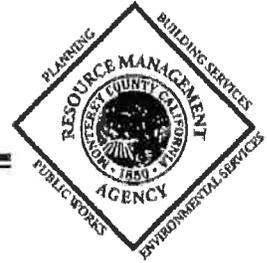
Sincerely,

A handwritten signature in black ink, appearing to read "Anthony", with a large, sweeping flourish above it that extends to the left and then curves back down to the right.

Anthony L. Lombardo  
ALL/gp

# MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY

Carl P. Holm, AICP, Director



Building Services / Environmental Services / Planning Services / Public Works & Facilities  
168 W. Alisal Street, 2nd Floor  
Salinas, California 93901  
(831)755-4800  
www.co.monterey.ca.us/rma

April 11, 2017

Fenton & Keller  
Attn: John S. Bridges  
Post Office Box 791  
Monterey CA, 93942-0791

**Subject: Request for Director's Decision  
Principally Permitted Viticulture Use (Section 21.14.030.N MCC)**

Dear Mr. Bridges:

This letter is in response to your request for a Director's determination pursuant to Monterey County Code 21.88 regarding the Board of Supervisors' direction on December 13, 2016 generally related to events in vineyards. Hilltop Ranch and Vineyard is requesting confirmation of specific application for the vineyard property as it pertains to vineyard/viticulture operations and product related education and activities, including:

- Wine club member/guest wine tasting
- Schedule wine pick up/activities
- Vineyard tour and educational activities
- Owner-invited corporate lunches, dinner and pairings related to vineyard/viticulture
- Product education, marketing and fundraising

The property initiating this question is located at 62 E. Carmel Valley Road (APNs 197-011-012, 013, 014 & 015). Current zoning designation of this property is low density residential (LDR), which is located in the Carmel Valley Master Plan area. This vineyard has about three acres of wine grapes produced commercially for Cima Collina Winery, which has a tasting room located at 19 E. Carmel Valley Road, within the White Oaks Center (APN: 189-291-006-000). The following is a summary of actions that relate to this matter:

- |         |  |
|---------|--|
| 02/2013 | Application filed requesting permits to allow up to 25 wine hospitality and viticulture functions per year with up to 75 attendees; and up to 10 social events in a vineyard setting including engagement parties, wedding ceremonies and/or wedding receptions with 75-250 guests and staff at each gathering (PLN130041)   |
| 04/2014 | Application filed requesting permits to allow assemblages of people including corporate wine educational dinners and social events for up to 250 people at a time, not exceeding 10 events per year located both within an existing 2,400 square foot barn and outdoors on existing lawn areas and within the vineyard. Also request for a Planning Commission determination of what constitutes an allowed ancillary use within a vineyard. (PLN140234) |
| 06/2014 | PLN130041 withdrawn  |

08/2014	Zoning Administrator continued PLN140234 to a date uncertain.
11/2015	A Notice of Violation (NOV) was sent for “ <i>Rental of a property for events (e.g. weddings) in the Low Density Residential zoning district without proper permit/approval.</i> ” Code Enforcement Case 15CE00348.
02/2016	Code Enforcement Case 15CE00348 was closed
03/2016	PLN140234 Tabled.
10/2016	Planning Commission hearing to discuss what constitutes an event generally in Monterey County.
12/2016	Application filed requesting permits to allow the vineyard (Hilltop Ranch) to operate in relation to the tasting room (Cima Collina), permitting routine vineyard activities (i.e., wine business dinners/meetings, members tastings, educational programs, etc.) (PLN160833)
12/2016	Board of Supervisors hearing to discuss what constitutes an event generally in Monterey County.
01/2017	PLN160833 deemed incomplete.

**Question # 1:** What uses should be considered ancillary or accessory to a vineyard in a residential zone without other development?

**Response #1:** Row crops, such as vineyards, are an allowed use in the residential zoning district. However, there is a difference between a commercial vineyard and having vines with a residence.

A vineyard is often associated with a winery or tasting room and is a desirable place for clients to tour. The dominant feature of a vineyard is as an agricultural setting, many times in picturesque locations. Vineyards (without other development) typically are not characterized by large groups of people. It is expected that a grape grower may want to show clients or prospective clients the vineyard, and this would be considered an appropriate accessory activity to the vineyard. It may even be that a grower would want to offer some form of refreshment to guests. This would be acceptable within the context of the vineyard. The question becomes at what point does an expanding number of people, visiting a vineyard and being provided refreshments and perhaps entertainment grow outside of an acceptable accessory use to the vineyard. A number of Cottage Industry permits have been approved in the residential zone for boutique wineries/breweries in the LDR zone.

Monterey County Zoning Code (Title 21) does not include a definition of what may be allowed under these circumstances. The purpose of the Low Density Residential District states: *The purpose of this Chapter is to provide a district to accommodate low density and intensity uses in the rural and suburban areas of the County of Monterey and to insure that allowable land uses are compatible in the area.* This district includes the idea of ensuring compatibility. The manner in which we consider what is acceptable in this area for a vineyard needs to be sensitive to this idea of compatibility. This is contrasted to the purpose of the Farmlands district which states: *The purpose of this Chapter is to provide a district to preserve and enhance the use of the prime, productive and unique farmlands in the County of Monterey while also providing opportunity to establish necessary support facilities for those agricultural uses.* The Farmlands district clearly encourages many more activities on the property as it is viewed as more of a commercial-type of district.

The 2010 General Plan includes an Agriculture and Winery Corridor Plan (AWCP). Although this property is not located in the AWCP, it can help provide some guidance as to policy language accepted for similar uses. Based on policy in the AWCP, it is my determination that a

vineyard would include the agricultural activities associated with growing and harvesting grapes, including limited tours of the site as part of the marketing efforts. However, for compatibility we must balance the commercial use with being in a residential zone. There needs to be some limitation to the size in order to retain balance of consistency with a residential neighborhood.

Certain uses otherwise considered part of a vineyard may not be appropriate where the vineyard is located in a residential zone. Events that showcase and/or market the product could also be associated with the vineyard. Picking up bottled wine is part of the winery or wine tasting facility, and could also be associated with the vineyard.

**Question #2:** What uses are previously permitted on the subject site?

**Response #2:** Between the 1930s through 1953, there were a series of ranching related uses on the site including: a ranch for girls, guest ranch and a dude ranch. Currently, there are three residences on the site, including a barn and watering hole. The vineyard was established in the 1990s.

On November 25, 2016, County issued a Notice of Violation (NOV) for "*Rental of a property for events (e.g. weddings) in the Low Density Residential zoning district without proper permit/approval.*" Code Enforcement Case 15CE00348 was closed on February 25, 2017 based on an understanding that the owner agreed to the following parameters outlined in an email by Carl Holm (2/11/16) for using the property with until event regulations get sorted out:

- Non-family related weddings are subject to a permit.
- No advertised events or tents (festivals, concerts or other larger, special events) without a permit. Use of existing facilities (e.g. barn) is allowed within applicable occupancy limits. Promotion limited to; email, direct correspondence and personal communications.
- Activities by invitation of owner only.
- No non-member wine tasting. Tasting to a certain level is acceptable as long as it does not become an event.
- No outdoor amplified music.
- Toilet facilities must be provided in accordance with Health Department requirements.
- Shuttle is allowable to reduce vehicle trips. If people drive individually, they must park entirely on the property and not block the roadway.

Communications provided by County staff state that people can go up to the vineyard to pick up wine. If Hilltop operates within these guidelines, County stated that we would not view it as a violation and Code Enforcement Case 15CE00348 would remain closed.

Staff presented interpretive guidelines to the Planning Commission and then the Board of Supervisors on October 26 and December 13, 2016, respectively. The Commission identified a need to define what is reasonable based on scale and frequency and the importance of defining when the public can engage. The Board directed staff to remain with "status quo" relative to events until an ordinance is adopted.

**Conclusion:**

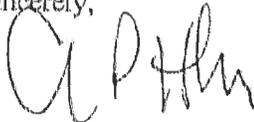
Hilltop Ranch has a commercial vineyard that is allowed in the LDR zone. This vineyard/viticulture operation is allowed product-related education and activities (e.g. marketing), including: limited wine club member wine tasting (guests of a member can be included, but this is not a tasting room); scheduled wine pick-up activities; vineyard tour and

educational activities; owner-invited corporate lunches, dinners and pairings related to vineyard/viticulture; and product education and marketing.

Originally, staff determined the applicant could process a permit to relate the vineyard with the tasting room similar to where winery operations have the tasting room connected to/with the vineyard. Following the BOS direction on 12/13/16, it is my determination that such a permit is not required if the operation remains within these parameters, including the parameters outlined above relative to my email dated 2/11/16. These activities must be by appointment only and limited to 75 people. The owner can apply for a permit to include/address any of these areas to be part of the operation.

Should you wish to appeal this decision, the appeal must be filed with the Secretary to the Planning Commission within 10 days from the date of this letter, no later than 5:00 pm on April 21, 2017, or no subsequent appeal on this issue may be heard. The fee for Appeals of Administrative Determinations in the amount of \$2,678.08 is due at the time of filing an appeal.

Sincerely,

A handwritten signature in black ink, appearing to read 'C P Holm', written in a cursive style.

Carl P. Holm, AICP

Director

Monterey County Resource Management Agency

# MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY

Carl P. Holm, AICP, Director



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LAND USE & COMMUNITY DEVELOPMENT | PUBLIC WORKS & FACILITIES | PARKS  
168 W. Alisal Street, 2nd Floor (831)755-4800  
Salinas, California 93901 [www.co.monterey.ca.us/rma](http://www.co.monterey.ca.us/rma)

May 16, 2017

Anthony Lombardo & Associates  
Attn: Anthony L. Lombardo  
144 W. Gabilan Street  
Salinas, CA 93901

**Subject: Request for Director's Decision – Addendum to April 11<sup>th</sup> letter  
Principally Permitted Viticulture Use (Section 21.14.030.N MCC)**

Dear Mr. Lombardo:

This is in response to the email you sent May 10 requesting clarifications of several points of the interpretation regarding my April 11<sup>th</sup> Director's opinion issued on Cima Collina's activities in the Hilltop Ranch vineyards.

1. Is this interpretation site specific or does it apply to other vineyards in residential districts that are associated with a winery?

RESPONSE: Director Interpretations are based broadly for how I interpret certain section(s) of the Code. While this was generated for a specific site, the interpretation would be applied similarly to other properties with similar conditions. Farming is a principally permitted use in the LDR zone and a vineyard is farming. In this case, there is a commercial vineyard in a residential zone. My interpretation is meant to distinguish between a commercial vineyard in the LDR zone and a vineyard as part of a residential property, as it would be applied in all such cases. I included some site-specific criteria to define a threshold of allowable use.

2. Is the 75 person limit for an individual event or cumulative throughout the day (e.g., is there a daily limit on the total number of people who can be hosted at events)?

RESPONSE: This would be a daily limit on the total number of people who can be hosted at an event.

3. Can there be multiple events at the same time (for example, a corporate dinner and a wine pick up party) on the property?

RESPONSE: There cannot be multiple events at the same time, but it is a matter of how an event is defined. For example, I could see a dinner for wine members where they can also pick up their wine. The point is that it should be the same set of people involved.

4. Could there be events every day?

RESPONSE: As an allowed use, there could be an event every day. However, as specified in my April 11 Interpretation, there are limits on events and criteria for the size and nature.

5. Does "invitation" mean a direct personal invitation and not an invitation by mass media?

RESPONSE: The Director's Interpretation is meant to apply to private events, meaning a direct personal initiation. However, a person that is invited may bring a guest. It cannot be used as a public venue where people drive up and attend uninvited or in response to mass media.

6. What would constitute a "wine pick up activity?"

RESPONSE: A scheduled day or period of time for wine club members to pick up their wine. I did not intend this to mean sending people up from the tasting room ad hoc. The standard to use shuttles and park entirely on the property was meant to help in this regard.

7. How will "tasting at a certain level" be determined and enforced?

RESPONSE: Invited guests having wine from the Cima Collina Winery is what is meant by "tasting at a certain level." A tasting room, where people can arrive any time during operating hours, would require a discretionary permit. Similarly, this is intended to market the wines of Cima Collina so serving wines from other wineries would require a discretionary permit. This interpretation identifies what is allowed, and is not an entitlement with conditions. County handles code enforcement on a reactive basis. We will investigate complaints we receive in order of priority with an emphasis for life-safety issues.

8. Has there been a determination of whether or not there are adequate toilet facilities on the property for the events that anticipated?

RESPONSE: This interpretation that is limited to Title 21 (Zoning Code), and is specific to allowing what is considered to be private events. Chapter 15.20.050 MCC addresses public assemblages, but is not covered under this interpretation. Environmental Health generally does not regulate private events. If Environmental Health determines there is a requirement for toilet facilities, this interpretation does not exempt Cima Collina from meeting other regulatory requirements.

9. How will the shuttle system be monitored to assure that the passengers are parking in a location approved for public parking and not using spaces intended for businesses or other uses.

RESPONSE: These are private events and parking should be consistent with private events on private property. Also, this Interpretation is not an entitlement with conditions. County handles code enforcement on a reactive basis. We will investigate complaints we receive in order of priority with an emphasis for life-safety issues.

10. Will the events be subject to the Carmel Valley Traffic Impact fees?

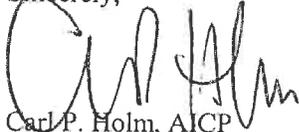
RESPONSE: Traffic impact fees are incurred when an entitlement is required. As an allowed use, the Carmel Valley Traffic Impact fee would not apply to permitted events at the vineyard.

11. Will the Cima Collina vineyard, barn and related event facilities be required to be ADA compliant?

RESPONSE: ADA requires that all people be allowed to have a similar level of experience. That would not require the entire vineyard to be ADA compliant. However, people with ADA needs must be able to participate in these events.

This letter includes some new interpretive information that was not in my April 11<sup>th</sup> letter to Mr. Bridges. Therefore, I will initiate a new appeal period. Should any aggrieved party wish to appeal this decision, the appeal must be filed with the Secretary to the Planning Commission within 10 days from the date of this letter, no later than 5:00 pm on May 26, 2017, or no subsequent appeal on this issue may be heard. The fee for Appeals of Administrative Determinations in the amount of \$2,678.08 is due at the time of filing an appeal.

Sincerely,



Carl P. Holm, AICP

Director

Monterey County Resource Management Agency

Attachment: J Bridges letter for Director's Decision 4.11.17

cc (via email):

[jbridges@fentonkeller.com](mailto:jbridges@fentonkeller.com)

[Erickson@stamlaw.us](mailto:Erickson@stamlaw.us)

[PrisWalton@sbcglobal.net](mailto:PrisWalton@sbcglobal.net)

[Chris\\_Dale@comcast.net](mailto:Chris_Dale@comcast.net)

[eric.sand@icloud.com](mailto:eric.sand@icloud.com)

[foxrich@aol.com](mailto:foxrich@aol.com)

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# Attachment G

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Michael W. Stamp  
Molly Erickson

**STAMP | ERICKSON**  
Attorneys at Law

479 Pacific Street, Suite One  
Monterey, California 93940  
T: (831) 373-1214  
F: (831) 373-0242

May 26, 2017

Via E-mail

Jacqueline Onciano, Chief of Planning and Secretary to the Planning Commission  
County of Monterey  
168 West Alisal Street  
Salinas, CA 93901

Re: Appeal of "Director's Interpretation" allowing special events use in Low Density Residential zone; Hilltop Ranch LLC, 62 East Carmel Valley Road

Dear Ms. Onciano:

The Carmel Valley Association (CVA) objects to the interpretations authored by Carl Holm starting in February 11, 2016 and modified April 11, 2017 and May 16, 2017. The interpretations to which CVA objects are collectively called "the Holm Letter" and are attached to the appeal form.

CVA's position is that County staff does not have the authority to write the letters and thus Mr. Holm's action can be challenged in Court without exhausting administrative remedies. If the County's position is otherwise, then we ask that you receive the attached appeal.

CVA submits the appeal and pays the appeal under protest because the County's action is illegal and has placed the financial burden on the public to right the County's wrong. CVA requests that the \$2,678.08 appeal fee be waived. If staff will waive the fee, please do and please let me know promptly. However, CVA believes that the request for staff to waive the fee likely is futile because you report to Mr. Holm and Mr. Holm wrote his letter with the express stated intent that his letter would force opponents to file an appeal. If you will not waive the fee, CVA asks the Planning Commission to waive it.

If you have any questions, please contact me and I will be happy to assist you. Thank you.

Very truly yours,

STAMP | ERICKSON

  
Molly Erickson

Attachments: Appeal with attachments



# ***NOTICE OF APPEAL***

## ***To Administrative Interpretation of the Zoning Ordinance***

***Monterey County Code***  
***Title 20.88 (Coastal Zoning)***  
***Title 21.82 (Non-Coastal Zoning)***

No appeal will be accepted until a written interpretation of the Zoning Ordinance is provided by the Director of the RMA-Planning Department. If you wish to file an appeal, pursuant to Monterey County Code Section 20.88.040.C (Coastal Zoning Ordinance) or Monterey County Code Section 21.82.040.C, you must do so no later than 5:00 P.M. on the date specified in the written decision or interpretation provided by the Director. For assistance in completing this form, please contact Carol Allen or Linda Rotharmel at (831) 755-5025.

Submit to: Secretary to the Monterey County Planning Commission  
c/o ~~Carol Allen or Linda Rotharmel~~ **Jacqueline Nickerson**  
Monterey County RMA-Planning Department  
168 West Alisal Street, Second Floor  
Salinas, CA 93901

1. Please give the following information:

- a) Your name: Carmel Valley Association
- b) Address: c/o Stamp / Erickson, 479 Pacific St. #1, Monterey CA 93940
- c) Phone Number: 831-373-1214

2. Indicate your interest in the interpretation by checking the appropriate box:

- Applicant
- Neighbor
- Other (please state) Valley-wide residents' association

3. What administrative decision or interpretation do you wish to appeal? Please attach a copy of the written response from the Director of Planning.

May 16, 2017 "Director's decision", April 11, 2017 letter and

February 11, 2016 email from Carl Holm, collectively "The Holm Letter"

4. Please give a clear, complete but brief statement of the reasons why, in your opinion, the administrative decision or interpretation is unjustified or inappropriate because:
- a) The findings, interpretation and decision are not supported by the evidence, or
  - b) The decision or interpretation is contrary to law.
- The Planning Commission will *not* accept an application for appeal that is stated in generalities, legal or otherwise. (Attach extra sheets if necessary).

See attached.

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5. In order to file a valid appeal, you must give specific reasons why you disagree with the decision or interpretation. (Attach extra sheets if necessary).

See attached.

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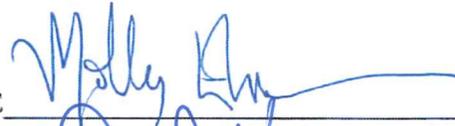
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6. Your appeal is accepted when the Secretary to the Planning Commission accepts the appeal as complete on its face, and receives the filing fee (\$2678.18). The appeal will be considered by the Planning Commission at public hearing within 60 days of the receipt thereof. *paid*

APPLICANT SIGNATURE  DATE May 26, 2017

ACCEPTED  DATE 5/20/17

SECRETARY TO THE PLANNING COMMISSION

# MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY

Carl P. Holm, AICP, Director



LAND USE & COMMUNITY DEVELOPMENT | PUBLIC WORKS & FACILITIES | PARKS  
168 W. Alisal Street, 2nd Floor (831)755-4800  
Salinas, California 93901 www.co.monterey.ca.us/rma

May 16, 2017

Anthony Lombardo & Associates  
Attn: Anthony L. Lombardo  
144 W. Gabilan Street  
Salinas, CA 93901

**Subject: Request for Director's Decision – Addendum to April 11<sup>th</sup> letter  
Principally Permitted Viticulture Use (Section 21.14.030.N MCC)**

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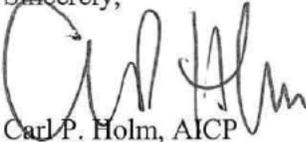
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This letter includes some new interpretive information that was not in my April 11<sup>th</sup> letter to Mr. Bridges. Therefore, I will initiate a new appeal period. Should any aggrieved party wish to appeal this decision, the appeal must be filed with the Secretary to the Planning Commission within 10 days from the date of this letter, no later than 5:00 pm on May 26, 2017, or no subsequent appeal on this issue may be heard. The fee for Appeals of Administrative Determinations in the amount of \$2,678.08 is due at the time of filing an appeal.

Sincerely,



Carl P. Holm, AICP

Director

Monterey County Resource Management Agency

Attachment: J Bridges letter for Director's Decision 4.11.17

cc (via email):

[jbridges@fentonkeller.com](mailto:jbridges@fentonkeller.com)

[Erickson@stamplaw.us](mailto:Erickson@stamplaw.us)

[PrisWalton@sbeglobal.net](mailto:PrisWalton@sbeglobal.net)

[Chris\\_Dale@comcast.net](mailto:Chris_Dale@comcast.net)

[eric.sand@icloud.com](mailto:eric.sand@icloud.com)

[foxrich@aol.com](mailto:foxrich@aol.com)

# MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY

Carl P. Holm, AICP, Director



Building Services / Environmental Services / Planning Services / Public Works & Facilities  
168 W. Alisal Street, 2nd Floor (831)755-4800  
Salinas, California 93901 [www.co.monterey.ca.us/rma](http://www.co.monterey.ca.us/rma)

April 11, 2017

Fenton & Keller

Attn: John S. Bridges

Post Office Box 791  
Monterey CA, 93942-0791

**Subject: Request for Director's Decision  
Principally Permitted Viticulture Use (Section 21.14.030.N MCC)**

Dear Mr. Bridges:

This letter is in response to your request for a Director's determination pursuant to Monterey County Code 21.88 regarding the Board of Supervisors' direction on December 13, 2016 generally related to events in vineyards. Hilltop Ranch and Vineyard is requesting confirmation of specific application for the vineyard property as it pertains to vineyard/viticulture operations and product related education and activities, including:

- Wine club member/guest wine tasting
- Schedule wine pick up/activities
- Vineyard tour and educational activities
- Owner-invited corporate lunches, dinner and pairings related to vineyard/viticulture
- Product education, marketing and fundraising

The property initiating this question is located at 62 E. Carmel Valley Road (APNs 197-011-012, 013, 014 & 015). Current zoning designation of this property is low density residential (LDR), which is located in the Carmel Valley Master Plan area. This vineyard has about three acres of wine grapes produced commercially for Cima Collina Winery, which has a tasting room located at 19 E. Carmel Valley Road, within the White Oaks Center (APN: 189-291-006-000). The following is a summary of actions that relate to this matter:

- |         |  |
|---------|--|
| 02/2013 | Application filed requesting permits to allow up to 25 wine hospitality and viticulture functions per year with up to 75 attendees; and up to 10 social events in a vineyard setting including engagement parties, wedding ceremonies and/or wedding receptions with 75-250 guests and staff at each gathering (PLN130041)   |
| 04/2014 | Application filed requesting permits to allow assemblages of people including corporate wine educational dinners and social events for up to 250 people at a time, not exceeding 10 events per year located both within an existing 2,400 square foot barn and outdoors on existing lawn areas and within the vineyard. Also request for a Planning Commission determination of what constitutes an allowed ancillary use within a vineyard. (PLN140234) |
| 06/2014 | PLN130041 withdrawn  |

08/2014	Zoning Administrator continued PLN140234 to a date uncertain.
11/2015	A Notice of Violation (NOV) was sent for “ <i>Rental of a property for events (e.g. weddings) in the Low Density Residential zoning district without proper permit/approval.</i> ” Code Enforcement Case 15CE00348.
02/2016	Code Enforcement Case 15CE00348 was closed
03/2016	PLN140234 Tabled.
10/2016	Planning Commission hearing to discuss what constitutes an event generally in Monterey County.
12/2016	Application filed requesting permits to allow the vineyard (Hilltop Ranch) to operate in relation to the tasting room (Cima Collina), permitting routine vineyard activities (i.e., wine business dinners/meetings, members tastings, educational programs, etc.) (PLN160833)
12/2016	Board of Supervisors hearing to discuss what constitutes an event generally in Monterey County.
01/2017	PLN160833 deemed incomplete.

**Question # 1:** What uses should be considered ancillary or accessory to a vineyard in a residential zone without other development?

**Response #1:** Row crops, such as vineyards, are an allowed use in the residential zoning district. However, there is a difference between a commercial vineyard and having vines with a residence.

A vineyard is often associated with a winery or tasting room and is a desirable place for clients to tour. The dominant feature of a vineyard is as an agricultural setting, many times in picturesque locations. Vineyards (without other development) typically are not characterized by large groups of people. It is expected that a grape grower may want to show clients or prospective clients the vineyard, and this would be considered an appropriate accessory activity to the vineyard. It may even be that a grower would want to offer some form of refreshment to guests. This would be acceptable within the context of the vineyard. The question becomes at what point does an expanding number of people, visiting a vineyard and being provided refreshments and perhaps entertainment grow outside of an acceptable accessory use to the vineyard. A number of Cottage Industry permits have been approved in the residential zone for boutique wineries/breweries in the LDR zone.

Monterey County Zoning Code (Title 21) does not include a definition of what may be allowed under these circumstances. The purpose of the Low Density Residential District states: *The purpose of this Chapter is to provide a district to accommodate low density and intensity uses in the rural and suburban areas of the County of Monterey and to insure that allowable land uses are compatible in the area.* This district includes the idea of ensuring compatibility. The manner in which we consider what is acceptable in this area for a vineyard needs to be sensitive to this idea of compatibility. This is contrasted to the purpose of the Farmlands district which states: *The purpose of this Chapter is to provide a district to preserve and enhance the use of the prime, productive and unique farmlands in the County of Monterey while also providing opportunity to establish necessary support facilities for those agricultural uses.* The Farmlands district clearly encourages many more activities on the property as it is viewed as more of a commercial-type of district.

The 2010 General Plan includes an Agriculture and Winery Corridor Plan (AWCP). Although this property is not located in the AWCP, it can help provide some guidance as to policy language accepted for similar uses. Based on policy in the AWCP, it is my determination that a

vineyard would include the agricultural activities associated with growing and harvesting grapes, including limited tours of the site as part of the marketing efforts. However, for compatibility we must balance the commercial use with being in a residential zone. There needs to be some limitation to the size in order to retain balance of consistency with a residential neighborhood.

Certain uses otherwise considered part of a vineyard may not be appropriate where the vineyard is located in a residential zone. Events that showcase and/or market the product could also be associated with the vineyard. Picking up bottled wine is part of the winery or wine tasting facility, and could also be associated with the vineyard.

**Question #2:** What uses are previously permitted on the subject site?

**Response #2:** Between the 1930s through 1953, there were a series of ranching related uses on the site including: a ranch for girls, guest ranch and a dude ranch. Currently, there are three residences on the site, including a barn and watering hole. The vineyard was established in the 1990s.

On November 25, 2016, County issued a Notice of Violation (NOV) for "Rental of a property for events (e.g. weddings) in the Low Density Residential zoning district without proper permit/approval." Code Enforcement Case 15CE00348 was closed on February 25, 2017 based on an understanding that the owner agreed to the following parameters outlined in an email by Carl Holm (2/11/16) for using the property with until event regulations get sorted out:

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**Conclusion:**

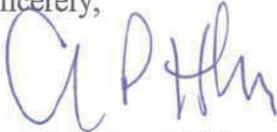
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educational activities; owner-invited corporate lunches, dinners and pairings related to vineyard/viticulture; and product education and marketing.

Originally, staff determined the applicant could process a permit to relate the vineyard with the tasting room similar to where winery operations have the tasting room connected to/with the vineyard. Following the BOS direction on 12/13/16, it is my determination that such a permit is not required if the operation remains within these parameters, including the parameters outlined above relative to my email dated 2/11/16. These activities must be by appointment only and limited to 75 people. The owner can apply for a permit to include/address any of these areas to be part of the operation.

Should you wish to appeal this decision, the appeal must be filed with the Secretary to the Planning Commission within 10 days from the date of this letter, no later than 5:00 pm on April 21, 2017, or no subsequent appeal on this issue may be heard. The fee for Appeals of Administrative Determinations in the amount of \$2,678.08 is due at the time of filing an appeal.

Sincerely,

A handwritten signature in blue ink, appearing to read 'C P Holm', written over a light blue horizontal line.

Carl P. Holm, AICP

Director

Monterey County Resource Management Agency

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**From:** Holm, Carl P. x5103  
**Sent:** Monday, March 06, 2017 7:30 AM  
**To:** 'jbridges@fentonkeller.com'; 'Joel Panzer'  
**Cc:** Gonzales, Liz x5102; Swanson, Brandon xx5334; Guertin, John P. x6654  
**Subject:** FW: Hilltop Ranch/Cima Collina  
**Attachments:** L-Holm 3.1.17.pdf

FYI

After our meeting, I was leaning toward establishing the allowed level of use allowed (without a permit), and then only having one permit to process. With neighbors being represented by Tony L, I think that would be the best path provided we can agree on the allowed level of use. In addition, I would suggest a possible path (for transparency) may be for you to request a Director's Interpretation post-BOS direction/interpretation. We can go about it a couple ways: 1) you submit the request with your justification for the allowed level of use given BOS direction and historical use; 2) we meet and discuss level of use followed by a letter. Tony's recourse would be to appeal the Director's interpretation, which would be interesting since going to the BOS was Tony's suggestion. Of course, we do have two new Supervisors since that time.

Regards  
Carl

---

**From:** Gina Pompey [<mailto:gina@alombardolaw.com>]  
**Sent:** Wednesday, March 01, 2017 2:19 PM  
**To:** Holm, Carl P. x5103  
**Subject:** Hilltop Ranch/Cima Collina

Mr. Holm:

Attached please find a letter from Mr. Lombardo regarding the above-referenced matter.

Thank you.

Gina Pompey  
Assistant to Anthony L. Lombardo  
ANTHONY LOMBARDO & ASSOCIATES  
A Professional Corporation  
144 W. Gabilan St.  
Salinas, CA 93901  
Phone (831) 751-2330  
Fax (831) 751-2331  
Email [gina@alombardolaw.com](mailto:gina@alombardolaw.com)

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**From:** Joel Panzer <joel@mwruck.com>  
**Sent:** Friday, February 12, 2016 4:01 PM  
**To:** Holm, Carl P. x5103; John S. Bridges  
**Cc:** Annette Hoff Danzer (annette@cimacollina.com) (annette@cimacollina.com); michele@cimacollina.com; richard.lumpkin@consolidated.com; Kristie M. Campbell  
**Subject:** RE: Hilltop Ranch

John,

Excellent outcome. I appreciate your strong representation....

Joel

Sent from my Windows Phone

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**From:** [Holm, Carl P. x5103](#)  
**Sent:** 2/12/2016 3:50 PM  
**To:** [John S. Bridges](#)  
**Cc:** [Novo, Mike x5192](#); [Ford, John H. x5158](#); [Burns, Tim O. x6770](#); [Bowling, Joshua x5227](#); [Hasson, Cynthia L. x5205](#); [Gonzales, Liz x5102](#); [Joel Panzer](#); [Annette Hoff Danzer \(annette@cimacollina.com\) \(annette@cimacollina.com\)](#); [michele@cimacollina.com](#); [richard.lumpkin@consolidated.com](#); [Kristie M. Campbell](#)  
**Subject:** RE: Hilltop Ranch

John

Based on the understanding that the owner agrees to operate within the guidelines outlined in my email, County considers that the owner responded to our notice and brought the matter into compliance. As such, County will close the case with no penalties or fines assessed at this point... Staff can represent to the PC that there is no open code compliance case.

Please note, if we find that an event occurs after this date (e.g. weddings, advertisement, etc), then we will reopen the case and assess fines/penalties accordingly.

Regards  
Carl

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**From:** [Holm, Carl P. x5103](#)  
**Sent:** Thursday, February 11, 2016 8:46 AM  
**To:** 'John S. Bridges'  
**Cc:** [Novo, Mike x5192](#); [Ford, John H. x5158](#); [Burns, Tim O. x6770](#); [Bowling, Joshua x5227](#); [Hasson, Cynthia L. x5205](#); [Gonzales, Liz x5102](#); [joel@mwruck.com](#); [Annette Hoff Danzer \(annette@cimacollina.com\) \(annette@cimacollina.com\)](#); [michele@cimacollina.com](#); [richard.lumpkin@consolidated.com](#); [Kristie M. Campbell](#)  
**Subject:** RE: Hilltop Ranch

Hi John

I meant to reply sooner, apologies. This matter has grown into a much bigger question about what uses are permitted with a vineyard, not just Hilltop. The general plan offers some guidance on defining a winery that can include a vineyard in the proximity, but not when there is a vineyard separate from the winery. We have also been dealing with defining when an activity on private property becomes an event needing a permit.

People are allowed to have personal activities on their private property. Communications provided by County staff state that people can go up to the vineyard to pick up wine. Tasting to a certain level is acceptable, but can easily tip over into becoming an event. Until we get to the Commission, without considering any historical use, the following are guidelines I recommend for use of the property:

- No weddings
- No advertised events
- No live music. Obviously music is allowed on private property; however, I strongly suggest treading very cautiously here because noise is a big factor in creating complaints. The site conditions are prone to sound carrying a long distance. I recommend music remains from a radio...
- Activities by invitation of owner only. No charging. The fact that people pay to be part of the club is an area we will be discussing further but for now members can go up to pick up wine and have some wine with friends. We do not regulate how many friends can go to private property by initiation of the owner; however, I recommend that the number be limited to 10-20 for now.
- No non-member wine tasting...this is not to become a wine tasting room for which there is no permit.
- No tents, use existing facilities only.
- No portable toilets
- Shuttle is up to you. I personally think the shuttle is a good gesture to reduce vehicle trips, but obviously that creates a visual target that people are interpreting as an event. If people drive individually, make sure they park entirely on the property and do not block the roadway.

A number of these conditions (live music, charging, tents, portables, etc) have a gray area between private use and an event needing a permit. This, including staff's communications is under review and will likely be part of the discussion before the Planning Commission. Until the Commission hears this matter, I recommend that your client not make long-term investment plans on this. Also, you may want to amend your application to include/address any of these areas that you want to be part of the operation so it is clear.

None of this email predisposes staff's final determination of events/permitted uses or the historical use of the property, but rather is to simply outline what I hope is clear guidance for using the property with reduced potential for complaints until this gets sorted out. I am open to discussing this further. I will caution that experience has shown that doing anything, regardless of staff's interpretation, can get the neighborhood's attention such that it affects the permit hearing...you may have heard about a canine facility in Carmel Valley. That said, if Hilltop chooses to operate within these guidelines, County will not view it as a violation (even if we receive a complaint) and the current case will be placed on hold until the permit process has been completed.

Regards  
Carl

---

**From:** John S. Bridges [<mailto:jbridges@fentonkeller.com>]

**Sent:** Monday, February 01, 2016 9:37 AM

**To:** Holm, Carl P. x5103

**Cc:** Novo, Mike x5192; Ford, John H. x5158; Burns, Tim O. x6770; Bowling, Joshua x5227; Hasson, Cynthia L. x5205; Gonzales, Liz x5102; [joel@mwruck.com](mailto:joel@mwruck.com); Annette Hoff Danzer ([annette@cimacollina.com](mailto:annette@cimacollina.com)) ([annette@cimacollina.com](mailto:annette@cimacollina.com)); [michele@cimacollina.com](mailto:michele@cimacollina.com); [richard.lumpkin@consolidated.com](mailto:richard.lumpkin@consolidated.com); Kristie M. Campbell

**Subject:** Re: Hilltop Ranch

Carl: I came across the attached after I sent my reply to you on Friday. This is further evidence of past County permission to have wine pick up and tasting at Hilltop. If reducing car trips by shuttling folks up the hill is a

problem ( we thought fewer vehicles would be appreciated by the neighbors...apparently not) we can easily stop the shuttle idea.

Thanks  
John

## **APPEAL BY CARMEL VALLEY ASSOCIATION**

### **Executive Summary of Appeal**

#### **What is the property that is the subject of this appeal?**

Hilltop Ranch LLC owns residential property in Carmel Valley in the Low Density Residential (LDR) zoning district. Hilltop Ranch made three applications in 2013, 2014 and 2016 seeking to get County permission to have special events at its vineyard, which is approximately three acres of the 10-acre LDR-zoned property. The County has not approved any permits for the special event use.

#### **What does this appeal challenge?**

Carl Holm wrote three communications to the Hilltop Ranch LLC's attorney, in which Mr. Holm stated his opinion that Hilltop Ranch can have special events. The three documents are an email dated February 11, 2016, a letter dated April 11, 2017, and a letter dated May 16, 2017. All three are collectively referred to here as "the Holm Letter." This CVA appeal challenges the Holm Letter.

#### **What is the harm caused by the Holm Letter?**

The Holm Letter used a private process to allow special events uses every day of the year at the Hilltop Ranch site. The public process was not followed. Other than the applicant, nobody got any advance notice of these three documents.

The Holm Letter rewards the applicant for private lobbying and private meetings with Mr. Holm. The Holm Letter penalizes everybody else, including:

- Surrounding residences and property owners who based their land uses on the zoning and not on a private deal they did not even know was available to them from Mr. Holm. They will permanently suffer the noise, traffic, glare, and other impacts of the special events.
- Competitors in the Ag Wine Corridor Plan area who have General Plan policies that allow special event uses.
- Venues that have permits for their special events activities.
- Everybody who drives Carmel Valley Road and is forced to endure the increased special events traffic.

#### **Is the Holm Letter illegal?**

Yes. It sets up a private zoning allowance that gives special uses for select private parties favored by Mr. Holm for whatever reason. It violates state laws and the County Code. It provides an incentive for everybody in the LDR zone to plant a vineyard so they can have special events. It corrupts the public process. If allowed to stand, the Holm Letter will cause serious long term land use and environmental effects and will harm the public's trust in Monterey County government.

### Overview

In this appeal CVA collectively refers to Mr. Holm's interrelated and interdependent communications – his private February 11, 2016 email, his April 11, 2017 letter and his May 16, 2017 letter – as “the Holm Letter.”

The Holm Letter claims to authorize a new special events use at a vineyard in a Low Density Residential (LDR) District neighborhood in the hills of Carmel Valley. The Holm Letter is private rule-making by staff. It is unauthorized, illegal, and has adverse unmitigated effects. The Holm Letter circumvents and is inconsistent with the County processes, the County Code, the Government Code, Planning & Zoning Laws, CEQA and other requirements.

The County may not administratively approve a request to devote a parcel of real property to a use disallowed by the applicable ordinance, where the County does not rezone the property to a district allowing the use, does not amend the text of the zoning ordinance to allow the use in the existing district, does not issue a conditional use permit consistent with the zoning ordinance, and does not grant a variance which cannot be issued in any event. The Holm Letter purports to grant a Carmel Valley hilltop parcel an ad hoc exception allowing a commercial special events use in the Low Density Residential zoning district. The act is illegal and the appeal should be granted.

The Holm Letter is private rule-making by staff, which is unauthorized, illegal, and causes many harmful effects. As explained in this appeal, the Holm Letter:

- Authorizes the special events uses forever and strips the County of its zoning authority and strips the public of its rights to due process.
- Intrudes on the authority of the decision makers: Planning Commission and Board of Supervisors, and compromises and is inconsistent with separation of powers.
- Creates an artificial baseline that narrows and reduces the ability and discretion of decision makers in the future.
- Failed to follow the public process for a controversial issue of significant public interest in Monterey County: Special Events.
- Is the deliberate result of private meetings and private agreements between Mr. Holm and the applicant's attorney outside of the public eye.
- Is not allowed by current LDR zoning.

- Is inconsistent with Mr. Holm's "Director's Interpretation" received by the Planning Commission in October 2016.
- Is inconsistent with Board of Supervisors' direction in December 2016 and at other times.
- Does not comply with CEQA.
- Is impossible to enforce, and would allow unlimited events and impacts and thus would pit neighbor against neighbor.
- Lacks conditions including a condition requiring property owner to indemnify County. Lacks mitigations.
- Is inconsistent with the General Plan and Carmel Valley Master Plan.
- Is part of a pattern and practice of the Resource Management Agency of privately offering and writing administrative interpretations for controversial issues of significant public interest.

CVA asks the Planning Commission to (1) grant the appeal and (2) waive the appeal fee.

### **The Property Owner**

The owner of the residential property in Carmel Valley is Hilltop Ranch LLC. The residential property includes approximately three acres of vineyard as part of a much larger parcel.<sup>1</sup>

The same underlying owner also owns the Cima Collina tasting room which is a commercial operation in Carmel Valley Village that holds special events.

The owner also has several vineyard properties in the Salinas Valley.

The Cima Collina winery is located in Marina. Special events are held in the winery.

**The Holm Letter gives the applicant at no cost what the applicant failed to get from its three recent applications for special event uses at the site, none of which resulted in a permit. It is a special favor granted by County staff who did not follow the law.**

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<sup>1</sup> Facts stated are from public records and Cima Collina advertisements.

**HISTORY OF HILLTOP RANCH LLC'S  
SPECIAL EVENTS APPLICATIONS AND CODE VIOLATIONS**

Starting in 2013, Hilltop Ranch LLC and Cima Collina submitted three different applications to the County, all of which sought permission to have special events at the Hilltop Ranch site, and the County has opened at least two code violation files due to illegal special events at the site.

1. First Hilltop Application for Special Events:

PLN130041 sought a "Use Permit to allow for assemblages of people to conduct private vineyard and wine educational tours; weddings, non-profit and business events, and in-house winery events for club members; and an Administrative Permit for transient occupancy to allow the use of an existing 1,200 square foot dwelling unit in conjunction with events or to rent it to members/customers on an occasional basis."

*On March 7, 2014, County planning staff stated that an EIR would be required because of noise, traffic, land use, water, and other issues.*

2. First County Code Enforcement Investigation:

In 2014 the County opened a Code Enforcement Violation for illegal special event uses at Hilltop Ranch. On March 31, 2014, Planning Director Mike Novo wrote to the property owner's representatives (Panzer, Gogliucci, Danzer):

*[T]he RMA-Planning department has recently received evidence showing that unpermitted events have recently been held at Hilltop Ranch and events have already been booked for the near future.*

*The County has opened a code enforcement investigation. Should you continue to hold events at Hilltop Ranch, you will be required to pay double fees on your current planning permit PLN130041 . . . , and code enforcement will begin issuing citations for the illegal activities, which could become costly.*

*Please halt all illegal activities....*

3. Second Hilltop Application for Special Events:

PLN140234 sought a Use Permit to allow "Assemblages of people, such as corporate Monitoring Measure: wine educational dinners and weddings for up to 250 people, not exceeding ten (10) events per year, in existing facilities including a 2,400 square foot barn, a 3,600 square foot outdoor area adjacent to the barn,

a 1,600 square foot lawn area in close proximity to an existing dwelling unit and two vineyards.” “The hospitality-education events will average between 50-75 guests and will be evenly scheduled between lunch and evenings with no more than one event on a single day.”

*County staff stated that this second application was because the first application was taking a long time to process.*

On May 18, 2014, CVA’s legal counsel wrote a 15-page letter to the County arguing the two Hilltop applications (PLN130041, PLN140234) should be denied and presenting evidence and legal support. The applicant withdrew PLN130041. Later, the Zoning Administrator continued PLN140234 to a date uncertain.

4. Second County Code Enforcement Investigation:

In 2015, the County received numerous complaints about events at the Hilltop property, and eventually the County opened another Code Enforcement Violation file 15CE00348 because Hilltop Ranch was illegally having weddings.

The applicant’s representatives repeatedly peppered Mr. Holm with various arguments and claims as to why the proposed special events use at the Hilltop Ranch site should be approved. Mr. Holm repeatedly communicated directly with the applicant representatives, attorney John Bridges, land use consultant Joel Panzer, and Cima Collina events coordinator Michele Gogliucci. Mr. Holm communicated privately with them to come to a private agreement as to special events uses at the site. Mr. Holm did not inform the public or the Planning Commission of the private communications.

On February 11, 2016, Mr. Holm wrote to Mr. Bridges giving “guidelines” for special events on which Hilltop Ranch LLC could rely “until we get to the Commission.” (The Holm Letter attached to the Appeal Form, p. 10.) Mr. Holm’s “guidelines” recommended a limit of 20 visitors at a time, allowed the use of a shuttle to bring visitors to the site, and stated “no weddings,” “no advertised events” and “no portable toilets.” He recommended that the property owner not make long term investment plans, and suggested that Hilltop Ranch amend its application to include any issues Hilltop wanted to include in its special event operations. Mr. Holm promised that if Hilltop operated within the “guidelines, Count will not view it as a violation (even if we receive a complaint) and the current [code violation] case will be placed on hold until the permit process has been completed.” (*Ibid.*) Mr. Holm also promised to “close the [code violation] case with no penalties or fines” and “if an event occurs after this date (e.g. weddings, advertisement, etc.) then we will reopen the case and assess fines/penalties accordingly.” (The Holm Letter, p. 9.)

After Mr. Holm stated February 2016 guidelines, Hilltop Ranch *did* hold weddings and publish advertisements for special events as shown in the County files, including mass emails inviting the public and County employees to events. (See, e.g., Exhibit A to this appeal [advertisements].) The County did not reopen the case, contrary to the County's commitment to do so, and the County did not assess any of the threatened fines/penalties. In short, Mr. Holm did not enforce the private conditions he had crafted for the site.

5. Third Hilltop Application for Special Events:

On December 15, 2016, the applicant submitted a third application for special event uses. PLN160833 sought an Administrative Permit "to allow the Hilltop Ranch vineyard to operate in relation to the tasting room (Cima Colina), permitting routine vineyard activities (i.e., wine business dinners/meetings, members tastings, educational programs, etc.)."

The County apparently exempted the 2016 application from County Code section 21.84.140, "Fees for retroactive permit application." Section 21.84.010 states that "Application for permits for any use for which a permit is required and where the use has been . . . established or initiated prior to the application for the permit, in violation of this Title, shall require a fee of twice the amount normally charged for the application." Here, the commercial use of the Hilltop Ranch required a permit and applicant initiated the use without a permit, as shown by the 2014 and 2015 Code Enforcement cases, the complaints in the County's records, and the advertised "Growers Dinner" event in 2016.

In early January 2017, the Carmel Valley LUAC recommended denial.

On January 19, 2017, the project planner sent an letter to the applicant, stating:

*RMA Planning would like to see a detailed list of the activities currently being held at Cima Colina that would carry over to the Hilltop Ranch vineyard. These would include the type of activities, the location of these activities onsite (dinners in the vineyard) and an estimated number of activities per month. . . . Of course, the number of people would never exceed 85.*

*Also, attached are the comment letters from the other departments. Some of their questions tie into what RMA Planning is asking for [including a traffic analysis]. It's important that we firm up the activities that will be held at the vineyard so as to better inform the neighbors when the Administrative Permit goes forward with a recommendation.*

*As you know, the Carmel Valley LUAC recommended denial.  
I don't believe we could change their mind with more details.  
But if you feel we should go back with the additional  
information once the County receives it, we can consider it.*

6. The 2017 Letters from Mr. Holm

A flurry of emails between the applicant and Mr. Holm ensued. Mr. Holm repeatedly urged the applicant to make a request for a private administrative interpretation, instead of going through the public review process. Mr. Holm wanted to accommodate the special events use and proposed to go about giving permission in a nonpublic forum.

On March 1, 2017, land use attorney Tony Lombardo sent the County a letter on behalf of neighbors of Hilltop Ranch. The letter stated detailed objections to the 2016 Hilltop Ranch application. Mr. Holm forwarded Mr. Lombardo's letter to Hilltop Ranch's attorney John Bridges and agent Joel Panzer. Mr. Holm also wrote to Messrs. Bridges and Panzer to coordinate their next moves, saying to them:

After our meeting, I was leaning toward establishing the allowed level of use allowed (without a permit), and then only having one permit to process. With neighbors being represented by Tony L, I think that would be the best path provided we can agree on the allowed level of use. In addition, I would suggest a possible path (for transparency) may be for you to request a Director's Interpretation post-BOS direction/interpretation. We can go about it a couple ways: 1) you submit the request with your justification for the allowed level of use given BOS direction and historical use; 2) we meet and discuss level of use followed by a letter. Tony's recourse would be to appeal the Director's interpretation, which would be interesting since going to the BOS was Tony's suggestion. Of course, we do have two new Supervisors since that time.

Regards  
Carl

(The Holm Letter, p. 8.)

Mr. Bridges met with Mr. Holm and did just what Mr. Holm proposed. Mr. Bridges sent a letter dated March 16, 2017, asking Mr. Holm to bless activities at the Hilltop Ranch as being “within the scope and definition of viticulture as an allowed use under section 21.14.030 .N” including these activities: “Product related education and activities including the following: wine club member/guest wine tastings, scheduled wine pick-up activities, vineyard tour and educational activities; owner invited corporate lunches, dinners and pairings related to vineyard/viticulture; and product education, marketing and fundraising.”

Then on April 11, 2017, Mr. Holm wrote a private letter to the applicant’s attorney John Bridges, stating Mr. Holm’s opinion that many kinds of special events would be allowed in the vineyard even though it is in the residential zone. Mr. Holm’s letter admitted that “the Monterey County Zoning Code (Title 21) does not include a definition of what may be allowed under these circumstances.” The letter is remarkably absent of facts, analysis, and discussion of authority. The letter then made up some rules and concluded that the Hilltop Ranch vineyard is as a matter of right allowed to have special events, parroting language used in Mr. Bridges’ letter, including: “product-related education and activities (e.g., marketing), including . . . wine tasting, ... wine pick-up activities; vineyard tour and educational activities; owner-invited corporate lunches, dinners and pairings related to vineyard/viticulture; and produce education and marketing.” (April 11, 2017 [The Holm Letter, pp. 5-6].) This was in addition to the weddings, shuttles, and other activities allowed by Mr. Holm in his February 11, 2016 email. Mr. Holm stated he based his opinion on policies in the Ag Wine Corridor Plan.

The first sentence of the April 11, 2017 letter (The Holm Letter, p. 4) states the letter was written “pursuant to Monterey County Code ch. 21.88.” Chapter 21.88 is for “amend[ments] by modification, change, deletion, addition, ... or similar changes to zoning district designations” and amendment to portions of Title 21 (21.88.010). Such amendments require payment of a fee, a public hearing before the Planning Commission, and action by the Board of Supervisors. None of those steps took place here.

The April 11, 2017 Holm letter was not placed on the County’s Accela project database available to the public, and the letter was not distributed to anybody other than the applicant’s attorney.

On April 21, 2017, the Carmel Valley Association wrote a letter of objection to the County regarding the PLN160833 project. (That letter is attached as Exhibit B to this CVA appeal.) The County did not respond to the CVA letter. Despite knowing of CVA’s concerns, the County Planning Staff did not provide CVA with a copy of the Holm letter dated April 11, 2017.

On May 10, 2017, Mr. Lombardo sent questions to Mr. Holm, seeking clarification of the April 11 Holm Letter.

On May 16, 2017, Mr. Holm responded, providing further information and attaching his April 11 letter.<sup>2</sup> The May 16 Holm letter insisted the special events uses were “allowed uses” and could be held every day at the vineyard. Mr. Holm said the special events were “intended to market the wines of Cima Collina” and “serving wines from other wineries would require a discretionary permit.” Mr. Holm emphasized that his interpretation did not have conditions, and that County Code enforcement is “reactive” and investigates complaints “in order of priority with an emphasis for life-safety issues.”

After getting the Holm Letter, the applicant withdrew the third application because the applicant got exactly what it had sought, without going through the public process.

### **Some Specific Reasons Why this CVA Appeal Should be Granted**

- A. THE HOLM LETTER AUTHORIZES USES NOT ALLOWED BY THE LDR ZONING. THE HOLM LETTER INTRUDES ON THE AUTHORITY OF THE DECISION MAKERS: THE PLANNING COMMISSION AND THE BOARD OF SUPERVISORS. THE HOLM LETTER FAILED TO FOLLOW THE MANDATORY PUBLIC PROCESS FOR THE CONTROVERSIAL ISSUE OF SIGNIFICANT PUBLIC INTEREST: SPECIAL EVENTS. THE HOLM LETTER VIOLATES THE STATE PLANNING & ZONING LAW.

In effect, the Holm Letter functionally rezoned the Hilltop Ranch property, and possibly parts of the Low Density Residential zone, to allow special events every day of the year. The purpose of the LDR district, as set forth in the zoning ordinance, "is to provide a district to accommodate low density and intensity uses in the rural and suburban areas of the County of Monterey and to insure that allowable land uses are compatible in the area." (County Code, § 21.14.010.) Daily commercial event use is not allowed by the zoning ordinance, with or without a conditional use permit. (County Code, §§ 21.14.030, 21.14.040, 21.14.050.) An applicant may seek a conditional use permit for up to ten events a year for assemblages of people; that permit is discretionary and is not automatically allowed. (§ 21.14.050.S, see § 21.14.050.X.)

The County zoning code does not “distinguish between a commercial vineyard in the LDR zone and a vineyard as part of a residential property” and County staff has no authority to privately make up an ad hoc distinction and grant its benefits as a special exception. That is what the Holm Letter does. Such definitions and clarifications must be considered in the proper public process.

The Holm Letter violates the California Planning and Zoning Law (Gov. Code, § 65000 et seq.) because it authorizes a use on the Hilltop Ranch property that is not allowed

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<sup>2</sup> In this appeal CVA collectively refers to Mr. Holm’s interrelated and interdependent communications – his private February 11, 2016 email, his April 11, 2017 letter and his May 16, 2017 letter – as “the Holm Letter.” All three communications are attached to the Appeal Form and paginated pages 1-10 for ease of reference.

under the County zoning ordinance. The Holm Letter is an ultra vires act and is void ab initio. (E.g., *Neighbors In Support of Appropriate Land Use v. County of Tuolumne* (2007) 157 Cal.App.4th 997.)

The property owners did not obtain a change in the zoning ordinance that imposes the restriction on their property (see Gov. Code, § 65851) either through a change in the zoning map or a change in the uses permitted or regulations imposed in the property's current zone (see *id.*, § 65850). The Planning and Zoning Law sets forth specific procedures for adopting and amending zoning ordinances which change a property from one zone to another or impose or remove any regulation on property within a zone. (*Id.*, § 65853.) Those procedures were not followed here by the County.

Nor did the property owner obtain a conditional use permit allowing the parcel to have a land use that the applicable zoning ordinance allows not as a matter of right but only upon issuance of the permit. The County Code for LDR zone provides a list of enumerated conditional uses. (County Code, §§ 21.14.040, 21.14.050.) Administrative procedures for hearing and deciding applications for conditional use permits are set forth in the County Code and in Government Code section 65900 and following.

Nor is a variance authorized to allow daily special events uses in the LDR zone because a variance may not be granted to allow a use unauthorized by the zoning ordinance. (Gov. Code, § 65906.)

The County did not amend its zoning ordinance, either to rezone the property or to change the uses allowed in the parcel's zone. In fact, the county considered changing the uses allowed with a conditional use permit, but decided not to do so. The Holm Letter does not constitute an approval of a conditional use in conformance with the zoning ordinance, because the zoning ordinance did not allow the use at issue as a conditional use. the Holm Letter was not the granting of a variance because a variance cannot grant permission to engage in an unauthorized use. The essence of the Holm Letter is to grant a request to devote the property to a use prohibited by the zoning ordinance.

The Holm Letter violated the "minimum of limitation" (Gov. Code, § 65800) that state law places on local authorities' control over zoning. State law requires uniformity. Government Code section 65852 provides: "All such [zoning] regulations shall be uniform for each class or kind of building or use of land throughout each zone, but the regulation in one type of zone may differ from those in other types of zones." This provision prohibits the County from granting a parcel's owner the right to engage in a use prohibited to other parcels in the same zone. "A zoning scheme, after all, is similar in some respects to a contract; each party foregoes rights to use its land as it wishes in return for the assurance that the use of neighboring property will be similarly restricted, the rationale being that such mutual restriction can enhance total community welfare. [Citations.] If the interest of these parties in preventing unjustified variance awards for

neighboring land is not sufficiently protected, the consequence will be subversion of the critical reciprocity upon which zoning regulation rests." (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 517-518.)

Because a zoning scheme is like a contract, the uniformity requirement is like an enforcement clause, allowing parties to the contract to challenge burdens unfairly imposed on them or benefits unfairly conferred on others. By creating an ad hoc exception to benefit the Hilltop Ranch in this case--an exception that was not a rezoning or other amendment of the ordinance, not a conditional use permit in conformance with the ordinance, and not a proper variance--the Holm Letter has broken this contract. Carmel Valley Association and the immediate neighbors never agreed to a use violative of the use limitations in the LDR zone. Zoning regulation rests upon a "critical reciprocity" (*Topanga Assn. for a Scenic Community v. County of Los Angeles, supra*, 11 Cal.3d at p. 518) and this reciprocity is undermined where a parcel such as Hilltop Ranch receives ad hoc privileges in derogation of its neighbors' reasonable expectation that the permitted uses will be governed by the applicable zoning ordinance unless and until it is amended.

Government Code section 65852 prohibits a county from granting a parcel's owner the right to engage in a use prohibited to all other parcels in the same zone, even though the county does not rezone the property, amend the ordinance to permit the use, grant a valid conditional use permit, or grant a variance. Government Code section 65852 provides "All such [zoning] regulations shall be uniform for each class or kind of building or use of land throughout each zone, but the regulation in one type of zone may differ from those in other types of zones."

As pertinent here, Government Code section 65850 provides that "the legislative body of any county . . . *by ordinance* may: (a) Regulate the use of buildings, structures and land as between agriculture, industry, business, residence and other purposes." (Italics added.) A zoning ordinance constitutes the exercise of a governmental and legislative function and is subject to change by the legislative power. The amendment of a legislative act is itself a legislative act. Rezoning of use districts or changes of uses and restrictions within a district can be accomplished only through an amendment of a zoning ordinance, and the amendment must be made in the same mode as its original enactment. (*Johnston v. City of Claremont* (1958) 49 Cal.2d 826, 834-835; *Richter v. Board of Supervisors* (1968) 259 Cal.App.2d 99, 105.) A legislative act was necessary to accomplish the rezoning purposes intended by the Holm Letter.

The Monterey County zoning ordinance does not provide for the issuance of administrative interpretations that functionally rezone property or provide administrative and does not establish adequate criteria for the determination of such matters by the County. (See, e.g., Gov. Code, § 65901.) The authority of County staff to draft an "administrative interpretation" to Code sections does not include a power to provide for exceptions to those Code sections, permitting land uses the Code forbids. A County

may not "rewrite a statute to make express an intention that did not find itself expressed in language of that provision."

In the alternative and as a separate argument, a quasi-judicial act was necessary to grant permission for the proposed special events use that the Holm Letter grants to the Hilltop Ranch property.

The Holm Letter makes an arbitrary and ad hoc distinction between "a commercial vineyard" and "having vines with a residence." The Holm Letter expressly stated it determined what "a vineyard would include" "based on policy in the AWCP" – but the Hilltop Ranch is not in the Ag Wine Corridor Plan area.

The Holm Letter authorizes Hilltop Ranch to hold special "events that showcase and/or market the product." But the wine produced from grapes from the Hilltop Ranch vineyard is a tiny fraction of the wine produced from the other Cima Collina-owned vineyards in the Salinas Valley. That means the public would drive up to the Hilltop Ranch in Carmel Valley and pick up "product" from grapes that were grown in the Salinas Valley and fermented in Marina, then driven past the Cima Collina tasting room to the hilltop site. The public also could go to events at Hilltop for wine that originated in the Salinas Valley.

The unauthorized County staff determination that "people can go to the vineyard to pick up wine" is ultra vires, improper and unreasonable, including because (1) wine can be picked up at the winery in Marina; and (2) wine can be picked up at the Cima Collina tasting room in the commercial district of Carmel Valley Village. In fact, to get to the Hilltop site, customers would drive *past* the Cima Collina tasting room on Carmel Valley Road and then up the narrow private residential driveway to the vineyard site.

The Holm Letter places no limit to the number of events throughout the year. The events could be daily, and there could be multiple events in one day. The "75-person limit" is arbitrary, unenforceable, does not include regular staff/residents at the site and event staff such as caterers, suppliers, florists, Cima Collina employees, and others who could easily exceed 20 or more.

The Holm Letter addresses site-specific issues and purports to place site-specific conditions on the special events use. This is evidence of a discretionary project approval, an act far beyond an "interpretation" of existing zoning code sections. The Holm Letter fails to identify what site-specific conditions would be placed on other properties that Mr. Holm's letter could purportedly entitle.

According to the County the Hilltop Ranch vineyard is approximately three acres, a small fraction of the large four-parcel site. Most of the property is occupied by a large lawn (which has been used for illegal special events), large pond, barn, parking area, three residences, and oak woodlands, as shown by public records. The Holm Letter, if

allowed to stand, would open the door to allowing an LDR property with a half-acre of vineyards, or a quarter-acre, or less, to claim the right to have daily special events.

Even though the County does not and has not permitted special events at the site, the Hilltop Ranch applicant has advertised and continues to advertise special events in violation of the County Code.

- Cima Collina advertises “the spectacular Hilltop Ranch & Vineyard where lush Pinot Noir is grown and educational tours, seminars, culinary experiences and more can be arranged. It is a wonderful setting for creating man[y] special events with unlimited possibilities. The vistas are beyond belief!”  
(<https://www.seemonterey.com/listings/cima-collina/2526/#sm.00001qidoxzy65cqaykthr7dxgt5f>)
- Cima Collina publicly advertises on a travel website for special events a photograph of a “DINING IN THE VINES AT CIMA COLLINA”
- In 2016, applicant held a Grower’s Dinner at the Hilltop Ranch that was broadly advertised to the public. Information still available on public websites shows that anybody could buy a \$145 ticket to attend.
- Cima Collina is currently publicly advertising the 2017 Grower’s Dinner on its website, and anybody with \$150 can buy a ticket and attend.
- Cima Collina invites the public to “Come explore our Hilltop Ranch Vineyard during the 2017 growing season”
- Cima Collina publicly advertises “vineyard tours”
- Cima Collina public facebook page shows a video of a wedding at the Hilltop Ranch site.

(See some examples at collective Exhibit A to this appeal.) The applicant has publicly advertised and continues to publicly advertise the Hilltop Ranch space to the public “with unlimited possibilities” for “special events” and renting space and selling tickets to the public. The advertising violates the uses that the Holm Letter purports to authorize.

The applicant’s actions are contrary to the County Code and the Holm Letter which purports to prohibit public advertising for events and to limit invitations only to “personal invitations.” These examples are further proof of the County’s inability or refusal to enforce conditions, and how the conditions cannot be relied upon. Invitations include anyone who signs up for or stumbles upon facebook, twitter, pinterest, and more.

**B. THE HOLM LETTER IS DIRECTLY CONTRARY TO THE “DIRECTOR’S INTERPRETATION” RECEIVED BY THE PLANNING COMMISSION IN OCTOBER 2016. THE HOLM LETTER IS INCONSISTENT WITH THE BOARD DIRECTION IN DECEMBER 2016.**

The Planning Commission and the Board of Supervisors have not authorized the Director to allow new special events at venues in the LDR zone. The Holm Letter

claims to rely on direction from the Commission and the Board but the Commission and the Board have given no public direction that authorizes the Holm Letter.

The official County position on special events in a vineyard is as shown in the County Planning materials presented to the Planning Commission on October 26, 2016. An exhibit to the Commission's agenda report was the Director's Interpretation by Mr. Holm which stated as follows:

**Can events be held in a vineyard?**

**No. Events are not associated with a vineyard by itself (Ag is an allowed use in many zoning districts). However, if the vineyard is on a parcel permitted for a winery and/or tasting room the vineyard may be used in support of activities associated with the winery. Marketing activities such as buyers touring the vineyard and tasting wine (limited number not including music or tents) would be allowed in agricultural zoning classifications (F, RG, PG, AP, CAP).**

(Oct. 17, 2016 Director's Interpretation, emphasis added [excerpts included as Exh. C to this appeal].) Thus, as reported to and reviewed by the Planning Commission, the County's stated position is:

- Events cannot be held in a vineyard. Special events are not allowed in the LDR zone and no special private rights of special events. The same rules and restrictions apply to everyone.
- Special events uses are not properly associated with a standalone vineyard use, meaning a vineyard at a different site from its winery.

Mr. Holm's staff report to the December 13, 2016 meeting of the Board of Supervisors included the following statements:

**Outside AWCP a winery requires a use permit/coastal development permit. A subset of this type of use that has come up recently is using vineyards for events**

**when they are not attached to the winery. A vineyard by itself is not a venue for events; however, commercial vineyards include marketing activities within the vineyard that constitute an event. . . . Viticulture and crop farming is an allowed use in certain residential zoning districts. Staff finds that vineyards in a residential district, not in conjunction with a winery or tasting room that has a permit, are typically not of a commercial nature; and therefore, would require a permit.**

(Exh. D to this appeal, p. 5.) The language and intent are clear: a vineyard in a residential district “is not a venue for events.” The Hilltop Ranch site is in a residential district. There is no winery at the Hilltop Ranch site. There is no tasting room at the Hilltop Ranch site. The Cima Collina winery and the Cima Collina tasting room are located elsewhere in the County in locations zoned for those uses.

At its December 13, 2016 meeting the Board rejected the draft resolution proposed by Mr. Holm that would have given Mr. Holm more leeway in making determinations about special events.<sup>3</sup> Instead the Board unanimously adopted an order that “Made no change to the Monterey County Code Title 21 regarding large-scale events and interpretive guidelines.” (Exhibit D to this appeal, p. 9, emphasis added.) The Board action did not authorize special events uses at vineyards in a residential zone.

Contrary to the Holm Letter, the Board did *not* give direction “generally related to events in vineyards” (as claimed in Holm Letter, p. 4). The Board direction said nothing of the sort, and the Board rejected the draft resolution that would have added administrative authority to Mr. Holm. Thus, the interpretation received by the Planning Commission was the operative guidance, and that guidance was that special events are not proper uses for vineyards in a residential zone.

The Holm Letter creates a new use of “commercial vineyard” and allows special events uses in the vineyard. It is not within the scope of the Board direction and not in Mr.

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<sup>3</sup> It is evident that Mr. Holm had the Hilltop Ranch lobbying and the Hilltop Ranch special events use in mind when he drafted the Board resolution because he specifically listed Hilltop Ranch representatives John Bridges and Joel Panzer on the cc distribution list of the December 2016 Board report on special events.

Holm's authority to make approvals that conflict with the LDR zoning and to make new definitions of uses that are not defined or allowed in the LDR zoning.

C. THE HOLM LETTER IS IMPOSSIBLE TO ENFORCE, AND PITS NEIGHBOR AGAINST NEIGHBOR, AND LAW-ABIDING PROPERTY OWNERS ARE AT A DISADVANTAGE UNLESS THEY CAN OBTAIN A PRIVATE LETTER. THE HOLM LETTER LACKS CONDITIONS AND LACKS MITIGATION MONITORING. THE HOLM LETTER DOES NOT REQUIRE THE PROPERTY OWNER TO INDEMNIFY COUNTY.

The Holm Letter does not have enforceable conditions and mitigations that are usually part of a permit. The County has minimal code enforcement ability due to resource/staffing limits. The Holm Letter would allow unlimited events at the site, likely without enforcement of the number of attendees, noise, safety, and other issues. The Holm Letter is not a legally enforceable permit and thus the code enforcement staff would be severely limited in doing anything, if at all, to address the harmful impacts to the neighbors and the environment and the public safety risks to life and health.

The risks for neighbor conflicts arising from the special events use illegally authorized in the Holm Letter is significant. The County should be aware of these issues under the circumstances and the history of Carmel Valley.

County discretionary permits typically require the property owner to indemnify the County. Here, if the County is sued for the Holm Letter, the County taxpayers would be liable, instead of the property owner who received the special unauthorized privileges.

D. THE HOLM LETTER VIOLATES CEQA. THE HOLM LETTER ATTEMPTS TO CREATE AN ARTIFICIAL BASELINE THAT WOULD REDUCE THE ABILITY AND DISCRETION OF DECISION MAKERS TO MAKE POLICY WHEN THE SPECIAL EVENTS ORDINANCE COMES BEFORE THEM IN THE FUTURE.

Even if the Holm Letter were authorized, which it is not, a discretionary action to allow special events uses is subject to CEQA. (E.g., Pub. Resources Code, § 21065.) The County did not comply with CEQA.

The special events use is inconsistent with the County General Plan, the zoning code, land use, traffic, public safety, piecemealing, and other CEQA violations. The special events uses would increase in demand of existing utilities (water and septic). If onsite portable restrooms are imported, that would add to the traffic and the impacts of special event use. The project would require the use of temporary tents and/or seating.

In addition to the land use inconsistencies, the proposed use poses a risk to public health and/or safety. There is no use permit and thus no condition or ability by the County to reconsider the permit to ensure operations are consistent with the grant, terms and conditions of a use permit. The new use is allowed with an unlimited period,

so even when the use results in unforeseen impacts to the surrounding residential community, the County has no built-in review date, much less a process for rescission of Mr. Holm's illegal approval.

The hosting of events on this site will differ significantly from the rural and low-density residential uses on the surrounding properties. The noise impacts would likely be significant, from crowd noise, live bands (even if not amplified), a radio or recording played loudly from the barn with the barn doors wide open, and more. As Mr. Holm has stated, the Hilltop "site conditions are prone to sound carrying a long distance." The reflection of the windows and mirrors of the 50+ parked vehicles likely would cause significant offsite light and glare in the hot Carmel Valley sun, and artificial lighting for night-time events and pedestrian and road safety also would cause adverse impacts in the dark residential area. The public safety and traffic impacts of event traffic on the private driveway and Carmel Valley Road would likely be significant and need addressing, according to the County Public Works department. The 75 daily attendees could easily exceed 30 cars, plus the additional 10 or more cars, vans and trucks of caterers and other event staff, all in addition to residents and vineyard workers. That additional traffic would at times more than quadruple the traffic volume on the reportedly narrow, curving, substandard shared private driveway. The applicant has not provided the information and complied with the access requirements Public Works sought to impose on the special events applications. (See *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714 [mitigated negative declaration inadequate for wedding venue due to increased noise and increased traffic on winding hilly road; EIR required].)

In addition to all the impacts, the issue of special events in Carmel Valley is one of significant controversy which requires an EIR to be prepared for such a proposed use.

The illegal events at the site in recent years do not create a baseline. That would be against public policy because it would be an incentive for people to act illegally. The Holm Letter, if allowed to stand, is an attempt to create a new baseline level of use that would materially harm and narrow the range of options of the decision makers when the Special Events ordinance comes before you and the public in the future. According to the County, there is no activity regarding developing a Special Events ordinance at this time; the County effort on Special Events is planned to begin after the Short Term Rental ordinances are complete. (County statement, May 25, 2017.)

E. THE HOLM LETTER IS THE DELIBERATE RESULT OF PRIVATE MEETINGS AND PRIVATE AGREEMENTS BETWEEN MR. HOLM AND THE APPLICANT'S ATTORNEY OUTSIDE OF THE PUBLIC EYE.

Mr. Holm has been working too closely in private with the Hilltop Ranch applicant. Mr. Holm's private directions to and agreements with the applicant continue his pattern of giving the applicant preferential treatment. Mr. Holm proposed first "establishing" what

he privately determined to be "the allowed level of use" which he would "agree on" privately with the applicant. Mr. Holm then proposed to whitewash his agreed-on "Director's interpretation" by having the applicant make an after-the-fact request for it which, in Mr. Holm's view, would create "transparency." Mr. Holm knew that his proposed actions would place a significant financial burden on the neighbors. In Mr. Holm's opinion, the sole "recourse" of the neighbors would be to pay the sizable fee of \$2,678 to file a formal appeal of Mr. Holm's "Director's interpretation" – *after* the neighbors discovered what Mr. Holm had done.

Mr. Holm's job is to follow the law, not circumvent the law or make up the law.

CVA strongly objects to Mr. Holm's private pre-approvals, his private agreements with and promises to applicants, his turning a blind eye to ongoing violations, and his actions to avoid public review and public hearings before the Planning Commission and the Board of Supervisors on the development applications of Hilltop Ranch. Mr. Holm is a public official in a powerful position and should be required to exercise that power in the public interest. Mr. Holm's pattern of private coordination with and accommodation of land use requests by private property owners is inconsistent with democracy and transparency.

F. THE HOLM LETTER IS INCONSISTENT WITH THE GENERAL PLAN AND CARMEL VALLEY MASTER PLAN.

The Ag Wine Corridor Plan is specific to the Ag Wine Corridor in the Salinas Valley. The Corridor is in Salinas Valley, not in the Carmel Valley. The AWCP policies may not be used as new policies for Carmel Valley. The General Plan EIR did not evaluate the impacts of AWCP policies being applied anywhere but the Salinas Valley.

Special events at Hilltop Ranch violate the primary land use policy of the Carmel Valley Master Plan: "All policies, ordinances, and decisions regarding Carmel Valley shall be consistent with the goal of preserving Carmel Valley's rural character." (CV-1.1.) Daily special events in a residential zone are not consistent with preserving rural character.

G. THE HOLM LETTER IS PART OF A PATTERN AND PRACTICE OF THE RESOURCE MANAGEMENT AGENCY OF PRIVATELY OFFERING AND WRITING ADMINISTRATIVE INTERPRETATIONS FOR CONTROVERSIAL LAND USE ISSUES.

The Holm Letter is part of an ongoing pattern and practice by the County of allowing land uses administratively without appropriate public process which would include advance notice, public hearings, and opportunity for the decision makers to create policy. This pattern and practice includes "interpretations" on issues of significant public interest including Special Events and Short Term Rentals which have not been decided by the Board of Supervisors. The practice appears to be intended to accommodate, and actually does accommodate, private commercial land uses while at the same time

avoiding a public process, avoiding public hearings, and failing to notify neighbors and interested parties.

What CVA requests: The County should stop these practices immediately. CVA seeks the end of special factors for special friends and projects. CVA offers to meet with the County and address these issues. The County should suspend all authority for administrative interpretations of land use, zoning, and water issues until the County has made a thorough examination of the actual practice and has amended the County codes to prohibit “interpretations” on controversial issues and to require notice, a public hearing, and approval by the Planning Commission and Board of Supervisors before any “interpretation” becomes effective.

### **Additional Materials**

CVA reserves the right to supplement and augment its appeal and evidence, as the material becomes known to CVA. The County has inconsistently produced public records to date. CVA is awaiting the County’s responses to public records requests.

CVA understand that the neighbors are also filing an appeal, and CVA joins in and incorporates all the issues and evidence stated and raised by the neighbors’ appeal as if fully stated herein. If the County needs a copy of the neighbors’ filed appeal, please let me know and I will provide it to you.

### **Request for Fee Waiver**

CVA asks the Planning Commission to waive the appeal fee for equitable reasons.

The Holm Letter is not authorized. The proper public planning process established by the County Code was not followed. The Holm Letter placed the financial burden on the public and the neighbors to challenge the Holm Letter. CVA is a public interest organization that has no financial interest in the Hilltop Ranch property. CVA’s interest is in fair and public planning that is transparent and follows the legal processes. CVA has brought a serious procedural and practical problem to the attention of the decision makers and is trying to prevent more serious problems, all in the public interest.

CVA paid under protest a fee of \$2,678.08 to file this public interest appeal of the Holm Letter. The fee is more than 150% of the \$1,728.07 fee to appeal a Planning Commission decision to the Board of Supervisors. Thus, the County system and practice financially rewards property owners who work behind the scenes with the RMA Director to get a favorable administrative determination. The public is left in the dark until it is too late. Once the Director’s Interpretation is released, the County places a heavy financial burden is placed on the public to appeal it, if the public even ever finds out about the secret deals or not. The County practice, including the appeal fee, is chilling to the public process. It is a corruption of the public processes.

To top it all off, on April 27, 2017, Hilltop Ranch LLC withdrew its PLN160833 application and asked the County for a refund of the PLN160833 application fees because Hilltop got what it wanted for free through the Holm Letter.

Granting an appeal fee waiver to CVA is appropriate under the circumstances. It is futile to ask Mr. Holm to waive the fee because he was the one who cooked up the idea of a private administrative interpretation and met behind closed doors with the applicant to shift the burden and cost onto the neighbors and public, and move the burden and cost away from applicant. The applicant has sought special favors for his land in three separate applications, and the applicant has a significant financial interest in intensifying his use and will reap a very significant financial benefit if the Holm Letter is allowed to stand.

### **Request**

The Planning Commission should (1) grant the appeal and (2) waive the appeal fee.

Thank you.

### **Exhibits to CVA Appeal**

- Exhibit A: Examples of advertisements and publications for special events at the Hilltop Ranch site
- Exhibit B: Carmel Valley Association letter dated April 21, 2017 to the County of Monterey
- Exhibit C: October 2016 "Director's Interpretation" provided to the Planning Commission on special events in vineyards
- Exhibit D: December 2016 Board of Supervisors report and adopted Board Order on special events

DETAILS

AMENITIES

MEETINGS

COUPONS

Located in the bucolic hills of Carmel Valley, just 20 minutes from the downtown Monterey Peninsula, Cima Collina is a boutique winery showcasing wines from small, responsibly-farmed vineyards in Monterey County. Primary specializing in Pinot Noir from the Hilltop Ranch Vineyard, the production also includes vineyard designed Chardonnay, Sauvignon Blanc, & Cabernet blends. Committed to the purity and quality of the food-friendly wines, the winery also continues its endeavors to be an environmentally conscience organization within the community and beyond. Award winning winemaker, Annette Hoff, invites you to enjoy her handcrafted wines in a "historical" tasting room setting, in the heart of Carmel Valley. Open daily to the public and by reservations for groups, this charming setting is perfect for picnics, small dinner events or a simple afternoon of savoring wine and artisan cheese sample. Just down the road from the tasting room is the spectacular Hilltop Ranch & Vineyard where lush Pinot Noir is grown and educational tours, seminars, culinary experiences and more can be arranged. It is a wonderful setting for creating man special events with unlimited possibilities. The vistas are beyond belief!



## DINING IN THE VINES AT CIMA COLLINA

IN THIS SECTION



## OFFSITE VENUES IN MONTEREY COUNTY

Monterey County has meeting and offsite facilities that will accommodate

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CVA Appeal, Ex. A, p. 3

## CIMA COLLINA

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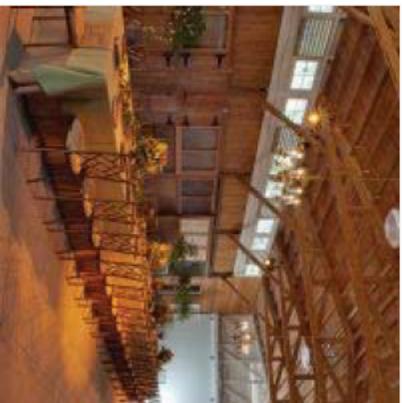
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# GROWER DINNER

By: Kristin Horton | Posted in: News | August 15, 2016 [←](#) [→](#)

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Annual dinner kicks off with featured Tondre Grapefield Vineyard, Santa L

Cima Collina's Hilltop Ranch historic barn doors will open Saturday, November 13, 2016 at 6:00 pm for the first in a series of annual Grower Dinners. Catered by local Chef Jeremie, the dinner honors Cima Collina's eleven-year vineyard partnership with Joe Alarid of Grapefield Vineyard in the highly acclaimed Santa Lucia Highlands.

Winemaker Annette Hoff Danzer has been producing vineyard-designated wines from Cima Collina's first production back in 2004. With a consistent focus on small, limited production wines hand picked from local vineyards, Hoff Danzer felt the timing was right for a series of dinners on the unique growing sites and people behind the vines. "Our wine dinners are always searching for those perfect pockets to harvest and understand the unique character of our vineyard on our wines," comments Hoff Danzer. "I think it's important for our grower partners to be recognized and highlighted."

For the occasion, Hoff Danzer has opened the renovated Hilltop Ranch barn to host the dinner. Local Carmel Valley winemaker Jerome Viel will present a four-course seated food and wine pairing focusing on Cima Collina Tondre Grapefield vineyard wines. The dinner will be held on Saturday, November 13, 2016 at 6:00 pm. An earlier reception among the vines will highlight Tondre Grapefield vineyard wines. Cima Collina library wines produced from the Santa Lucia Highlands site and dating back to the 2005 vintage. The event will begin at 6:30, with guests seated for dinner at 7:30. Reservations can be made online at [www.cimacollina.com](http://www.cimacollina.com) or at (831)620-1111. Cost is \$145 per person.



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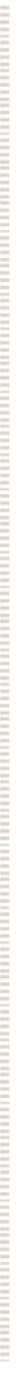


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The Magic ,



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Creative Strategy & Website Design by Tarfoot, Santa Barbara, California.

conspire to make this a truly gifted region for growing grapes. With the cool maritime climate, well-drained soils and energy of our winemaking colleagues, a dynamic renaissance is currently underway in our region.

We invite you try the wines of Cima Collina. We are confident we will meet your highest expectations of what an artisan wine should be.

Grapes first introduced by the Franciscan friars, who established the Mission at the mouth of the valley, provide the backdrop to our estate vineyard. Located in the heart of Carmel Valley Village, the land was originally part of a historic ranch and site for California's first dude ranch.

CVA Appeal Ex A, p. 7

Come experience the rich history of Cima Collina.



## SPRING AT HILLTOP RANCH



Come explore our Hilltop Ranch Vineyard during the 2017 growing season – Visit our blog for seasonal updates and historical tidbits along the way.

Shop online for your favorite Hilltop Ranch wine today – *Hilltop Ranch Pinot Noir*, *Pinot Gris* or *Limited Edition silk-screened bottle*. Free shipping on all orders over 6 bottles – Enjoy!



**Details**

Located in the bucolic hills of Carmel Valley, just 20 minutes from the downtown Monterey Peninsula, Cima Collina is a boutique winery showcasing wines from small, responsibly-farmed vineyards in Monterey County. Primarily specializing in Pinot Noir from the Hilltop Ranch Vineyard, the production also includes vineyard-designated Chardonnay, Sauvignon Blanc, & Cabemet blends. Committed to the purity and quality of its food-friendly wines, the winery also continues its endeavors to be an environmentally conscience organization within the community and beyond.

Our wines result from partnerships with dedicated growers cultivating fruit in a wide variety of microclimates & soils-a true grower's and winemakers delight.

Cima Collina crafts artisan wines from hand-selected fruit grown in small Monterey County vineyards. Started in 2004 by owner Richard Lumpkin & Napa-trained winemaker Annette Hoff Danzer, the pair share a belief in the region's ability to produce compelling, distinctive wines.

**Photos**



**Hours**

**OPEN**

Sunday	12:00 pm - 06:00 pm
Monday	12:00 pm - 06:00 pm
Tuesday	12:00 pm - 06:00 pm
Wednesday	12:00 pm - 06:00 pm
Thursday	12:00 pm - 06:00 pm
Friday	12:00 pm - 06:00 pm
Saturday	12:00 pm - 06:00 pm

**Social**

**Wine Varietals**

Cabemet Franc  
 Chardonnay  
 Gewurztraminer  
 Meritage  
 Mourvedre  
 Pinot Blanc  
 Pinot Gris/Grigio  
 Pinot Noir  
 Sauvignon Blanc  
 Syrah

**Wine Types**

Dessert Wine  
 Port  
 Red Wine  
 White Wine

**Features**

- Barrel Tasting
- Blending Session
- Co-op Tasting Room
- Educational
- Family Friendly
- Family Owned
- Limos
- Pet Friendly
- Picnic Area
- Private Tasting
- Scenic View
- Sustainable
- Table Seating
- Vineyard Tours**
- Winery Tours





## CIMA COLLINA GROWERS' DINNER

More details available soon!

04  
NOV 2017

More details available soon!

FEES & TICKETS	
> Tickets	\$150.00
> Wine Club Members	\$130.00



ACTIVITIES FOOD AND WINE WINE TASTING

START: November 4, 2017 12:00 AM  
END: November 4, 2017 11:00 PM

EXPORT TO ICALENDAR

EVENT VENUE

Like 0

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Cima Collina Winery



Cima Collina crafts artisan wines from hand-selected fruit grown in small Monterey County vineyards. Started in 2004 by owner Richard Lumpkin and Napa-trained winemaker Annette Hoff Danzer, the pair shares...

Telephone: (831) 620-0645  
Web: http://www.cimacollina.com



April 21, 2017

Mary Adams, Chair, and Members of the Board of Supervisors  
County of Monterey  
168 West Alisal Street, 2nd Floor  
Salinas, CA 93901

Re: Carmel Valley Association objections to the Hilltop Ranch applications and code violations – PLN130041, PLN140234, 15CE00348, PLN160833  
62 East Carmel Valley Road, Carmel Valley Master Plan area.

Dear Chair Adams and Supervisors Alejo, Parker, Phillips and Salinas:

Carmel Valley Association (CVA) objects to the new 2016 permit application by the Hilltop Ranch Vineyard in Carmel Valley. CVA has objected over the years to unpermitted commercial activities and special events at the site, and to the 2013 and 2014 applications (PLN130041, PLN140234) that seek County permits for commercial activities at the site. The County describes the pending 2014 application as this:

PLN140234 – HILLTOP RANCH & VINEYARD LLC:

Use Permit to allow assemblages of people including corporate wine educational dinners and social events for up to 250 people at a time, not exceeding ten events per year located both within an existing 2,400 square foot barn and outdoors on existing lawn areas and within the vineyard. Planning Commission determination of what constitutes an allowed ancillary use within a vineyard.

In 2014, CVA submitted to the County a detailed letter objecting to the applications.

In 2015, a County code enforcement case arose from commercial activities that took place at Hilltop Ranch without benefit of a County permit (15CE00348). The status of that code enforcement case and the further site violations since then has been disrupted by County staff. It is currently muddled.

In 2016, the Hilltop Ranch made a third project application to the County. The third application seeks an “administrative permit” for uses similar to those Hilltop requested in its 2013 and 2014 applications. The new 2016 application is described as this:

PLN160833 – HILLTOP RANCH & VINEYARD LLC

Administrative Permit to allow the vineyard (Hilltop Ranch) to operate in relation to the tasting room (Cima Collina), permitting routine vineyard activities (i.e., wine business dinners/meetings, members tastings, educational programs, etc.).

Carmel Valley Association Objects to the Hilltop Ranch Applications  
Which All Seek Approval of Prohibited Commercial Uses In a Residential Zone

CVA objects to the newest application (PLN160833) by Hilltop Ranch for “vineyard activities” including “wine tasting,” “marketing activities” and “educational programs” at the vineyard. The request, if approved, would be precedent-setting and would require prior CEQA review. CVA objections include these:

- Back door piecemeal attempt. PLN160833 is an attempt to stage commercial events at Hilltop Ranch by seeking much of what the pending PLN140234 application also seeks. The similarities are evident.
  - The 2014 application proposes “corporate wine educational dinners and social events.”
  - The 2016 application proposes “wine business dinners/meetings, members tastings, educational programs, etc” with no limit on frequency or number of attendees.
- Zoning violation. The proposal is for a commercial use not allowed in and inconsistent with the LDR zone. The conditional use is not allowable and cannot be permitted legally. The vineyard is in a residential zone and surrounded by residential uses.
- Significant environmental impacts: including noise, traffic impacts on Carmel Valley Road and Highway One, sewage disposal, water demand, water supply, fire safety, food preparation, and more.
- AWCP policies are inapplicable in CV. The County planners have alluded to the policies in the Ag Wine Corridor Plan (AWCP) of the County General Plan, and claimed that the AWCP policies somehow allow the proposed uses at Hilltop Ranch. The claim is baseless. The Salinas valley AWCP policies do not apply to Carmel Valley, The General Plan is specific about the limits of the wine corridor, and the corridor does not include Carmel Valley. The County General Plan EIR did not evaluate the impacts of extending AWCP policies to Carmel Valley, and the AWCP policies are the subject of pending litigation, in any event.
- No precedent. The proposal seeks to get special favorable treatment for (1) the proposed commercial uses of the vineyard *in a residential zone* due to its “relation to” (2) a tasting room in Carmel Valley Village *in a commercial zone*. The “relation to” claim has no basis in planning and zoning law.

Mary Adams, Chair, and Members of the Board of Supervisors  
Hilltop Ranch, Carmel Valley: PLN130041, PLN140234, 15CE00348, PLN160833  
April 21, 2017  
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- Violation of the County's Proof of Access ordinance. The neighbors on the private road oppose the application and its proposed commercial use of the private shared road. Safety is a major concern, especially considering the steep banks, narrow creekside location, buses, and private vehicles whose occupants' focus would be on drinking wine.
- Inconsistent with the County position on events in a vineyard. The official County position is as follows:

**Can events be held in a vineyard?**

**No. Events are not associated with a vineyard by itself** (Ag is an allowed use in many zoning districts). However, if the vineyard is on a parcel permitted for a winery and/or tasting room the vineyard may be used in support of activities associated with the winery. Marketing activities such as buyers touring the vineyard and tasting wine (limited number not including music or tents) would be allowed in agricultural zoning classifications (F, RG, PG, AP, CAP).

(Oct. 17, 2016, Director's Interpretation, emphasis added [annotated excerpts included as Exh. A to this letter].) To recap, the County's stated position is that:

- Events cannot be held in a vineyard.
- Special events uses are not properly associated with a standalone vineyard use, meaning a vineyard at a different site from its winery.

Thus, the 2014 and 2016 applications cannot be approved and must be denied. In any event, the Hilltop Ranch vineyard is not in an agricultural zone and does not qualify for the exception claimed by the County for agriculturally zoned areas.

**The 2016 Application Has the Same Issues and Problems as the 2013 and 2014 Applications**

PLN160833 suffers from the same problems identified by CVA in CVA's 2014 letter that is attached to this letter as Exhibit B. CVA restates each of its objections as if fully set forth herein.

CVA also joins in the objections stated in detail in the March 1, 2017 letter by the neighbors of the Hilltop Ranch site objecting to PLN160833. That letter was authored

by Anthony Lombardo and is attached as Exhibit C. That letter goes into detail as to many reasons why the project should be denied. Under the California Environmental Quality Act (CEQA, Pub. Resources, § 21000 et seq.), any person or entity may raise issues in litigation that were presented to the public agency by any other person or entity. (Pub. Resources Code, § 21177(a).)

#### The Hilltop Ranch/Cima Collina Applications Require Comprehensive CEQA Review

The three Hilltop Ranch/Cima Collina applications show what the applicant is trying to do: add commercial uses to a vineyard that is located in a quiet residential neighborhood on a site zoned LDR – Low Density Residential. The three applications are all part of the same effort. The County must consider them together.

Dividing up the development request into separate applications is called “piecemealing.” CEQA prohibits piecemealing of projects. (E.g., CEQA Guidelines, §§ 15065(a)(3), 15300.2(b); *Laurel Heights Improvement Association v. The Regents of the University of California* (1988) 47 Cal.3d 376, 396, *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1226.)

Contrary to the requirements of CEQA, the County has encouraged piecemealing. For example, Mr. Holm expressly advised the applicant in 2016 to apply for an “administrative permit,” according to County records. Then Mr. Holm agreed to make a “Director’s interpretation” to facilitate the new permit, all without holding a public hearing or presenting the issues to the Planning Commission, and without adequately acknowledging the pending 2014 application for similar commercial uses.

The impacts, the piecemealing, and the highly controversial nature of the applications and code violations at the site require the County to prepare an EIR.

#### Requests

Carmel Valley Association requests that any County consideration of anything involved with the Hilltop Ranch be placed on a public hearing with at least ten days’ advance notice to CVA.

CVA requests that the County not issue an administrative permit or an “interpretation” applicable to the site, contrary to the private offer by County Resource Management Agency Director Carl Holm to the applicant in March 2017. Make no mistake: None of the Hilltop Ranch applications qualify for administrative approval.

CVA requests that no Hilltop Ranch matter proceed until the County has first:

1. Investigated what appears to be secretive back-room agreements with the Hilltop Ranch applicant’s attorney and agents.

Mary Adams, Chair, and Members of the Board of Supervisors  
Hilltop Ranch, Carmel Valley: PLN130041, PLN140234, 15CE00348, PLN160833  
April 21, 2017  
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2. Made this letter part of the public record on each of the projects.
3. Prepared an environmental impact report in full compliance with CEQA. Alternatively, a more efficient approach would be for the County to deny the pending applications outright because the projects cannot be legally permitted. No CEQA review is required for projects that are denied.

If the County refuses to agree to any of these requests, please promptly advise me so CVA can consider its options.

Thank you.

Very truly yours,

STAMP | ERICKSON



Molly Erickson

cc: Charles McKee, County Counsel  
Chair Cosme Padilla and members of the County Planning Commission  
Carl Holm, Director, Resource Management Agency

Attachments: Exhibits A, B and C

**Director's Interpretation**

**Please note that this memorandum is issued solely for informational purposes, written to provide the Board of Supervisors, Planning Commission, Public and staff a written interpretation of how special events are currently considered..**

**Date:** October 17, 2016

**By:** Carl P. Holm, AICP, RMA Director

**Application:** County-wide

**What is the Question?**

A question that was presented by the public is: *“How can a golf and country club in P/QP zoning be allowed to exceed the number of members and guests for which it was permitted for any purpose, and in particular a commercial purpose not remotely related to the anticipated operation of a golf and country club, without a specific use permit. (Assemblages of people such as this could be allowed within reasonable parameters with a use permit for up to 10 days per year – the Code provides a path for this.) Such a permit should clearly explain the parameters of the event as well as the methods by which any impacts will be mitigated.”*

**Questions raised by this inquiry:**

- 1) Can a golf course/country club have events?
- 2) Is there a limit on the number of people that can attend an event?
- 3) Can wineries/tasting rooms hold events?
- 4) Can events be held in a vineyard?

**Applicable Monterey County Policy/Regulation:**

- Zoning Code - Uses:
  - P/QP uses/zoning; allowed in most zoning designations with a Use Permit. P/QP allows golf courses and country clubs with a Use Permit/Coastal Development Permit.
  - “Assemblages of people...”; allowed in most, if not all, zoning districts with a Use Permit/Coastal Development Permit.
  - “Other uses of similar nature, density and intensity as those listed...”; language contained in all zoning districts, subject to approval of Planning Commission.
- 20.58/21.58 MCC (Regulations for Parking).
- AWCP Section 3.2: allows events up to 150 people (allowed without a planning permit)
- AWCP Section 3.3: events with 151-500 subject to ministerial permit
- AWCP Section 3.4: events over 500 require a use permit
- 15.20.050 MCC: Public Assemblage. Maximum 10 calendar days per year.
- CEQA – Baseline: Generally is the condition at the time the environmental assessment is made or in the case of an EIR when the Notice of Preparation (NOP) is issued.

## Director's Interpretation

- **21.68.020 - Legal nonconforming land use.**  
*A legal nonconforming land use may be continued from the time that legal nonconforming land use is established, except that.*
  - A. *No such use shall be expanded, enlarged, increased, or extended to occupy a greater area than that occupied when the legal nonconforming use was established.*
  - B. *No such use may be intensified over the level of use that existed at the time the legal nonconforming use was established.*
  - C. *The legal nonconforming use may be changed to a use of a similar or more restricted nature, subject to a Use Permit in each case.*
  
- **21.68.030 - Legal nonconforming structure use.**  
*A legal nonconforming use of a structure may be continued except that:*
  - A. *The nonconforming use of a structure may be changed to a use of the same or more restricted nature subject to the issuance of a Use Permit in each case.*
  - B. *The nonconforming use of a portion of a structure may be extended throughout the structure subject to the issuance of a Use Permit in each case.*
  - C. *A structure maintaining a legal residential nonconforming use may be increased for the expansion of the use by one hundred twenty (120) square feet, or ten (10) percent of the floor area, whichever is greater.*

**Short Answers:**

The following numbered responses correspond to the questions, above:

- 1) Yes. Events are considered part of this type of use. However, the event needs to be on the parcel(s) identified in the permit.
- 2) Yes. Threshold depends on zoning regulations in place at the time the event is/was established and if there is a valid entitlement with any limitation, such as: application, adopting resolution, environmental documentation, site design (e.g. parking lot).
- 3) Yes. Events are considered part of this type of use. However, the event needs to be on the parcel(s) identified in the permit.
- 4) No. Events are not associated with a vineyard by itself (Ag is an allowed use in many zoning districts). However, if the vineyard is on a parcel permitted for a winery and/or tasting room the vineyard may be used in support of activities associated with the winery. Marketing activities such as buyers touring the vineyard and tasting wine (limited number not including music or tents) would be allowed in agricultural zoning classifications (F, RG, PG, AP, CAP).

**Discussion:**

Events can cause issues (noise, traffic, etc) if not managed properly. Most types of events require a permit of some sort – land use entitlement can include a use permit for an assemblage of people or public/quasi public use, building permit for structures (e.g. tents over 400 sf), ABC permit for alcohol sales, permit for chemical toilets (maximum 10 days per year), encroachment

Michael W. Stamp  
Molly Erickson  
Olga Mikheeva  
Jennifer McNary

**STAMP | ERICKSON**  
**Attorneys at Law**

CVA Appeal, Exhibit B, p. 8  
479 Pacific Street, Suite One  
Monterey, California 93940  
T: (831) 373-1214  
F: (831) 373-0242

May 18, 2014

Janet Brennan, Chair  
Carmel Valley Land Use Advisory Committee  
County of Monterey  
168 W. Alisal Street  
Salinas, CA 93901

Subject: PLN140234/PLN130041 – Hilltop Ranch (May 19, 2014 agenda)

Dear Ms. Brennan and members of the Carmel Valley Land Use Advisory Committee:

This Office represents the Carmel Valley Association (CVA). CVA objects to the proposed applications for new commercial uses of the Hilltop Ranch property. The project should be denied due to its incompatibility with the neighborhood and the unmitigated potentially significant adverse environmental impacts. (County Code, § 21.04.030.)

In this letter, we first address the law of conditional use permits, the law of zoning, and the specific zoning applicable to the Hilltop Ranch location. We then address the Hilltop Ranch applications, the California Environmental Quality Act (CEQA), and the environmental impacts of the proposed use. This letter is intended as the expression of the views of CVA on the specific facts and circumstances presented by the specific applications of Hilltop Ranch.

A Conditional Use Permit Is Appropriate Only for Uses that Are  
(1) Appropriate to the Location and (2) Permitted in the Zoning Ordinance.  
Those Requirements Are Not Met Here.

A use permit may be granted only if (1) the use is compatible with the proposed location and other criteria identified in the zoning ordinance and area plan, and (2) it is a use permitted in the zoning ordinance. The Hilltop Ranch applications seek approval for a commercial wedding and special event use that is not appropriate to the location and that is not listed in the zoning ordinance for the applicable zone.

The Fifth District California Court of Appeal addressed a remarkably similar issue in *Neighbors in Support of Appropriate Land Use v. County of Tuolumne* (2007) 157 Cal.App.4th 997 (*Neighbors*). In *Neighbors*, the owners of a 37-acre property – including vineyards and water storage ponds – applied to Tuolumne County for permission to operate a business hosting weddings and other special events. The zoning ordinance did not permit such uses at the site. The site was bordered on three sides by residences on lots of two to five acres. (*Id.* at p. 1001.) The neighbors opposed the application due to noise and parking problems experienced during the

wedding of the owners' daughter. The owners then withdrew the application (*id.* at pp. 1001-1002).

A month later, the property owners submitted a revised application for the business, seeking to add as conditional uses in the applicable zoning districts, "lawn parties, weddings, or similar outdoor activities" (*Neighbors, supra*, at p. 1002). The Tuolumne County Board of Supervisors declined to amend the zoning ordinance to allow weddings and special events in the applicable zone. (*Ibid.*) However, the County staff "opined that the county could still approve the . . . application by creating a special exception to the zoning ordinance" (*id.* at pp. 1002-1003).

The Tuolumne County Board of Supervisors then approved a development agreement at the site that purported to grant an exception to the zoning ordinance, along with a conditional use permit for "commercial events such as lawn parties, weddings or similar activities" (*Neighbors, supra*, at p. 1003). The County also approved a mitigated negative declaration under CEQA stating that, with mitigation measures, the project would not have a significant effect on the environment. (*Id.* at p. 1003) The neighbors sued. The trial court and the Court of Appeal agreed with the neighbors and held that the County had not followed Planning and Zoning Law (Gov. Code, § 65000 et seq.) because the use was not permitted in the zone. (*Id.* at pp. 1003-1004, 1016.)

A Use Permit Is Discretionary,  
Which Means an Application for a Use Permit Can Be Denied.

A conditional use permit is a method by which a County can approve a use that is not strictly allowed as a matter of right in the zone. An application for a conditional use permit is evaluated on a case-by-case basis, and a permit is granted only if the use is compatible with the proposed location and other criteria in the zoning ordinance. Some types of uses raise site-specific concerns such as potential noise, traffic, and parking, which is why a case-by-case evaluation is essential. Because a conditional use permit can be considered for a use that "could be incompatible in some respects with the applicable zoning, a special permit is required." (*County of Imperial v. McDougal* (1977) 19 Cal.3d 505, 510.)

A use permit runs with the land. (*County of Imperial v. McDougal, supra*, 19 Cal. 3d 505, 510.) A use permit does not expire automatically even when a condition to the conditional use permit provides for an expiration within a matter of years. (*Community Development Commission of Mendocino County v. City of Fort Bragg* (1988) 204 Cal.App.3d 1124, 1131-1132; *Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1530-1531.) The Monterey County staff's proposed attempt to limit the proposed PLN140234 use permit to three years is of dubious enforceability.

The careful consideration of use permits is so important that Monterey County requires two key steps:

1. All use permit applications are subject to a public hearing with notification of the neighbors (County Code, § 21.74.050.A), and
2. The County must deny any application if the County finds that “under the circumstances of the particular case” the use could “be detrimental to health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use; or be detrimental or injurious to property and improvement in the neighborhood.” (County Code, § 21.74.050.A.)

The Monterey County Zoning Ordinance Does Not Allow  
 the Proposed Commercial Uses in the Low Density Residential Zone.

The Hilltop Ranch property is in the Low Density Residential (LDR) Zone. The County Zoning Ordinance clearly states the purposes of the LDR Zone:

[T]o provide a district to accommodate low density and intensity uses in the rural and suburban areas of the County of Monterey and to insure that allowable land uses are compatible in the area. (§ 21.14.010)

The Zoning Ordinance states three categories of uses in the LDR Zone:

Category 1. Low impact “Allowed uses”: Numerous uses are allowed as a matter of right – these uses include a single family residence, similar low-intensity residential uses like day care, low-intensity farming uses, and cottage industries (§ 21.14.030 “Uses allowed”). The proposed Hilltop Ranch use is not a use that is allowed as a matter of right in the LDR zone.

Category 2. Medium impact “Administrative Permit”: Next, LDR zoning identifies more intense uses that require an administrative permit (§ 21.14.040 – Administrative Permit). This category is for specific types of housing, such as a second housing unit, and small water system facilities. The proposed Hilltop Ranch use does not qualify for that “administrative permit” category.

Category 3. Highest impact category “Use Permit”: The most intense category of uses that the County will consider for parcels in the LDR zone are specifically listed as “Use permit required in each case.” (§ 21.14.050). This category is discretionary, which means that the County can and should deny applications if the proposed use is not a good fit with the location and the neighborhood. A special permit is required, and this category of uses are not allowed as a matter of right. (*Neighbors in Support of Appropriate Land Use v. County of Tuolumne, supra*, 157 Cal.App.4th 997, 1006.) There is no guarantee that the County will approve applications that fall into this third category. The Hilltop Ranch applicant is arguing that this third category applies to the proposed commercial use for weddings and special events.

The pre-eminent policy in the Carmel Valley Master Plan says that "All policies, ordinances, and decisions regarding Carmel Valley shall be consistent with the goal of preserving Carmel Valley's rural character." (Carmel Valley Master Plan, policy CV-1.1.) If the environmental benefits of land use planning are to be enjoyed, Monterey County must take affirmative steps to protect and preserve the quality of life of its residents.

### The 2013 Project

In April 2013, Hilltop Ranch submitted an application for: 1) a "Use Permit to allow the use of the property to include: a) up to 25 wine hospitality and viticultural functions per year with up to 75 attendees; and b) up to 10 social events in a vineyard setting including engagement parties, wedding ceremonies and/or wedding receptions with 75-250 guests and staff at each gathering") – which the County described as "a Use Permit to allow for assemblages of people to conduct private vineyard and wine educational tours; weddings, non-profit and business events, and in-house winery events for club members" – and 2) a permit for transient occupancy of an existing dwelling. (See County project description, PLN130041, April 15, 2013 LUAC meeting.) The events proposed to use four parcels:

APN 197-011-015-000	an existing 2,400 square foot barn and 3,600 square foot outdoor area adjacent to the barn
APN 197-011-012-000	a 1,600 square foot lawn area (adjacent to the house proposed for transient rentals)
APN 197-011-013-000	vineyard
APN 197-011-014-000	vineyard

The County did not address the issue that the zoning ordinance does not allow up to 35 special events/year in the LDR zone, as requested by the application.

On April 15, 2013, the PLN130041 application was reviewed by the Carmel Valley Land Use Advisory Committee (LUAC). The CV LUAC heard significant concerns from the public, and the LUAC expressed significant concerns about noise, traffic, parking, water, land use, lighting, lack of code enforcement, and the precedent-setting nature of the approvals, given the other nearby wineries. The LUAC voted unanimously to continue the item, stating as follows:

The matter should be continued there are too many unresolved issues. There is a need for a master plan for wineries as event space in the Carmel Valley. The cumulative impact of winery events needs to be addressed[. T]his should go to the Planning Commission for a review of the entire context.

Chair Brennan and Members of the Carmel Valley LUAC  
 May 18, 2014  
 Page 5

- Clear limits in the Permit need to be drafted.
- There should be an objective measure of permitted sound levels.
- The zoning is inconsistent.
- The number of people at the maximum needs to be reduced.
- Fire and life safety issues must be addressed
- Private road issues to be addressed.
- A traffic study is needed.
- The total number of events should be reviewed.

The recommendations and comments of the LUAC were ignored.

On March 3, 2014, the CV LUAC again considered the PLN130041 application. The LUAC again heard serious concerns about noise, traffic, parking, the potential cumulative impacts of multiple winery event venues, the fact that Hilltop Ranch is a vineyard and not a winery, and more. LUAC members expressed concerns about the parking, traffic, noise and cumulative impacts of event venues. LUAC continued the item because LUAC had not had time to review the traffic study and LUAC also wanted a noise study.

On March 31, 2014, Planning Director Mike Novo stated that the County "has recently received evidence showing that unpermitted events have recently been held at Hilltop Ranch and events have already been booked for the near future" and that "The County has opened a code enforcement investigation" (see Attachment A to this letter). This open code enforcement investigation was not disclosed in staff reports to the Zoning Administrator.

The County staff has admitted that the Hilltop Ranch application PLN130041 has "issues (i.e., traffic, water and septic) that need to be resolved before that application can proceed." (Staff report to Zoning Administrator, May 8, 2014, p. 1.)

#### The 2014 Project Application Is for a Part of the 2013 Project.

On April 10, 2014, Hilltop Ranch submitted a second application to the County. The 2014 application was identical to the 2013 application – in fact, it was the 2013 application, signed in 2013. The County accepted the identical application, and crossed off the handwritten "PLN130041" and instead wrote in "PLN140234." The 2013 application is Attachment B to this letter, and the 2014 application is Attachment C.

Less than a month later, on May 1, 2014, the County planner rushed the second application to a public hearing before the Zoning Administrator. The Zoning Administrator took public comment, heard objections from the public, asked probing questions of staff, continued the item, and referred the matter to the CV LUAC for review and advice.

The planner described the 2014 project as follows:

Temporary Use Permit to allow Assemblages of people, such as corporate wine educational dinners and weddings, not exceeding ten (10) days, and not involving construction of permanent facilities until such time as the original permit PLN130041 has been finalized.

(Undated mail from E. Gonzales; see email from J. Faulk of Env. Health to E. Gonzales, April 16, 2014.) In short, the applicant has "chopped up" the original PLN130041 application into smaller pieces, and still intends to pursue the original application, as well. The approach is illegal, as described below.

CEQA Prohibits a Segmented or Piecemealed Review of the Project.

Pursuant to CEQA, a public agency is required to consider the "whole of an action" when the agency considers the environmental impacts of a project. CEQA mandates "that environmental considerations do not become submerged by chopping a large project into many little ones--each with a minimal potential impact on the environment--which cumulatively may have disastrous consequences." (*Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283-284.) Thus, the CEQA Guidelines define "project" broadly as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment" (CEQA Guidelines, § 15378, subd. (a)).

In the seminal case of *Laurel Heights Improvement Assn. v. University of California* (1993) 47 Cal.3d 376, the California Supreme Court set aside an EIR for failing to analyze the impacts of the reasonably foreseeable second phase of a multiphased project. That case involved a plan by the University of California, San Francisco (UCSF) to move its school of pharmacy to a new building, of which only one-third was initially available to UCSF. (*Id.* at p. 393.) Although the EIR acknowledged that UCSF would eventually occupy the remainder of the building once that space became available, the EIR only discussed the environmental effects relating to the initial move. (*Id.* at p. 396.) The Court concluded that the EIR should have analyzed both phases and was deficient for omitting the expansion plans. (*Id.* at p. 399.) In so holding, the court announced the legal test: "[A]n EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects." (*Id.* at p. 396.)

Numerous other cases have reinforced this holding. "CEQA forbids 'piecemeal' review of the significant environmental impacts of a project." (*Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1358.) A complete description of a project must address not only the immediate environmental consequences of going forward with the project, but also all "reasonably foreseeable

consequence[s] of the initial project” (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 428).

The holdings in these CEQA opinions prohibit the approach taken by Monterey County with regard to the Hilltop Ranch applications. The 2014 Hilltop Ranch application and the 2013 Hilltop Ranch application are interdependent. The Hilltop Ranch 2013 proposed project and 2014 proposed project perform the same function at the same location: private events for private customers. (See *Berkeley Keep Jets*, *supra*, 91 Cal.App.4th at 1361-1362.) The 2014 application proposes 10 events – part of the 35 events of the 2013 application. The 2014 application “depends on,” and is a foreseeable consequence of, approval of the 2013 application. As the County planner stated, “The applicants would like to move forward with the ability to have a limited number of special events prior to approval of the site as a location for regular special events.” (County staff report, May 8, 2014, p. 1.)

The Hilltop Ranch Projects Are Not Exempt from CEQA.

The County has claimed that PLN140234 is exempt from CEQA pursuant to CEQA Guidelines section 15304, subdivision (e). The claim is not supported by the CEQA guidelines or case law. Categorical exemptions may be provided only for classes of projects which have been determined not to have a significant effect on the environment. Accordingly, categorical exemptions should not be interpreted so broadly as to include classes of projects which would not normally fall under the exemption's statutory requirements. This is consistent with the general rule that CEQA must be interpreted to afford maximum possible environmental protection, consistent with the reasonable scope of the statutory language. (*Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1192-1193.) As the Sixth District Court of Appeal has held with regard to a project in Monterey County,

Since a determination that a project falls within a categorical exemption excuses any further compliance with CEQA whatsoever, we must construe the exemptions narrowly in order to afford the fullest possible environmental protection.

(*Save Our Carmel River v. Monterey Peninsula Water Management District* (2006) 141 Cal.App.4th 677, 697, emphasis added.) “Exemption categories are not to be expanded beyond the reasonable scope of their statutory language.” (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 125.)

The CEQA exemption claimed by Monterey County, CEQA Guidelines section 15304, exempts “minor public or private alterations in the condition of land, water, and vegetation” and subdivision (e) exempts “Minor temporary use of land having negligible or no permanent effects on the environment, including carnivals, sales of Christmas trees, etc.” The described uses for that so-called “class 4 exemption” are for temporary uses of empty unimproved land – Christmas tree sales on empty lots in commercial

zones, or carnivals on undeveloped fields or school soccer fields. Those are very different from the Hilltop Ranch location in a quiet residential area, and very different from an ongoing use that would have significant environmental impacts.

The evidence in this case shows that the two Hilltop Ranch applications each could have significant environmental impacts on parking, traffic, water, sound, and other impacts, as discussed further below. Because the project would have potentially significant impacts, instead of "negligible or no permanent effects on the environment," the claimed exemption is not applicable. No other exemption applies.

Here, the County has proposed to stretch the class 4 CEQA exemption past its breaking point. The County's effort is not appropriate – the County should not try to shoehorn this commercial use into a low-density residential zone of Carmel Valley. Even if a project meets the strict definition of an exemption, its environmental impact might not be minor. (*Day v. City of Glendale* (1975) 51 Cal.App.3d 817; *California Farm Bureau Federation v. California Wildlife Conservation Bd.* (2006) 143 Cal.App.4th 173 [rejecting agency's use of § 15304 exemption].) As the record shows, the Hilltop Ranch project could have significant environmental impacts. Under the circumstances, a CEQA exemption is not appropriate. The project should be denied. If the project is to proceed, an initial study – and possibly an environmental impact report – would be required first for the reasons given in this letter and the many comments from the public.

Even if the Hilltop Ranch use is exempt from CEQA, which it is not, several exceptions apply, as shown by facts discussed in this letter. (See CEQA Guidelines, § 15300.2, subds. (a), (b), and (c).) In short, this application requires an initial study pursuant to CEQA.

#### The Proposed Commercial Use Is Not Permissible in the LDR Zone.

The County staff report for the project proposes to allow a use permit for "assemblages of people." The application echoes that language - for example, the applicant submitted a document called "Hilltop Ranch Parking Plan - Assemblages of People." The applicant's "parking plan" document is not dated, and it is not stamped "applicant submittal" as required by adopted policy of the County Board of Supervisors.

In the Low Density Residential (LDR) zone, certain uses are allowed by a conditional use permit only. One of those uses is this:

Assemblages of people, such as carnivals, festivals, races and circuses, not exceeding ten (10) days, and not involving construction of permanent facilities (ZA).

(County Code, § 21.14.050.S, emphasis added.)

The list of examples of allowable “assemblages” under this category is for “carnivals, festivals, races and circuses.” Each of those uses is open to the public. Each of those uses are temporary, impermanent happenings that may or may not happen each year. They are to be allowed only where there is adequate access, parking, and other considerations. They do not involve the construction of permanent facilities. The allowance for a time period of “not exceeding ten days” is designed to allow time for setting up temporary structures (e.g., tents, amusement rides, kiosks, games), plus time for holding an event several days in length, and time for breaking down the temporary structures.

The Hilltop Ranch application does not meet the definition for a number of reasons. CVA asserts that the nature of uses “such as carnivals, festivals, races and circuses” is inherently different from the use proposed by Hilltop Ranch. Weddings and the special corporate and club events described by the applicant are not open to the public. It is undisputed that the weddings and corporate events envisioned for Hilltop Ranch are private events. The Hilltop Ranch use is claimed to be ten days scattered throughout the year, entirely at the discretion of the applicant. The Hilltop Ranch use is designed to be a permanent use that occurs intermittently – which is different from a temporary and impermanent use like a circus or a festival.

The zoning code category for public “assemblages of people” should not be stretched past the breaking point, as the County is attempting here. This category does not include a private commercial special event use that would have significant impacts. That would not be consistent with the overriding County policy that “All . . . decisions regarding Carmel Valley shall be consistent with the goal of preserving Carmel Valley’s rural character.” (CVMP, policy 1-1.)

#### The Proposed Hilltop Ranch Project Would Require Construction and Development of Permanent Facilities.

As CVA members Dale McCauley and Frank Hennessy have stated in writing, the 2014 application would require the construction of permanent facilities. Facilities are things that are designed, built, or installed to fulfill a specific function. (See, e.g., Conditions 1 and 2 proposed for the 2013 project, which also would be appropriate conditions for PLN140234 if the special event use was a permissible use in the LDR zone, which it is not.)

As one example, a parking lot – with a surface with necessary drainage, space dimensions, and similar features – is considered to be a facility. The PLN140234 project would require the installation of additional parking spaces. The placement of paving or other similar ground covering for parking purposes is construction and development, as defined in the County Code. (§§ 21.06.200, 21.06.310.) The road to the Hilltop Ranch would be improved and expanded as a result of this use (see County Condition 8, PLN140234, May 8, 2014 staff report). That development would be a permanent facility required by this conditional use permit. Other new permanent

facilities required by the 2013 and 2014 Hilltop Ranch projects include remodeling the barn to create a catering/kitchen space, a 60,000-gallon water tank, fire sprinklers in the barn, fire hydrants, and reconfiguration of the access road including turnarounds, improvements, and expanded dimensions.

The Proposed Use Is Not Similar to Any Other LDR Use.

There is no zoning code category that would allow a standalone permit for ten special events of the nature that Hilltop Ranch is proposing. A senior Monterey County planning staff member has stated orally that the proposed Hilltop Ranch project might be similar to a use that allows social events for club members and guests. That argument is deeply flawed. It purports to rely on a "Country Club" use that in the LDR zone requires a conditional use permit. County Code section 21.06.230 defines "Country club" as "any premises, structures or facilities used for meetings, dining, dancing, other social events, or recreational activities for club members and guests."

A country club use has indoor enclosed facilities designed for the purpose of "meetings, dining, dancing, and other social events." Prior to approval of a country club use, the County would have prepared, circulated and approved an initial study and environmental documentation supporting the use and investigating and mitigating impacts. Country clubs have parking on site, legal and adequate access, enclosed bathrooms connected to an approved septic disposal system, a reliable water supply, and a management and staff structure familiar with holding and managing special events. Country clubs are sited where they will not have significant impacts on the neighbors, and they are sited where the neighbors know of the existence of the club when they move in, and understand the periodic impacts.

The Hilltop Ranch project is not a country club under the County definition. A country club use does not require extraordinary treatment like unenforceable claims of shuttle busses, offsite parking to which there is no legal and permanent right, no onsite water use, and portable toilets. Here, the neighbors of Hilltop Ranch reasonably expect a peaceful and quiet environment, not one impacted by commercial uses, noise, and traffic. The neighbors reasonably expect the County to protect their low density residential neighborhood and the environment. The County should not allow country club uses to be established in their neighborhood.

If the County insists on arguing that the proposed Hilltop Ranch use is like a country club, then the County should make that argument publicly, and the applicant should revise the application to seek approval for a "Country Club." Only the Planning Commission may consider an application for a Country Club; the Zoning Administrator may not. (County Code, §§ 21.14.00.C, 21.74.030.B and C.)

### Environmental Impacts.

**Parking:** The project will have unmitigated and unidentified environmental impacts. The County has failed to comply with its own parking regulations, as described County Code chapter 21.58. The County requires that “off-street parking areas shall be provided and maintained as set forth in this Chapter.” (§ 21.58.030)

The staff analysis to date has failed to discuss and identify the applicable parking requirements pursuant to County Code section 21.58. The County’s parking requirements are required to be met, pursuant to the County’s LDR zoning (see § 21.14.060 “Site development standards”) which requires compliance with section 21.58. As another problem with the parking analysis, the applicant’s off-site parking scheme is essentially a request for a variance from the parking requirements mandated by County Code section 21.58. The County has failed to recognize this requirement. Even if the County had properly noticed the need for a variance, a variance is not appropriate under the circumstances.

The County has relied on a submittal by the applicant that attached a map marked “preliminary” and “not for County submission.” (See map attached to Gogliucci letter, p. 21 of 55-page County staff report, May 8, 2014.) The map does not contain an engineer’s stamp.

For its special events of up to 250 people, the Hilltop Ranch project proposes that event attendees drive to Carmel Valley Village, park their cars at Hidden Valley Music Seminars, and then take shuttles from Hidden Valley through the village, up the private road easement over property owned by others, to the Hilltop Ranch site. There are significant problems with the proposal.

- Hilltop Ranch has no legally enforceable right to allow parking at Hidden Valley in perpetuity or for the duration of the Hilltop use permit. This violates County Code chapter 21.58, which states that “All off-street parking facilities required by this Chapter shall be maintained for the duration of the use requiring such areas.”
- Absent those enforceable rights in place for the duration of any Hilltop Ranch use permit, Hidden Valley’s conditional permission could be rescinded at any time.
- Any parking by Hilltop Ranch customers would be conditional – only when Hidden Valley has no large events.
- Hidden Valley has events of its own on Saturdays, Sundays and weekday evenings which would pre-empt parking use by Hilltop Ranch.
- More than a dozen other operations and businesses, including Gardener Ranch, Carmel Valley Fiesta, Wine and Art Event, also use Hidden Valley for special events parking during summer weekends and other times. It is

reasonably foreseeable that parking at Hidden Valley would not be available for parking by Hilltop Ranch for one or more of its large events.

**Traffic:** The proposed use would create traffic, including possible 150 cars for a single event traveling on Carmel Valley Road. Carmel Valley Road is already at an "Unacceptable" Level of Service E on two road segments over which Hilltop Ranch traffic would pass. Highway One is at Level of Service F, and pursuant to County policy even one additional car at peak hour is considered a significant impact on traffic. There is no practical way to prevent the applicant from having events during peak hour. It simply cannot be done, and the County does not have the code enforcement capability to enforce such a condition. In any event, the County has not placed a condition stating the times and days of the week that events could be held, and such a condition likely would not be enforceable.

**Noise:** Sounds travel remarkably well and sometimes in unusual ways in Carmel Valley. It is no excuse to argue that this 2014 project is only ten events per year. As shown elsewhere, the impacts of the entire project (PLN130041 and PLN140234) must be evaluated. Over ten years there could be 100 events, and in 20 years, there could be 200 events under this permit alone. If the 2013 project is included in the calculations, as under CEQA it must be, there would be 35 events per year, which means 350 events every ten years, or 700 events every 20 years. The neighbors are entitled to peace and quiet, and the quiet enjoyment of their homes. The neighbors should not be subjected to 350 events or more every ten years. The special events foreseeably would include the sounds of a public address system and amplified music. People at parties involving alcohol often make loud and sustained noise. The project must have a noise study.

**Water:** The County has not made an adequate and good faith effort to quantify and analyze water use. These are important issue that must be adequately investigated and disclosed before the applications can be considered. The County has acknowledged that the 2013 project raises serious and significant water impacts. The 2014 project has the same impacts. It is not enough to dismiss the important issue of water by saying that the caterer will prepare the food offsite and the portable toilets will have hand-washing facilities. By remaining silent on water use, the County approvals would allow unlimited water to be used for this commercial event business. The water use foreseeably would increase in the Cal Am service area as a result of this use.

It is reasonably foreseeable that the project would have water impacts that the County has failed to investigate and mitigate. The County cannot reasonably prohibit all new water use as a result of this project. There will be additional water use because the events would create more water demand than currently exists at the site. The caterers and party attendees would use the various water-using facilities that already exist. The plans submitted by the applicant show that the barn would be reconfigured to provide facilities customized for special events. The applicant's plans state that "Work includes electrical, plumbing and misc. finishes." (Emphasis added) The new

"kitchen staging area" that would be constructed is adjacent to a room that already has existing plumbing facilities. The remodeling and other work would require building permits, according to County records.

The Hilltop Ranch gets its water from Cal Am and from a well, according to County records. As of May 15, 2014, the County planning staff could not state what water source – well or Cal Am – supplied the various parcels, and for what purposes. As of May 18, 2014, the County had not responded to specific questions about the water sources and uses.

Cal Am water: The SWRCB Order WR 2009-0060 against Cal Am, also called the Cease and Desist Order, prohibits Cal Am from serving new or intensified uses. Condition No. 2 of Order WR 2009-0060 prohibits Cal-Am from serving an increased use of water at an existing service address due to a change in zoning or use. The State Water Board has specifically explained as follows:

Condition 2 prohibits any increased water use at an existing service address that results from a change in zoning or use approved by either MPWMD or a local land use authority after October 20, 2009.

(SWRCB letter to Cal Am, April 9, 2012, p. 3.) A discretionary approval by the County – the local land use authority – of the proposed Hilltop Ranch use would allow an increased water use. Therefore, the application would violate the Cease and Desist Order.

The Cease and Desist Order prohibits a "change in zoning or use at an existing service address." Cal Am and the State Water Board have concluded that the addition of a fire service connection due to a remodel, where such connection is required by the Fire Code, is not allowed if the addition constitutes a "change in zoning or use at an existing service address." (SWRCB letter to Cal Am, April 9, 2012, pp. 3-4.) This Office has asked the County whether a fire service connection would be required as a result of the proposed Hilltop Ranch use, and the County has not responded.

Well water: According to the Monterey Peninsula Water Management District, the active onsite well pumps water from the Carmel Valley Alluvial Aquifer. The MPWMD manages the water in the aquifer. As of May 16, 2014, the County planning staff had not consulted with the MPWMD staff regarding the proposed Hilltop Ranch applications. Attachment D to this letter shows the location of the Hilltop Ranch well. Attachment E shows the pumping from the well over the last ten years..

Access: The burden of proof is on the applicant to prove that the applicant has legal access for the proposed use. The Hilltop Ranch has an easement across properties owned by others. Under the facts and circumstances presented here, the applicant has not demonstrated legal access for the proposed commercial use at Hilltop

Ranch. The additional burdens placed on the easement may not be legal. Determining the legality of access for this use is a highly factual investigation and dependent on facts available to the owners of the dominant tenement and servient tenements. The County has not adopted the private road ordinance that would have provided some guidance to the County on this issue.

The Hilltop Ranch applicant has asserted that a chain of title report was done for the applicant's claimed road easement (March 20, 2014 letter from J. Panzer). However, the applicant did not attach the entire report. Instead, the applicant presented one document and claimed that it was carried forward to all subsequent deeds. (*Id.* at p. 1.) The County cannot rely on mere representations by the applicant. A representation of the applicants is not reliable because the applicant has "a vested interest" in asserting a claim that would "allow the project to go forward." (*Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 122). The *Save Our Peninsula* case was about the September Ranch subdivision application in Carmel Valley. In that case, the Sixth District Court of Appeal rejected the County's reliance on a claim that the applicant had made, because the County had relied unquestioningly on the claim about water without investigating and confirming it. (*Ibid.*)

County files also show that Hilltop Ranch representatives have tried to claim that its proposal is similar to Holly Farm and Chateau Julien. Those two locations are very different from the Hilltop Ranch location. In this letter we identify just a few of the differences. Holly Farm and Chateau Julien are located directly on Carmel Valley Road, with direct access to the road – without easements over property owned by another. They have plenty of parking. They are on the valley floor, where sound travels differently. They were businesses established before the Cease and Desist Order against Cal Am went into effect.

Ordinance: The County is actively processing an ordinance on short term rentals and special events which would address the wedding and special event uses proposed by Hilltop Ranch, as well as the transient occupancy request in the 2013 Hilltop Ranch application. The County ordinance will be subject to CEQA review. It would be premature for the County to consider the proposed use at Hilltop Ranch prior to the County's analysis of the environmental impacts of special events and the County-wide regulation of special events.

#### Past Grading: Storage Permit

Grading for agricultural reservoirs require a permit from the County. (County Code, §§ 16.08.090 16.08.040.J.) The County's Accela database for this site – 62 East Carmel Valley Road and for APN 197-011-015-000 – does not show a County grading permit for the onsite reservoir at Hilltop Ranch. The County should address this issue. As a separate matter, storage of pumped groundwater typically requires a permit. It is unknown whether Hilltop Ranch has a permit for the water stored in its reservoir.

Request

The project should be denied due to the lack of neighborhood compatibility, the presence of conflicts with the County zoning code, and unmitigated environmental concerns. An initial study is required pursuant to CEQA, if the applicant wants to pursue the project.

The Carmel Valley Association joins in all the concerns and objections expressed by others on these projects.

Thank you.

Very truly yours,

STAMP | ERICKSON



Molly Erickson

Attachments:

- A. March 31, 2014 letter from Mike Novo re: code enforcement violation
- B. 2013 application (PLN130041)
- C. 2014 application (PLN140234)
- D. Well location at Hilltop Ranch (MPWMD record)
- E. Well water production from wells at Hilltop Ranch (MPWMD record)

# MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY

Benny J. Young, Director  
Carl P. Holm, AICP, Deputy Director



---

Michael A. Rodriguez, C.B.O., Chief Building Official  
Michael Novo, AICP, Director of Planning  
Robert K. Murdoch, P.E., Director of Public Works

168 W. Alisal Street, 2<sup>nd</sup> Floor  
Salinas, CA 93901  
<http://www.co.monterey.ca.us/rma>

March 31, 2014

**VIA EMAIL**

Annette Hoff Danzer  
[Annette@cimacollina.com](mailto:Annette@cimacollina.com);  
Michele Gogliucci  
[michelemgogliucci@gmail.com](mailto:michelemgogliucci@gmail.com);  
Joel Panzer  
[joel@mwruck.com](mailto:joel@mwruck.com);

RE: Social Activities at Hilltop Ranch

Dear Annette, Michele and Joel,

The RMA-Planning department has recently received evidence showing that unpermitted events have recently been held at Hilltop Ranch and events have already been booked for the near future.

The County has opened a code enforcement investigation. Should you continue to hold events at Hilltop Ranch, you will be required to pay double fees on your current planning permit PLN130041 (\$11,066.93 x 2), and code enforcement will begin issuing citations for the illegal activities, which could become costly.

Please halt all illegal activities until such time that you have obtained the entitlements.

Sincerely,

Mike Novo  
Director of RMA - Planning

Cc: code enforcement



MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY  
PLANNING DEPARTMENT  
168 WEST ALISAL, 2ND FLOOR, SALINAS, CA 93901  
OFFICE: 831.755.5025 FAX: 831.757.9516

DEVELOPMENT PROJECT APPLICATION

PLN B0041

This application is for:

- Combined Development Permit
- Rezoning
- Administrative Permit [Coastal Non-Coastal]
- Use Permit
- Variance
- Design Approval
- General Development Plan
- Coastal Development Permit
- Modification of Conditions
- Local Coastal Plan Amendment [L.U.P. or C.I.P.]
- General Plan Amendment
- Other \_\_\_\_\_
- Tentative Parcel Map [Minor Subdivision]
- Tentative Map [Standard Subdivision]
- Vesting Tentative Map
- Preliminary Map
- Preliminary Project Review Map
- Lot Line Adjustment [Major/Minor]
- Revised Tentative Map
- Revised Tentative Parcel Map
- Amended Final Map
- Amended Parcel Map
- Subdivision Extension Request

1. Owner[s] Name: Richard Lumpkin  
 Address: 62 E. Carmel Valley Rd City: Carmel Valley State: CA  
 Telephone: 217-254-3425 Zip Code: 93924
2. Applicant's Name: Annette Hoff Denzer  
 Address: 3344 Paul Davis Drive #6 City: Marina State: CA  
 Telephone: 831-384-7806 Zip Code: 93933
3. Applicant's interest in property [Owner, Buyer, Representative, etc.] Representative / Employee

4. Property address and nearest cross street: 62 E. Carmel Valley Rd, Carmel Valley 93924  
Cross street: Jolie Vista
5. Assessor's Parcel Number[s]: 197-011-012 thru -015
6. Current Zoning: LDR
7. Property area [acres or square feet]: 20 acres total over 4 parcels
8. Describe the proposed project: Special Events on site including educational tours, weddings, corporate & non-profit events; transitional use of "guesthouse" in conjunction with events or as a short-term, vacation rental

9. REZONING OR AMENDMENT ONLY: The applicant wishes to amend Section \_\_\_\_\_ of the Monterey County Code, from a \_\_\_\_\_ Zoning District to a \_\_\_\_\_ Zoning District or some other classification.

10. GENERAL PLAN AMENDMENT OR COASTAL PLAN AMENDMENT ONLY: Describe the proposed amendment:

11. SUBDIVISION INFORMATION ONLY: Number of Lots: \_\_\_\_\_  
 Purpose of Subdivision: Sale:  Lease:  Financing:  Other:

12. LOT LINE ADJUSTMENT INFORMATION ONLY: What is the purpose of the adjustment: \_\_\_\_\_

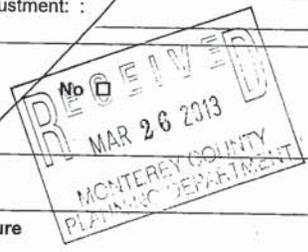
WILL THE ADJUSTMENT RELOCATE THE BUILDING AREA? Yes

ADJUSTED PARCEL SIZE[S]: \_\_\_\_\_

Owner's Signature \_\_\_\_\_ Owner's Signature \_\_\_\_\_

Owner's Name [Please Print] \_\_\_\_\_ Owner's Name [Please Print] \_\_\_\_\_

Assessor's Parcel Number \_\_\_\_\_ Assessor's Parcel Number \_\_\_\_\_



13. VARIANCES ONLY: Describe the proposed variance: \_\_\_\_\_

14. If new or additional construction is proposed, complete the following information: n/a
- A. Residential Development: Single Family Residence  Other [how many total units] \_\_\_\_\_  
 No. of covered parking spaces \_\_\_\_\_ No. of uncovered parking spaces \_\_\_\_\_ Lot Coverage \_\_\_\_\_ %
- B. Commercial or Industrial Development: No. of employees [include all shifts] \_\_\_\_\_ n/a  
 No. of covered parking spaces \_\_\_\_\_ No. of uncovered parking spaces \_\_\_\_\_  
 No. of Loading Spaces \_\_\_\_\_ Lot Coverage \_\_\_\_\_ %
15. Will grading or filling be required: Yes  No  Cubic Yards \_\_\_\_\_
16. Will the project require placement of structures, roads, grading cuts or fills on slopes of 30% or greater: Yes  No
17. Will any trees be removed: Yes  No  If yes, indicate the number, specie[s] and diameter: \_\_\_\_\_

Other vegetation to be removed: \_\_\_\_\_

18. How will water be supplied: Individual Wells  Mutual System \_\_\_\_\_  
 Name of Public or Private Water System: and C&I - Arm Connection
19. How will sewage or other waste be disposed: forevents - portable toilets; septic tank  
 Name of Public or Private Sewer System: Tom's Septic
20. Is this land currently in row crop production: Yes  No
21. Is this land used for grazing: Yes  No
22. Is this land under an Agricultural Preservation Contract: Yes  No  If yes, indicate the Contract No. \_\_\_\_\_
23. Is this proposed project located on a hazardous waste facility: Yes  No  [Government Code 65962.5]. [A list of hazardous waste sites is maintained by the Environmental Health Dept., Phone 831-755-4500.]

I/We state that as the owner[s] or agent for owner[s] for the development permit application. I/We have read the complete application and know the contents herein. I/We declare under penalty of perjury that the information contained in this application including the plans and documents submitted herewith are true and correct to the best of my/our knowledge.

Dated: March 23, 2013 at Hilltop Ranch, Central Valley, California  
I declare under penalty that I am authorized by the owner[s] of the described property to make this application.

Richard A. Lumpkin Annette Hoff Danzer  
 Owner's Name [Please Print or Type] Agent's Name [Please Print or Type]

Richard A. Lumpkin Annette Hoff Danzer  
 Owner's Signature Agent's Signature

Some application fees are charged on a deposit basis. Processing hours in excess of the deposit will be billed to the applicant at an hourly rate, prior to issuance of entitlements or permits. Processing hours less than the original fee will be refunded at the same rate after issuance of the entitlements or permits.

**For Department Use Only**

Plan Designation: Residential Area Plan / Land Use Plan: CUMP  
 Legal Lot: Yes Zoning Violation Case No.: \_\_\_\_\_  
 Property Owner Verified: Yes  No  Height: \_\_\_\_\_ Lot Coverage \_\_\_\_\_  
 Setbacks: F \_\_\_\_\_ R  S \_\_\_\_\_ Special \_\_\_\_\_ OPL \_\_\_\_\_  
 FAR \_\_\_\_\_ Fire Haz. \_\_\_\_\_ SRA \_\_\_\_\_ Flood \_\_\_\_\_  
 Advisory Committee: CVLUAC  
 Geo. Hazard Zones: \_\_\_\_\_ Arch. Sensitivity Zone: High ESH: NDPUE  
 Misc.: \_\_\_\_\_  
 Application Given Out By: [Signature] Date: 2/27/13  
 Application Received By: [Signature] Date: 3/26/13



PLANNING DEPARTMENT

168 WEST ALISAL, 2ND FLOOR, SALINAS, CA 93901

OFFICE: 831.755.5025 FAX: 831.757.9516

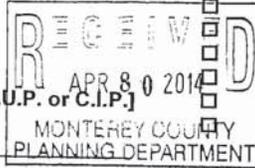
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DEVELOPMENT PROJECT APPLICATION

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10. GENERAL PLAN AMENDMENT OR COASTAL PLAN AMENDMENT ONLY: Describe the proposed amendment:

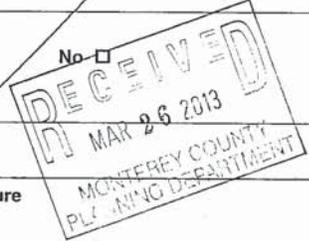
11. SUBDIVISION INFORMATION ONLY: Number of Lots: \_\_\_\_\_  
 Purpose of Subdivision: Sale:  Lease:  Financing:  Other: \_\_\_\_\_

12. LOT LINE ADJUSTMENT INFORMATION ONLY: What is the purpose of the adjustment: \_\_\_\_\_

WILL THE ADJUSTMENT RELOCATE THE BUILDING AREA? Yes  No

ADJUSTED PARCEL SIZE[S]: \_\_\_\_\_

Owner's Signature \_\_\_\_\_ Owner's Signature \_\_\_\_\_  
 Owner's Name [Please Print] \_\_\_\_\_ Owner's Name [Please Print] \_\_\_\_\_  
 Assessor's Parcel Number \_\_\_\_\_ Assessor's Parcel Number \_\_\_\_\_



13. VARIANCES ONLY: Describe the proposed variance: \_\_\_\_\_

14. If new or additional construction is proposed, complete the following information: n/a
- A. Residential Development: Single Family Residence  Other [how many total units] \_\_\_\_\_  
 No. of covered parking spaces \_\_\_\_\_ No. of uncovered parking spaces \_\_\_\_\_ Lot Coverage \_\_\_\_\_ %
- B. Commercial or Industrial Development: No. of employees [include all shifts] \_\_\_\_\_ n/a  
 No. of covered parking spaces \_\_\_\_\_ No. of uncovered parking spaces \_\_\_\_\_  
 No. of Loading Spaces \_\_\_\_\_ Lot Coverage \_\_\_\_\_ %
15. Will grading or filling be required: Yes  No  Cubic Yards \_\_\_\_\_
16. Will the project require placement of structures, roads, grading cuts or fills on slopes of 30% or greater: Yes  No
17. Will any trees be removed: Yes  No  If yes, indicate the number, specie[s] and diameter: \_\_\_\_\_

Other vegetation to be removed: \_\_\_\_\_

18. How will water be supplied: Individual Wells  Mutual System \_\_\_\_\_  
 Name of Public or Private Water System: End-Cut-Ann Connection
19. How will sewage or other waste be disposed: for events - portable toilets; septic tank  
 Name of Public or Private Sewer System: Tom's Septic
20. Is this land currently in row crop production: Yes  No
21. Is this land used for grazing: Yes  No
22. Is this land under an Agricultural Preservation Contract: Yes  No  If yes, indicate the Contract No. \_\_\_\_\_
23. Is this proposed project located on a hazardous waste facility: Yes  No  [Government Code 65962.5]. [A list of hazardous waste sites is maintained by the Environmental Health Dept., Phone 831-755-4500.]

I/We state that as the owner[s] or agent for owner[s] for the development permit application. I/We have read the complete application and know the contents herein. I/We declare under penalty of perjury that the information contained in this application including the plans and documents submitted herewith are true and correct to the best of my/our knowledge.

Dated: March 23, 2013 at Hilltop Ranch, Carmel Valley, California  
 I declare under penalty that I am authorized by the owner[s] of the described property to make this application.

Richard A. Lumpkin  
 Owner's Name [Please Print or Type]

Annette Hoff Danzer  
 Agent's Name [Please Print or Type]

Richard A. Lumpkin  
 Owner's Signature

Annette Hoff Danzer  
 Agent's Signature

Some application fees are charged on a deposit basis. Processing hours in excess of the deposit will be billed to the applicant at an hourly rate, prior to issuance of entitlements or permits. Processing hours less than the original fee will be refunded at the same rate after issuance of the entitlements or permits.

**For Department Use Only**

Plan Designation: Residential Area Plan / Land Use Plan: CUMP

Legal Lot: yes Zoning Violation Case No.: \_\_\_\_\_

Property Owner Verified: Yes  No  Height: \_\_\_\_\_ Lot Coverage \_\_\_\_\_

Setbacks: F \_\_\_\_\_ R  S \_\_\_\_\_ Special \_\_\_\_\_ OPL \_\_\_\_\_

FAR \_\_\_\_\_ Fire Haz. \_\_\_\_\_ SRA \_\_\_\_\_ Flood \_\_\_\_\_

Advisory Committee: Civil DAC

Geo. Hazard Zones: \_\_\_\_\_ Arch. Sensitivity Zone: High ESH: None

Misc.: \_\_\_\_\_

Application Given Out By: [Signature] Date: 2/27/13

Application Received By: [Signature] Date: 3/26/13



**Production History for Lumpkin Wells  
APNs 197-011-012 and 197-011-015**

All values in Acre-feet (AF)  
1 AF = 325,851 gallons

Water Year	-012 lower	-015 upper
WY 2002	1.58	2.43
WY 2003	3.95	2.42
WY 2004	14.02	1.72
WY 2005	9.79	0.00
WY 2006	2.41	0.48
WY 2007	1.11	0.00
WY 2008	1.11	0.00
WY 2009	3.03	0.00
WY 2010	3.03	0.00
WY 2011	9.68	0.00
WY 2012	0.91	0.00
WY 2013	1.46	0.00

Notes:

1. WY = Water Year, runs from October 1 to September 30.
2. Permit 01-017 for upper well on 197-011-015. Meter was inspected in June 2001, but according to our records it was not active till after September 2001.
3. Permit 02-130 for lower well on 197-011-012
4. Production for WY 2005 was adjusted to account for a period longer than 12-months, meter readings were reported from September 30, 2004 and February 24, 2006.
5. Production for WY 2006 was calculated from meter readings from February 2006 and February 2007. Last record of any production from the upper well.
6. No reports filed in WY 2007; production shown is assumed half of total on meters between February 2007 and September 2008.
7. Production split between WY 2008 and 2007 for meter readings from February 2007 through September 2008.
8. WY 2009 meter readings didn't match previous year's. Used 1/2 of metered total from September 30, 2008 through April 4, 2011.
7. Production split between WY 2010 and 2009 for meter readings from September 30, 2008 through April 4, 2011.
8. WY 2013 readings from September 30, 2012 through October 21, 2013.

**ANTHONY LOMBARDO & ASSOCIATES**

A PROFESSIONAL CORPORATION

ANTHONY L. LOMBARDO  
KELLY MCCARTHY SUTHERLAND  
CODY J. PHILLIPS

144 W. GABILAN STREET  
SALINAS, CA 93901  
(831) 751-2330  
FAX (831) 751-2331

March 1, 2017

3147.001

Carl Holm, Director  
Monterey County RMA  
168 W. Alisal Street  
Salinas, CA 93901

RE: Hilltop Ranch/Cima Collina (PLN160833; PLN140234; PLN130041)

Dear Carl:

I represent a group of concerned property owners adjoining and surrounding Hilltop Ranch. My clients believe the applications should be denied based on the following:

1. Zoning
2. Traffic safety
3. Noise
4. Precedent

The three separate applications from Hilltop Ranch are summarized below:

- PLN160833: Administrative Permit to allow the vineyard (Hilltop Ranch) to operate in relation to the tasting room (Cima Collina), permitting routine vineyard activities (i.e., wine business dinners/meetings, members tastings, educational programs, etc.).
- PLN140234: Use Permit to allow assemblages of people including corporate wine educational dinners and social events for up to 250 people at a time, not exceeding ten events per year located both within an existing 2,400 square foot barn and outdoors on existing lawn areas and within the vineyard.
- PLN130041: Combined Development Permit consisting of: 1) Use Permit to allow the use of the property to include: a) up to 25 wine hospitality and viticultural functions per year with up to 75 attendees; and b) up to 10 social events in a vineyard setting including engagement parties, wedding ceremonies, and/or wedding receptions with 75-250 guests and staff at each gathering; and 2) an Administrative Permit for transient occupancy to allow the use of an existing 1,200 square foot dwelling in conjunction with events or to rent to customers and members on an occasional basis.

**OBJECTIONS**

Zoning

On their face these applications should be denied due to their inconsistency and incompatibility with the residential zoning and residential uses in the area. The project site is made up of 4 residential lots ranging in size from 4.03 to 5.71 acres. They are in an area that is zoned for residential use and is designated as Low Density Residential/2.5 acres per unit by the Carmel Valley Master Plan. MCGP 2010 Policy LU-2.34 states "...Low Density Residential areas are

Carl Holm, Director  
March 1, 2017  
Page 2

appropriate for residential (1-5 acres/unit) recreational, public and quasi-public and limited agricultural activities that are incidental and subordinate to the residential use.” The level of activity is clearly not “incidental and subordinate” to the residential use. It is also unclear that the proposed uses are in any way connected to or reliant on the residences. The uses proposed are inconsistent with the MCGP 2010 and CVMP and should be denied.

#### Traffic Safety

The properties are accessed by a narrow, single lane, private residential driveway that was built to serve a limited number of residential lots and to be maintained by them. It is not designed or constructed to accommodate the large volume of auto, truck and bus traffic that would be associated with the proposed uses. We could find no evidence in the record that the applicants have rights to use this right of way for other than the residential and limited agricultural uses. That right should have been substantiated prior to any application moving forward.

A traffic analysis was prepared in 2014. It is not clear from a cursory review of that report if it addressed both the 2013 and 2014 applications or just the 2014 application. In any event the project description should be defined much more thoroughly to incorporate the three applications and the analysis should be updated accordingly.

The analysis does state however that “The proposed project will generate new vehicle trips on the segment of State Highway 1 between Ocean Avenue and Carmel Valley Road that currently operates at LOS F. Therefore, the project may have a potentially significant impact on State Highway 1.” Based on numerous applications throughout the County the standard has been that if one trip is being added to roads that operate at LOS F, an EIR is required.

The uses proposed are inconsistent with the traffic loads on Highway 1 and Carmel Valley Road and should be denied.

#### Noise

There is no information on the noise levels that would be expected to be generated by these uses. Prior documented unpermitted gatherings on Hilltop have generated disturbing levels of crowd and vehicle noise before, during and after the event. The noise impacts of these activities on a quiet rural residential area are intrusive to the surrounding countryside and its inhabitants. There are reasons for the LDR zoning classification and noise is one of them.

Because of the intrusive noise coming from Hilltop relative to what the neighbors should rightfully expect in an LDR zoned neighborhood, these applications should be denied.

#### Precedent

These applications seek to create highly intensified public commercial uses in a residential neighborhood. If allowed to proceed, any unincorporated resident could most likely justify becoming an "event center" so that they, too, could make more money from their property investment no matter how large or small. The serene rural nature of particularly Carmel Valley would be permanently destroyed. Therefore to maintain the serene rural nature of Carmel Valley, these applications should be denied.

Carl Holm, Director  
March 1, 2017  
Page 3

### Other Concerns

Piecemeal Development and Project Description: The three separate applications represent a classic attempt to piecemeal a project. So that the public and decision makers can have a full understanding of the scope and scale of the proposals, the applications should have been combined into a single application with a complete project description.

Dividing the application into 3 parts to obfuscate the true nature of this large, noisy, intrusive, non-conforming commercial project and its impacts on the surrounding community supports denial of the applications.

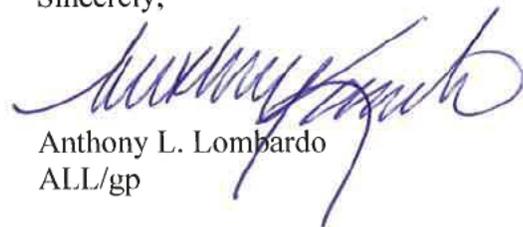
Relationship to the Agricultural Wine Corridor: References apparently have been made that the uses proposed by Hilltop Ranch are uses that are typically found in areas of vineyards and wineries and these could be looked at as an extension of the County's Agricultural and Winery Corridor Plan (AWCP). That is incorrect. The 2010 MCGP specifically designates AWCP areas. The designated AWCP areas are the Central/Arroyo Seco/River Road segment, the Metz Road segment and the Jolon Road segment. There are no AWCP areas in Carmel Valley.

Given the extreme level of detail and scrutiny that was given the 2010 MCGP and the AWCP in their development and adoption, it is clear that it has been decided that AWCP provisions were found to be not appropriate in Carmel Valley. That decision was undoubtedly in recognition of the limited traffic capacity, water constraints and primarily residential nature of Carmel Valley.

Baseline Analysis: The baseline for any of these studies and related CEQA document should be the level of use and activity before events started being held on the property. No credit should be given to on-going illegal activities in the analysis of this project.

In conclusion, my clients object to the Hilltop Ranch/Cima Collina applications for reasons of zoning, noise, traffic safety and precedent along with other concerns not included in this letter. These applications are also inconsistent with the MCGP 2010 and CVMP and should therefore be denied forthwith.

Sincerely,



Anthony L. Lombardo  
ALL/gp

**Director's Interpretation**

**Please note that this memorandum is issued solely for informational purposes, written to provide the Board of Supervisors, Planning Commission, Public and staff a written interpretation of how special events are currently considered..**

**Date:** October 17, 2016

**By:** Carl P. Holm, AICP, RMA Director

**Application:** County-wide

**What is the Question?**

A question that was presented by the public is: *“How can a golf and country club in P/QP zoning be allowed to exceed the number of members and guests for which it was permitted for any purpose, and in particular a commercial purpose not remotely related to the anticipated operation of a golf and country club, without a specific use permit. (Assemblages of people such as this could be allowed within reasonable parameters with a use permit for up to 10 days per year – the Code provides a path for this.) Such a permit should clearly explain the parameters of the event as well as the methods by which any impacts will be mitigated.”*

**Questions raised by this inquiry:**

- 1) Can a golf course/country club have events?
- 2) Is there a limit on the number of people that can attend an event?
- 3) Can wineries/tasting rooms hold events?
- 4) Can events be held in a vineyard?

**Applicable Monterey County Policy/Regulation:**

- Zoning Code - Uses:
  - P/QP uses/zoning; allowed in most zoning designations with a Use Permit. P/QP allows golf courses and country clubs with a Use Permit/Coastal Development Permit.
  - “Assemblages of people...”; allowed in most, if not all, zoning districts with a Use Permit/Coastal Development Permit.
  - “Other uses of similar nature, density and intensity as those listed...”; language contained in all zoning districts, subject to approval of Planning Commission.
- 20.58/21.58 MCC (Regulations for Parking).
- AWCP Section 3.2: allows events up to 150 people (allowed without a planning permit)
- AWCP Section 3.3: events with 151-500 subject to ministerial permit
- AWCP Section 3.4: events over 500 require a use permit
- 15.20.050 MCC: Public Assemblage. Maximum 10 calendar days per year.
- CEQA – Baseline: Generally is the condition at the time the environmental assessment is made or in the case of an EIR when the Notice of Preparation (NOP) is issued.

## Director's Interpretation

- **21.68.020 - Legal nonconforming land use.**  
*A legal nonconforming land use may be continued from the time that legal nonconforming land use is established, except that.*
  - A. *No such use shall be expanded, enlarged, increased, or extended to occupy a greater area than that occupied when the legal nonconforming use was established.*
  - B. *No such use may be intensified over the level of use that existed at the time the legal nonconforming use was established.*
  - C. *The legal nonconforming use may be changed to a use of a similar or more restricted nature, subject to a Use Permit in each case.*
  
- **21.68.030 - Legal nonconforming structure use.**  
*A legal nonconforming use of a structure may be continued except that:*
  - A. *The nonconforming use of a structure may be changed to a use of the same or more restricted nature subject to the issuance of a Use Permit in each case.*
  - B. *The nonconforming use of a portion of a structure may be extended throughout the structure subject to the issuance of a Use Permit in each case.*
  - C. *A structure maintaining a legal residential nonconforming use may be increased for the expansion of the use by one hundred twenty (120) square feet, or ten (10) percent of the floor area, whichever is greater.*

**Short Answers:**

The following numbered responses correspond to the questions, above:

- 1) Yes. Events are considered part of this type of use. However, the event needs to be on the parcel(s) identified in the permit.
- 2) Yes. Threshold depends on zoning regulations in place at the time the event is/was established and if there is a valid entitlement with any limitation, such as: application, adopting resolution, environmental documentation, site design (e.g. parking lot).
- 3) Yes. Events are considered part of this type of use. However, the event needs to be on the parcel(s) identified in the permit.
- 4) No. Events are not associated with a vineyard by itself (Ag is an allowed use in many zoning districts). However, if the vineyard is on a parcel permitted for a winery and/or tasting room the vineyard may be used in support of activities associated with the winery. Marketing activities such as buyers touring the vineyard and tasting wine (limited number not including music or tents) would be allowed in agricultural zoning classifications (F, RG, PG, AP, CAP).

**Discussion:**

Events can cause issues (noise, traffic, etc) if not managed properly. Most types of events require a permit of some sort – land use entitlement can include a use permit for an assemblage of people or public/quasi public use, building permit for structures (e.g. tents over 400 sf), ABC permit for alcohol sales, permit for chemical toilets (maximum 10 days per year), encroachment

## Director's Interpretation

permit, etc. Events can be occasional (one-time) or reoccurring (annual) events; however, the County's permitting process is currently a one-size-fits-all (occasional or annual).

Events generally range from:

1. Personal events on privately owned property; to
2. Renting property for an event; to
3. Large events involving sales of tickets(within site limits); to
4. Regional/international events (exceeding site limits).

County intends to develop ordinances to distinguish and address these differing events, but there are issues arising in the interim. A number of large events have occurred historically that have been, for the most part, unregulated and have continued to grow/expand. This interpretation considers events under current regulations as well as how historical events are addressed, considering past practices.

There are generally three types of uses that include events:

- 1) "Assemblages of people". Requires a use permit/coastal development permit (most zoning districts).
- 2) Golf courses, resorts, and hotels. It has been a long standing practice that golf courses, resorts, and hotels include events as part of their normal course of business, even if not expressly stated in their permit. These uses require a use permit/coastal development permit as P/QP uses (most zoning districts).
- 3) Winery related. The practice is that winery related uses (winery, tasting room, etc.) include events as part of their normal course of business. AWCP has special regulatory policy language corresponding to the size of the facility and the number of people attending activities. Outside the AWCP these events require a use permit/coastal development permit. A subset of the winery related use that has come up recently is a desire to use vineyards for events when they are not attached to the winery. **Vineyards by themselves are typically allowed in residential and agricultural zoning districts by right, do not include facilities to support visitors, and so vineyards by themselves are not considered as a location where events area allowed.** The wine industry however does invite customers to tour the vineyard. This is a normal accessory use of the vineyard in agricultural zones and land uses.

Monterey County has been very permissive in allowing events to continue and expand with minimal public review. Our main focus has been life and safety relative to structures (e.g. "tents").

**Conclusion:**

There are a number of events that have occurred for years/decades. Determining the legality of these events is case specific and fact driven. Events which began without any entitlement on the property are evaluated based on zoning regulations in place at the time the event is/was established. If there is a valid entitlement the event is evaluated for consistency with that entitlement, considerations from the environmental document and the site design. The analysis of the thresholds allowed by a previously approved permit involves the following steps:

## Director's Interpretation

- Review permit file (application, adopting resolution, environmental/technical documents, etc)
- Define Applicable Parcel(s) identified in the entitlement. Use is limited to parcels included in the permit.
- Basis for analysis (CEQA). The thresholds used to evaluate impacts (e.g. traffic) are limiting factors in determining what was allowed.
- Established restrictions (conditions, mitigation). If no explicit limit, it is implied as allowed within site limits.
- Site Limitations. Some questions may help define carrying capacity (by design):
  - o Can the event be accommodated using the existing number of parking spaces, or are other parking options necessary (open space/vacant parcels, shuttles, etc)?
  - o In the case of a golf course; Are the number of attendees consistent with the maximum number of golfers that can be accommodated?
  - o Is the use and activity accommodated within the facilities that have been designed for the site?

If adequate restroom facilities are not available for the number of people planned (as determined by the Environmental Health Bureau), then chemical toilets are required. Chapter 15.20.050 MCC limits activities involving the assemblage of people including but not limited to circuses, carnivals, festivals, picnics, barbecues or races without providing adequate flush toilets connected to an approved sewage disposal system. If the use is less than ten (10) days per calendar year adequate chemical toilets may be used to meet this requirement. Stated in another way, events that require chemical toilets to meet the demand is limited to a maximum of ten calendar days per year.

County regulations require off-site parking sufficient to meet the parking demand in order to avoid parking on street. When a use is established, it has to meet parking standards established to meet this intent. If parking has not been addressed as part of the permit, then the event cannot be interpreted to be allowed. If offsite parking is needed, this would result in the need to apply for a subsequent permit.

**In Carmel Valley, parameters must address potential impacts to traffic on Carmel Valley Road and on Hwy 1 among other things. The 2010 GP, CVMP (Policy CV-2.17), and GP EIR identify potential issues with adding traffic on Carmel Valley Road and on Hwy 1.**



# Monterey County

168 West Alisal Street,  
1st Floor  
Salinas, CA 93901  
831.755.5066

## Board Report

Legistar File Number: RES 16-086

December 13, 2016

Introduced: 11/30/2016

Current Status: Agenda Ready

Version: 1

Matter Type: BoS Resolution

REF150053/REF150054 - EVENTS

Adopt a Resolution establishing interpretive guidelines for Title 21 of the County Code regarding large-scale special events.

Proposed CEQA Action: Adoption of interpretive guidelines for existing policy and regulations is not a project per Section 15321 of the CEQA Guidelines.  
Countywide

Note: the Board did NOT approve the draft resolution proposed by Mr. Holm.

### RECOMMENDATION:

It is recommended that the Board of Supervisors adopt a Resolution (**Exhibit B**) establishing the following interpretive guidelines for Title 21 of the County Code regarding large-scale special events:

- a. Events that are part of certain operations under existing use permits (e.g., hotels, resorts, golf courses, wineries/tasting rooms, and commercial) are allowed pursuant to historical practice.
- b. The RMA Director is authorized to determine those events that are allowed to continue or expand subject to ministerial permits where there is an existing use such as a hotel, resort, golf course, winery, or commercial use, even if not explicit in the permit language. Such uses shall be subject to any limitations identified as existing permit conditions or mitigation measures.
- c. "Large-scale special events", as determined by the RMA Director, must have operational plans for the event considered at a public Events Task Force meeting at least 90 days prior to the event.
- d. The RMA Director is authorized to establish an Events Task Force made up of regulatory staff including, but not limited to, RMA/Planning, Fire, RMA/Building, Environmental Health, RMA/Public Works, Sheriff, and Highway Patrol. The purpose of the Events Taskforce is to review proposed plans and operations for events, hear public concerns, and for regulatory staff to apply conditions addressing possible impacts.

### SUMMARY:

Monterey County has a large tourist economy, which makes it a desired location for many events of varying size and complexity. Staff finds that there are generally four different types of events ranging from:

1. Personal event on privately owned property; to
2. Renting property for an event; to
3. Large event where tickets are sold (within site limits); to
4. Regional/international events (exceeding site limits).

In many cases, events in Monterey County began as small activities. The County has been permissive in allowing events to continue and expand with minimal public review. Some of these events have become increasingly popular to where they expand beyond their original footprint and/or attract other associated events.

Concerns have been expressed by both operators and neighboring residents as to how these have been permitted. On the one hand, event organizers tend to claim that their events are either “grandfathered” based on past practices or that permit(s) issued would allow unlimited occupancy because there is no condition limiting the size. On the other hand, neighbors challenge that permits are needed where there is a change in the operation (e.g. exceed threshold capacity).

Events can cause issues such as noise and traffic if not managed properly. Most types of events require a permit of some sort - a Use Permit for an assemblage of people or public/quasi public use, building permit for structures (e.g. tents over 400 sf), permit for alcohol sales, permit for chemical toilets (maximum 10 days per year), encroachment permit, etc. Events can be occasional (one-time) or reoccurring (annual) events.

Within the next year or so, staff intends to develop draft ordinances to distinguish and address these differing events. However, in the meantime, questions have been raised as to whether some of the events should be allowed to continue or even expand. As events have proliferated, staff’s main focus has been protecting life and safety relative to structures (e.g. “tents”) and traffic safety. This report is directed at addressing issues raised relative to items 3 and 4 of this list (large-scale special events and regional/international special events, respectively).

Based on input at a Planning Commission workshop, staff has drafted a plan of action for the Board to consider. Staff requests Board direction on the following:

- Events that are part of certain operations (hotels, resorts, golf courses, wineries, commercial), are allowed based upon historical practice even if not explicit in the permit language.
- The RMA Director is authorized to determine what constitutes a “*large-scale special event.*” “Large-scale special events” generally would be considered as those reaching a threshold such as number of people or where an event operation expands beyond parcels listed in permit.
- The RMA Director is authorized to establish an Events Task force made up of representatives from regulatory agencies, including but not limited to: RMA (building services, planning, encroachment), Environmental Health, Sheriff, Fire, and California Highway Patrol.
  - The role of this task force is to identify what is required to address possible impacts; the respective regulatory agencies, not the task force, will approve or disapprove a permit(s).
  - Events Task Force meetings will be an open, public meeting with an agenda listing events being considered.
  - Task force meetings would be scheduled monthly beginning January 2017.
  - RMA will schedule events for consideration at an Events Task Force meeting.
  - Operators will need to submit plans for tents, traffic circulation, parking, food, alcohol, waste, etc. for consideration at least 90 days prior to the scheduled event. These plans will be the subject of discussion at the task force meeting.

Staff envisions a process similar to the Development Review Committee that RMA established where we have a roundtable discussion between regulatory agencies and the applicants so everyone is on the same page. Staff finds that this kind of process could be beneficial to both operators and concerned residents. In addition, having this kind of process for events will help coordinate periods where there are multiple events scheduled within the County. For example, such a process could have been helpful for car week when we were balancing fire response in the area.

Staff is requesting these interpretive guidelines as an interim interpretation by the Board of Supervisors to provide guidance in identifying the permitting requirements for individual events until the matter can be resolved in an updated ordinance. This process, presenting the matter to the Planning Commission and Board, was identified by staff to allow the public opportunity to understand and comment on the process that will be used for large-scale special events until an ordinance is adopted.

DISCUSSION:

See **Exhibit A** for a more detailed Discussion.

OTHER AGENCY INVOLVEMENT:

Staff presented this matter to the Planning Commission (PC) on October 26, 2016 to receive input. Generally, the PC supports large-scale special events continuing. Comments to note include:

- If a permit is not explicit to use (relative to events) or thresholds, then what can be reasonably expected by the public?
- Need to define what is “reasonable” based on scale and frequency.
- Threshold would be the degree of impact felt - such as impacts spilling off the property (e.g. traffic, safety, parking, noise)
- Important to define how/when public can engage to discuss how impacts (e.g. traffic) will be addressed.
- PC asked to give a voice to the community - feel responsible to the community that feels the impacts.

A summary of Comments made at the PC Workshop as well as copies of comments submitted to the PC are attached for reference (**Exhibit C**).

FINANCE:

There would be no fiscal impact resulting from adoption of these interpretive guidelines. No additional staff time is required beyond current/past practices. Ministerial permits (structures/tents, food, alcohol, etc) have established fees for processing. Fees, based on adopted fee articles, may be assessed as needed for extra services such as traffic control.

Prepared and approved by: Carl P. Holm, AICP, RMA Director

Attachments:

Exhibit A - Discussion

Exhibit B - Resolution

Exhibit C - PC Comments and Correspondence

cc: RMA Land Use (Planning, Engineering, Environmental Services, Building Services, Code Compliance); Parks (RMA); County Counsel (Land Use, Parks); Environmental Health Bureau; Sheriff; Fire; California Highway Patrol; Water Resources Agency; MPWMD; Richard Rudisill; Michael Waxer; Rob Carver; Dale Ellis (MC Hospitality); Jennifer Stemler (MCVGA); **John Bridges;** **Joel Panzer;** Gwen Amaral; Cheryl Burrel (PBC); Tony Lombardo; Event Organizers (list); STR Distribution List

**EXHIBIT A  
DISCUSSION**

The County's current entitlement process (land use permits) is currently a one-size-fits-all regardless if it is occasional or annual. There are generally four types of uses that include events:

- 1) **“Assemblages of people”**. Requires a use permit/coastal development permit (most zoning districts). This is the catch all for events when an event does not fall into one of the categories below.
- 2) **Golf courses, resorts, and hotels**. It has been a long standing practice that golf courses, resorts, and hotels include events as part of their normal course of business, even if not expressly stated in their permit. The golf course use requires a use permit/coastal development permit as a P/QP use in most zoning districts.
- 3) **Winery related**. The practice is that winery related uses (winery, tasting room, etc.) include events as part of their normal course of business. AWCP has special regulatory policy language based on the number of people. Outside AWCP a winery requires a use permit/coastal development permit. A subset of this type of use that has come up recently is using vineyards for events when the are not attached to the winery. A vineyard by itself is not a venue for events however commercial vineyards include marketing activities within the vineyard that constitute an event. Staff has determined that vineyards within farmland and/or grazing zoning districts are allowed to have limited events as commercial agricultural operations. Viticulture and croffarming is an allowed use in certain residential zoning districts. Staff finds that vineyards in a residential district not in conjunction with a winery or tasting room that has a permit, are typically not of a commercial nature; and therefore, would require a permit.
- 4) **Commercial**. Retail businesses often have sales events to help bring in customers. As such, events are considered part of a commercial operation.

A difficult aspect of the event discussion is that some events started from humble beginnings and have grown into major national events. The difficulty is identifying whether the event was initiated legally and if so defining the scale allowed either when the event began or the scale contemplated in the original approval. A number of large-scale events have occurred historically that have been, for the most part, unregulated and have continued to grow/expand, including but not limited to:

- Big Sur International Marathon
- Concours de Elegance – Car Week
- Major Golf Tournaments: AT&T Pro-Am, US Open, etc.

Successes of these events have led to other operators holding similar or related events. For example, Concours de Elegance expanded into multiple events that make up what is now referred to as car week. There are several different venues associated with car week that started as something small and have grown into very large events.

A Special Events Task Force was historically run by Parks to review certain types of events; however, the Parks Department ran the task force more from an owner/operator perspective than a regulator. Although this process was open to the public, it was not well advertised and not very inviting or informative. It was a good concept, but there were no clear guidelines for what events did or did not get presented and there was no requirement for an operator to attend a task force meeting. The RMA Director/Interim Parks Director identified this as an area to improve

**EXHIBIT A  
DISCUSSION**

both in efficiency and effectiveness. One action was to assign RMA/Permit Coordinator, Ms. Freda Escobar, as lead for coordinating the regulatory process (events coordinator). The program being proposed creates a separation between Parks as a land owner/operator (marketing events on County land) and land use regulators.

When challenged, staff is tasked to research the subject event to determine if the event is an allowable use and to establish thresholds. Each case is fact driven depending on zoning regulations in place at the time the event is/was established, if there is a valid entitlement with any limitation, and what the environmental document considered. Factors that staff consider include:

- Permit file (application, adopting resolution, environmental/technical documents, etc)
- Applicable Parcel(s) as identified in the entitlement. Use is limited to parcels included in the permit.
- Basis for analysis (CEQA). The threshold used to evaluate impacts (e.g. traffic) becomes a limiting factor.
- Established restrictions (conditions, mitigation).
  - o If no explicit limit, it is implied as allowed within site limits.
  - o Where there is an explicit limit, expanding beyond that threshold would require amending the existing Permit).
- Site Limitations. Some questions may help define carrying capacity (by design):
  - o Can the event be accommodated using the existing number of parking spaces, or are other parking options necessary (open space/vacant parcels, shuttles, etc)?
  - o In the case of a golf course; is the number of attendees consistent with the maximum number of golfers that can be accommodated?

A number of discretionary permits have been issued with no condition limiting events (number, size, etc). As a result, past practice has been to allow these events to continue and grow. However, each event is required to obtain ministerial permits for structures (e.g. tents over 400 square feet, tents that include electrical/mechanical equipment, stages/platforms over 30-inches tall), food services, and/or alcohol sales, encroachment into public right of way, as applicable. These permits are generally related to public health and safety.

At this time, when a complaint is received, or if somebody comes in to obtain a permit, the site is evaluated using these considerations. If it is determined that it is not a permitted activity, or if the proposed event exceeds the thresholds of the site, then the sponsor is notified that building permits for any temporary structures cannot be issued, and that the event is not allowed in it's proposed configuration. If the event sponsor has provided this information in sufficient time, this determination can be appealed to the Planning Commission.

**Board of Supervisors  
of the County of Monterey**

Resolution No. \_\_\_\_\_  
A resolution of the Monterey County Board of Supervisors establishing interpretive guidelines for Title 21 of the County Code regarding large-scale special events. (REF150053/ REF150054, Countywide)

**Note: the Board did NOT approve this draft resolution.**

WHEREAS, Monterey County has a large tourist economy, which makes it a desired location for many events of varying size and complexity; and

WHEREAS, concerns have been expressed by both operators and neighboring residents as to how these have been permitted; and

WHEREAS, large-scale special events can cause issues such as noise and traffic if not managed properly; and

WHEREAS, the County intends to develop draft ordinances to distinguish and address various types of events within the next year; and

WHEREAS, this action serves an interim interpretive guidelines for Title 21 of the County Code by the Board of Supervisors to provide guidance in identifying the permitting requirements for individual large-scale special events until the matter can be resolved in an updated ordinance; NOW, THEREFORE,

BE IT RESOLVED by the Board of Supervisors of the County of Monterey that the following interpretive guidelines for Title 21 of the County Code are hereby established for the management or permitting of large-scale special events:

- a. Events that are part of certain operations under existing use permits (e.g., hotels, resorts, golf courses, wineries/tasting rooms, and commercial) are allowed pursuant to historical practice.
- b. The RMA Director is authorized to determine those events that are allowed to continue or expand subject to ministerial permits where there is an existing use such as a hotel, resort, golf course, winery, or commercial use, even if not explicit in the permit language. Such uses shall be subject to any limitations identified as existing permit conditions or mitigation measures.
- c. “*Large-scale special events*”, as determined by the RMA Director, must have operational plans for the event considered at a public Events Task Force meeting at least 90 days prior to the event.
- a. The RMA Director is authorized to establish an Events Task Force made up of regulatory staff including, but not limited to, RMA/Planning, Fire, RMA/Building, Environmental Health, RMA/Public Works, Sheriff, and Highway Patrol. The purpose of the Events

Taskforce is to review proposed plans and operations for events, hear public concerns, and for regulatory staff to apply conditions addressing possible impacts.

BE IT FURTHER RESOLVED that the RMA Director is hereby directed to return to the Board of Supervisors within a reasonable time with amendments to the County Code to address the issues regarding large-scale special events.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2016 by the following vote, to wit:

AYES:

NOES:

ABSENT:

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book\_\_ for the meeting on \_\_\_\_\_.

Dated:

Gail T. Borkowski, Clerk of the Board of Supervisors  
County of Monterey, State of California

By \_\_\_\_\_  
Deputy



## Monterey County Board of Supervisors

168 West Alisal Street,  
1st Floor  
Salinas, CA 93901  
831.755.5066

### Board Order

Upon motion of Supervisor Potter, seconded by Supervisor Armenta and carried by those members present, the Board of Supervisors hereby:

**Made no change to the Monterey County Code Title 21 regarding large-scale events and interpretive guidelines**

APPROVED on this **13th day of December 2016**, by the following vote, to wit:

AYES: Supervisors Armenta, Phillips, Salinas, Parker and Potter

NOES: None

ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 79 for the meeting on December 13, 2016.

Dated: January 26, 2017  
File ID: RES 16-086

Gail T. Borkowski, Clerk of the Board of Supervisors  
County of Monterey, State of California

By Denise Hancock  
Deputy

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# Attachment H

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## Chapter 21.14 - REGULATIONS FOR LOW DENSITY RESIDENTIAL ZONING DISTRICTS OR "LDR" DISTRICTS

### Sections:

#### 21.14.010 - Purpose.

The purpose of this Chapter is to provide a district to accommodate low density and intensity uses in the rural and suburban areas of the County of Monterey and to insure that allowable land uses are compatible in the area.

#### 21.14.020 - Applicability.

The regulation of this Chapter shall apply in all "LDR" Districts and are subject to Chapter 21.62 (Height and Setback Exceptions) of this Title.

#### 21.14.030 - Uses allowed.

- A. The first single family dwelling per lot;
- B. Guesthouses meeting the development standards of Section 21.64.020;
- C. The keeping of pets;
- D. Animal husbandry and small livestock farming; provided that not more than one horse, mule, cow, or similar livestock shall be kept for each twenty thousand (20,000) square feet of land area;
- E. Rooming and boarding of not more than two (2) persons;
- F. Non-habitable accessory structures and accessory uses to any permitted use;
- G. Temporary residence, pursuant to Section 21.64.070, used as living quarters during the construction of the first dwelling on a lot;
- H. Small family day care home;
- I. Small residential care facility;
- J. Water system facilities including wells and storage tanks serving four (4) or fewer service connections, pursuant to Chapter 15.04, Monterey County Code, and replacement of water tanks and wells where no increase in service connections is created. The screening of any tanks and associated structures shall be approved by the Director of Planning;
- K. Cultivation, cutting and removal of Christmas trees;
- L. Home occupations, pursuant to Section 21.64.090;
- M. Stands for the sale of agricultural products grown on the premises having no permanent electricity, plumbing or paving and where adequate restroom facilities exist on premises, subject to the approval of the Director of Environmental Health;
- N. Crop farming, tree farming, viticulture and horticulture;
- O. Other uses of a similar character, density and intensity to those listed in this section;
- P. Intermittent livestock farming or animal husbandry uses such as "4-H" projects;
- Q. Accessory dwelling unit meeting the development standards of Section 21.64.030;
- R. Employee housing providing accommodations for up to six (6) employees;
- S. Supportive housing contained within a dwelling unit if the dwelling unit is an allowed use under this section;

- T. Transitional housing or transitional housing development contained within the housing types of this section.

(Ord. No. 5177, § 29, 5-24-2011; Ord. No. 5135, § 100, 7-7-2009)

21.14.040 - Uses allowed—Administrative permit required in each case (Chapter 21.70).

- A. Repealed;
- B. Tract sales or rental offices;
- C. Repealed;
- D. Repealed;
- E. Second residential unit not exceeding the zoning density of the property;
- F. Reduction in setback requirements of ten (10) percent or less of the required setbacks;
- G. Small water system facilities including wells and storage tanks of five (5) to fourteen (14) service connections;
- H. Other uses of a similar character, density and intensity to those listed in this section.
- I. Additions to existing approved wireless communications facilities, pursuant to Section 21.64.310;
- J. Supportive housing contained within the housing types of this section;
- K. Transitional housing or transitional housing development contained within the housing types of this section.

(Ord. No. 5177, § 30, 5-24-2011; Ord. 3938, 1997)

21.14.050 - Uses allowed—Use permit required in each case (Chapter 21.74).

- A. Additional residential units to a maximum of four (4) on any lot and not exceeding the zoning density of the property;
- B. Public and quasi-public uses including churches, cemeteries, parks, playgrounds, schools, public safety facilities, public utility facilities but not including uses of a non-residential nature such as jails, rehabilitation centers, detention facilities, or corporation yards;
- C. Country clubs;
- D. Golf courses;
- E. Commercial kennel (ZA);
- F. Legal nonconforming use of a portion of the structure extended throughout the structure (ZA);
- G. Legal nonconforming use changed to a use of a similar or more restricted nature;
- H. Bed and breakfast facility, pursuant to Section 21.64.100;
- I. Commercial and noncommercial wind energy conversion systems;
- J. Development in Carmel Valley Floodplain, pursuant to Section 21.64.130 (ZA);
- K. Ridgeline development;
- L. Conversion of uncultivated land to cultivated agricultural use on land with fifteen (15) percent—twenty-five (25) percent slopes (North County Area Plan, Central Salinas Valley Plan, Cachagua Area Plan, only);

- M. Repealed;
- N. Repealed;
- O. Keeping and raising of mink (ZA);
- P. Any building, structure, or enclosure for the purpose of maintaining a zoo or zoological garden or for the purpose of raising, maintaining or exhibiting any wild animal or animals;
- Q. Water system facilities including wells and storage tanks serving fifteen (15) or more service connections;
- R. Removal of minerals or natural materials for commercial purposes;
- S. Assemblages of people, such as carnivals, festivals, races and circuses, not exceeding ten (10) days, and not involving construction of permanent facilities (ZA);
- T. Accessory structures and accessory uses prior to establishment of main use or structure (ZA);
- U. Large family day care facilities (ZA);
- V. Cottage industries, pursuant to Section 21.64.095 (ZA);
- W. The exploration for and the removal of oil and gas (ZA);
- X. Other uses of a similar character, density and intensity to those listed in this section;
- Y. Public stables on a minimum of ten (10) acres (ZA);
- Z. Mobile home parks, pursuant to Section 21.64.210.
- AA. Wireless communications facilities, pursuant to Section 21.64.310;
- BB. Large residential care facility (ZA);
- CC. Supportive housing contained within the housing types of this section;
- DD. Transitional housing or transitional housing development contained within the housing types of this section.

(Ord. No. 5177, § 31, 5-24-2011; Ord. 3938, 1997)

#### 21.14.060 - Site development standards.

- A. Minimum Building Site. The minimum building site shall be one acre unless otherwise approved as part of a clustered residential development.
- B. Development Density, Maximum. The maximum development density shall not exceed the acres/unit shown for the specific "LDR" District as shown on the zoning map (e.g. "LDR/2" means an "LDR" District with a maximum gross density of two acres/unit).
- C. Structure Height and Setback Regulations. The following structure height and setback regulations apply unless superseded by a structure height limit noted on the zoning map (e.g. "LDR/2.5 (24)" would mean a structure height limit of twenty-four (24) feet), setback requirements when combined with a "B" distance or setbacks shown on a recorded final or parcel map, or setback lines on a Sectional District Map.

In a subdivision where a lot or lots have a designated building envelope, the dwelling unit and accessory structures shall be located wholly within the building envelope unless otherwise approved in the subdivision process.

##### 1. Main Structures.

##### a. Minimum Setbacks.

Front: thirty (30)feet;

Side: ten (10) percent of the average lot width, to a maximum required of twenty (20) feet;

Rear: twenty (20) feet.

b. Height. Maximum height: thirty (30) feet.

2. Accessory Structures (Habitable).

a. Minimum Setbacks.

Front: fifty (50) feet;

Side: six feet;

Rear: six feet.

b. Height. Maximum height: fifteen (15) feet

3. Accessory Structures (Non-habitable).

a. Minimum Setbacks.

Front: fifty (50) feet;

Side: six feet on front one-half of property; one foot on rear one-half of property;

Rear: one foot.

b. Height. Maximum height: fifteen (15) feet.

c. Agricultural windmills are exempt from the height provisions of this Chapter.

4. Accessory structures used as barns, stables or farm out buildings shall not be less than fifty (50) feet from the front of the property or twenty (20) feet from the side or rear property line or twenty (20) feet from any residence on the property. The maximum height shall be thirty (30) feet.

D. Minimum Distance Between Structures.

Main Structures: twenty (20) feet;

Accessory/Main Structures: ten (10) feet;

Accessory/Accessory Structures: six feet.

E. Building Site Coverage, Maximum: thirty-five (35) percent on lots less than twenty thousand (20,000) square feet; twenty-five (25) percent on lots of twenty thousand (20,000) square feet or more.

F. Parking Regulations. Parking for all development shall be established pursuant to Chapter 21.58.

G. Landscaping Requirements. None, except as may be required by condition of approval of an Administrative or Use Permit.

H. Lighting Requirements.

1. For any new development that includes exterior lighting, all exterior lighting shall be consistent with the Design Guidelines for Exterior Lighting adopted by the Board of Supervisors pursuant to Section 21.63.020, unless exempt under Section 21.63.020.D.

2. Review by the Director of Planning of all exterior lighting associated with any construction permit for consistency with the Design Guidelines for Exterior Lighting and approval by the Director of Planning are required prior to issuance of the construction permit.

3. Applications for construction permits which are subject to these lighting regulations must include the following information:

a. Plans indicating the location of each light fixture; and

b. Manufacturer's catalog specification sheet for each type of fixture.

c. The Director of Planning may waive these submittal requirements or request additional information, as deemed necessary on a project by project basis.

I. Sign Regulations. Signing for all development shall be established pursuant to Chapter 21.60.

(Ord. No. 5262, § 5, 1-26-2016)

21.14.070 - Special regulations.

A. Manufactured dwelling units meeting the standards of Section 21.64.040 are permitted subject to the requirements of any conventional dwelling unit in this Chapter.

B. The following types of development are subject to Section 21.64.250 (Regulations for the Reduction of Vehicle Trips) of this Title:

a. Any residential development of twenty-five (25) or more units; or

b. Any new or expanded commercial, industrial or tourist oriented development which will employ fifty (50) or more persons.

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# Attachment I

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Before the Board of Supervisors in and for the  
County of Monterey, State of California

Resolution 2000- 342

Resolution Amending the Monterey )  
County Master Fee Resolution to )  
Clarify the Fee for Appeals on )  
Land Use Issues and Establish )  
Criteria for the Waiver of Fees in )  
Specific Circumstances. )

Whereas: Chapter 1.40 of the Monterey County Code establishes the Monterey County Master Fee Resolution (the Resolution) as the vehicle for setting and amending fees; and,

Whereas: The Board wishes to clarify the appeal fee for land use issues and to establish criteria and authority for the Director of Planning and Building Inspection to waive fees in specific cases; and,

Whereas: The Board has received a report and recommendations from the County Administrative Office and Planning and Building Inspection; and,

Whereas: The Board has held a public hearing as required by law and heard from all interested parties;

NOW, therefore, be it resolved that the Board clarifies that the appeal fee for appeals to the Planning Commission or Board of Supervisors on land use issues is \$671.00.

Be it further resolved that the Director of Planning and Building Inspection may waive application and appeal fees for discretionary permit and building permit applications for:

1. Small day care centers (less than twelve children).
2. Inclusionary portions of proposed residential developments.
  - a. Special Handling affordable housing projects, as detailed in the adopted Special Handling criteria (25% affordable housing). Amount of fees waived is based on the percentage of affordable housing provided, and may include additional fees beyond the original application fees.
  - b. Persons age 62 or over on a fixed, very low income as defined by Housing and Urban Development.

- c. Reclassification applications to bring property into consistency with existing General Plan land use designations.
  - d. County or other government agencies.
  - e. Permit fees for the repair or reconstruction of property and structures damaged or destroyed by an act or event that has been declared a disaster by the Board of Supervisors where insurance is inadequate to pay the applicable fees.
8. Development, enhancement, expansion or modification of needed community facilities by non-profit organizations and community groups meeting the following criteria:
- a. The proposed project is available for use by the general public; and
  - b. Provides a scope of benefit beyond the residents of the immediate vicinity; and
  - c. Is of obvious public benefit. Evidence of public benefit includes, but is not limited to, projects that:
    - i. Meet a public need previously identified or recognized by the Board of Supervisors;
    - ii. Provide a public facility not presently available in the community;
    - iii. Have generated obvious, substantial community support; or,
    - iv. Would either reduce County costs or increase County revenue.
9. General Plan amendments for parcels with inappropriate or inaccurate land use designations provided the property has been field checked and verified that it is inaccurately or inappropriately designated.

Requests Not Conforming to Policy:

The Planning Commission shall consider all requests for fee waivers not meeting the above criteria.

Appeal of Director's Decision:

The Planning Commission shall consider all appeals of decisions of the Director on fee waiver requests.

Payment of Fees:

All fees shall be paid at the time of the filing an application or an appeal. Should the fees subsequently be waived, the fees shall be refunded.

On motion of Supervisor PENNYCOOK, seconded by Supervisor SALINAS, and carried by those members present, the Board hereby adopts this resolution amending the Monterey County Master Fee Resolution to clarify the fee for appeals on land use issues and establish criteria for the waiver of fees in specific circumstances.

PASSED AND ADOPTED this 29<sup>th</sup> day of August, 2000, by the following vote, to-wit:

AYES: Supervisors Salinas, Pennycook and Calcagno.

NOES: None.

ABSENT: Supervisors Johnsen and Potter.

I, SALLY R. REED, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof at page -- of Minute Book 70, on August 29, 2000.

DATED: August 29, 2000

SALLY R. REED, Clerk of the Board  
of Supervisors, County of Monterey, State of  
California

By: Nancy Luckenbell  
Deputy



# Monterey County

168 West Alisal Street,  
1st Floor  
Salinas, CA 93901  
831.755.5066

## Board Order

Upon motion of Supervisor Salinas, seconded by Supervisor Parker and carried by those members present, the Board of Supervisors hereby:

Adopted Resolution No. 12-384 amending the Monterey County Fee Resolution to:

- a. Authorize the Director of Planning to consider and decide requests for waiver of land use appeal fees when the appellant is unable to afford the appeal fee due to appellant's financial condition; and
- b. Authorize the Appropriate Authority to hear appeals from the Director of Planning's decisions on land use fee waiver requests. (Fee Waiver Resolution/REF120049)

PASSED AND ADOPTED on this 10<sup>th</sup> day of July 2012, by the following vote, to-wit:

AYES: Supervisors Armenta, Calcagno, Salinas, and Parker

NOES: None

ABSENT: Supervisor Potter

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 76 for the meeting on July 10, 2012.

Dated: August 13, 2012  
File Number: 12-643  
Revised: 01-25-13

Gail T. Borkowski, Clerk of the Board of Supervisors  
County of Monterey, State of California

By Denise Hancock  
Deputy

**Before the Board of Supervisors in and for the  
County of Monterey, State of California**

**Resolution No. 12-384**

Resolution amending the Monterey County )  
Fee Resolution to Augment and Clarify Fee )  
Waiver Procedures..... )  
(REF120049/Fee Waiver Process) )

WHEREAS, state law authorizes the County to establish fees for the cost of processing land use entitlements, so long as such fees do not exceed the estimated reasonable cost of providing the service for which the service is charged;

WHEREAS, pursuant to state law, the Board of Supervisors has periodically established fees for the processing of land use entitlements (“land use application fees”), including fees for filing administrative appeals of land use decisions (“land use appeal fees”), and the current land use fee schedule includes fees for filing appeals of land use entitlements in the inland unincorporated area of the County, appeals of administrative determinations, and appeals of fee determinations;

WHEREAS, the land use appeal fees are imposed to cover a portion of the costs of processing the appeal, and in enacting the fees, the Board of Supervisors found that the land use application fees and land use appeal fees do not exceed the estimated reasonable cost of processing the land use applications and appeals;

WHEREAS, the Board of Supervisors may, in the exercise of its police powers, waive land use application fees, including land use appeal fees, when policy or other reasons dictate that a waiver of fees is appropriate;

WHEREAS, on August 29, 2000, the Board of Supervisors adopted Resolution No. 2000-342 authorizing the County’s Director of Planning to grant requests for waivers of application and appeal fees for discretionary land use permits and building permits if the fee waiver request meets certain criteria and authorizing the Monterey County Planning Commission to consider all land use fee waiver requests not meeting the specific criteria, a copy of said resolution being attached hereto as Exhibit 1 and incorporated herein by reference;

WHEREAS, the existing land use fee waiver process allows appellants to request a fee waiver due to inability to pay, but the Board of Supervisors desires to make explicit that those who are genuinely unable to afford the fee are not barred from filing a land use appeal due to their financial condition;

WHEREAS, the Board of Supervisors desires to augment the criteria under which the Director of Planning has authority to grant a fee waiver to include grant of a waiver of land use appeal fees when the appellant provides evidence that the appellant is unable to afford the appeal fee due to appellant’s financial condition, provided that the appellant provides evidence in support of the fee waiver request such as evidence demonstrating that appellant would qualify for a waiver of court fees and costs pursuant to California Government Code section 68632 because of his or her financial condition;

WHEREAS, questions have arisen in the implementation of Resolution No. 2000-342 as to which County hearing body may hear appeals from the Director's fee waiver decisions, and therefore, the Board of Supervisors desires to clarify that the "Appropriate Authority" who is designated by the Monterey County Code to hear an appeal of a land use decision is also authorized to hear and decide appeals from the Director's decisions on fee waiver requests.

WHEREAS, the fees to which this waiver applies are not a tax and are exempt from voter approval pursuant to subparagraphs (1) through (3) and subparagraph (6) of section 1 of Article 13C of the California Constitution (Proposition 26), and this fee waiver does not result in increased charges and fees to other land use permit applicants, as the loss of revenue will be borne by the County's General Fund;

WHEREAS, this action related to fee waivers is statutorily exempt from the California Environmental Quality Act pursuant to section 21080(b)(8) of the Public Resources Code because the fees are charges to cover operating expenses;

WHEREAS, Section 1.40.010 of Chapter 1.40 of the Monterey County Code provides that all fees, penalties, refunds, reimbursements, and charges of any kind by the County may be adopted by resolution or may be designated in the Monterey County Fee Resolution;

WHEREAS, the Board intends that this resolution shall augment Resolution No. 2000-342 and that the Monterey County Fee Resolution shall incorporate the procedures specified by this resolution.

### **DECISION**

NOW, THEREFORE, based on all of the above facts and circumstances, the Board of Supervisors does hereby resolve as follows:

1. The Board of Supervisors hereby authorizes the Director of Planning to consider and decide upon requests from appellants for a waiver of land use appeal fees when the appellant provides evidence that appellant is unable to afford the appeal fees due to appellant's financial condition, provided that the appellant provides evidence in support of the fee waiver request such as evidence demonstrating that appellant would qualify for a waiver of court fees and costs pursuant to California Government Code section 68632 because of his or her financial condition.
2. The hearing body designated by the Monterey County Code as the Appropriate Authority to hear an appeal of a land use decision is also hereby authorized to hear and decide appeals from the Director of Planning's decisions on land use fee waiver requests.
3. This resolution augments Resolution No. No. 2000-342, and establishes Article 14.D of the Monterey County Fee Resolution, which shall incorporate the procedures specified in Sections 1 and 2 of this resolution

PASSED AND ADOPTED upon motion of Supervisor Salinas, seconded by Supervisor Parker, and carried this 10th day of July 2012, by the following vote, to wit,;

The Board hereby adopts this Resolution amending the Monterey County Master Fee Resolution to clarify the fee for appeals on land use issues and establish criteria for the waiver of fees in specific circumstances.

AYES: Supervisors Armenta, Calcagno, Salinas, and Parker

NOES: None

ABSENT: Supervisor Potter

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 76 for the meeting on July 10, 2012.

Dated: August 15, 2012  
File Number: 12-643  
Revised: January 25, 2013

Gail T. Borkowski, Clerk of the Board of Supervisors  
County of Monterey, State of California

By Denise Hancock  
Deputy