



PLN 220054

282 Corral de Tierra

Comments for Monterey Board of Supervisors

# History

- Applied for permit in Feb , 2022
- Permit application complete in March 2023
- First Hearing April 2023 :
  - Planning Office recommends approval of the permit
  - Application meets all requirements (above and beyond)
  - Alta Tierra Association claims to be a legal HOA and raises objections
- Second Hearing June 2023:
  - Alta Tierra Association claiming to be an “HOA” submitted a formal objection based on a 1963 water sharing and road maintenance agreement
  - Planning commission rejected application due to “HOA” objection - Section 21.64.280.D.2.g

# Planning Commission Actions

In denying the permit, the Planning Office and Planning Commission have taken extra-ordinary actions to accede to the wishes of a group of neighbors who object to this application

- Gave the Alta Tierra Association the right to object by **wrongly** defining it to be an HOA
- Gave the Alta Tierra Association a reason to object by **wrongly** redefining the term “domestic water use”
- **Wrongly** re-interprets Section 21.64.280.D.2.g to empower a set of individuals with the power of an HOA, after declaring them not to be an HOA

Wrongly redefining “domestic water use”

# Water Agreement and Water rights

The water agreement stipulates that the first and second party shall be entitled to “water for domestic purposes, landscaping, swimming pools, and such additional uses as may be determined by the ownership of a majority of said parcels.”

- What is domestic water use ?

# Planning Office Opinion – March 22, 2023

RE: PLN220054-ROSSEEL - Public Correspondence & HOA

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From: Angelo, Philip (angelop@co.monterey.ca.us)

To: gpgr\_61@yahoo.com

Date: Wednesday, March 22, 2023 at 04:46 PM PDT

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Hi Geert,

I understand, but respectfully disagree. However, I think in this instance it may be a “distinction without a difference” as our understanding is that the plain language of the water agreement doesn’t restrict this use.

I would recommend being prepared to speak regarding the water system and association at the hearing however. I’ve attached the most recent draft conditions. I believe the only change is that the duration is three years similar to what was recently approved.

Best,



**Phil Angelo**  
**Associate Planner**  
Monterey County - Housing & Community Development  
1441 Schilling Place, South 2<sup>nd</sup> Floor  
Direct: (831) 784-5731  
[AngeloP@co.monterey.ca.us](mailto:AngeloP@co.monterey.ca.us)

# Planning Office Opinion – April 2023

The term “domestic purposes” is not defined in Title 21. However, MCC section 21.06.450 defines a “family” as one or more non-transient, related, or unrelated persons living together in a dwelling unit. This definition suggests that short-term rental water use is more properly viewed as a commercial, rather than domestic, use. Conversely, the correspondence received from the Applicant’s agent cites the California Code of Regulations Title 23 definition of domestic water use, which is inclusive of water used for human consumption, cooking or sanitary purposes in homes, resorts, and hotels.

## 21.06.001 - General provisions.

A. Interpretation and Grammar. For the purpose of this Title, certain terms used in this Title are defined as follows: All words used in the present tense shall include the future tense; all words in the plural number shall include the singular; and all words in the singular number shall include the plural number, .....

B. Terms in Common Usage. Any term, word, or phrase not specifically defined in this Chapter shall be defined, firstly, in the light of the other Chapters of the Monterey County Code; **secondly, state law**, particularly the State Planning Act; thirdly, as defined in "Anderson on Zoning", latest edition; fourthly as defined in Webster's New International Dictionary of the American Language, latest edition and fifthly, any accepted dictionary of the English language.



# State Law

## Subarticle 2. Beneficial Uses

[§ 659. Beneficial Use of Water.](#)

[§ 660. Domestic Uses.](#)

[§ 661. Irrigation Use.](#)

[§ 662. Power Use.](#)

[§ 662.5. Frost Protection Use. \[Renumbered\]](#)

[§ 663. Municipal Use.](#)

[§ 664. Mining Use.](#)

[§ 665. Industrial Use.](#)

[§ 666. Fish and Wildlife Preservation and Enhancement Use.](#)

[§ 667. Aquaculture Use.](#)

[§ 667.5. Fish and Wildlife Protection and Enhancement. \[Renumbered\]](#)

[§ 668. Recreational Use.](#)

[§ 668.5. Water Quality Use. \[Renumbered\]](#)

[§ 669. Stockwatering Use.](#)

[§ 669.5. Name and Address of Applicant. \[Renumbered\]](#)

[§ 670. Water Quality Use.](#)

[§ 670.5. Supplement to Application May be Required. \[Renumbered\]](#)

[§ 670.6. Instream Beneficial Use Assessment.](#)

[§ 671. Frost Protection Use.](#)

[§ 672. Heat Control Use.](#)

[§ 673. General Requirements. \[Renumbered\]](#)

[§ 674. Requirements for Irrigation Purposes. \[Renumbered\]](#)

23 CCR § 660

§ 660. Domestic Uses.

Currentness

Domestic use means the use of water in homes, resorts, motels, organization camps, camp grounds, etc., including the incidental watering of domestic stock for family sustenance or enjoyment and the irrigation of not to exceed one-half acre in lawn, ornamental shrubbery, or gardens at any single establishments. The use of water at a camp ground or resort for human consumption, cooking or sanitary purposes is a domestic use.

- Domestic water use is unambiguously defined and the Alta Tierra Association cannot legally restrict the water use.



## Additional reference in Title 21

- Fact: Domestic water systems are unambiguously defined as for “human consumption”

### 15.04.020 - Definitions.

- **"Domestic water system"** means any water system including a local small water system, state small water system, or small public water system
- **"State small water system"** means a system for the provision of piped water to the public for human consumption that serves .....
- **"Human consumption"** means the use of water for drinking, bathing or showering, hand washing, food preparation, cooking, or oral hygiene.

# Planning Office Opinion

The term “domestic purposes” is not defined in Title 21. However, MCC section 21.06.450 defines a “family” as one or more non-transient, related, or unrelated persons living together in a dwelling unit. This definition suggests that short-term rental water use is more properly viewed as a commercial, rather than domestic, use. Conversely, the correspondence received from the Applicant’s agent cites the California Code of Regulations Title 23 definition of domestic water use, which is inclusive of water used for human consumption, cooking or sanitary purposes in homes, resorts, and hotels.

The definition of “family” is completely irrelevant to the “domestic water use”. This would enforce an untenable restriction on domestic water use

There is no legal definition of “commercial water use”.

- “Commercial” and “Residential” are Zoning definitions
- “Domestic water use” is defined under “Beneficial Water Uses” in CCR Title 23, 660
- There is no definition of “Commercial water use” in CCR Title 23, 660

**This attempt to redefine domestic water use was so egregious that the Planning Commission explicitly struck all references to it**

# Planning Office and “HOA” objection both wrong

## **RESOLUTION OF AGREEMENT RE: ADDITIONAL WATER USE FOR TRANSIENT USE OR SHORT TERM RENTALS**

At a meeting of the Homeowners comprising the Alta Tierra Association, held on May 4, 2023, having been duly noticed, and a quorum being present, the following Resolution was adopted by unanimous vote of all attending:

**RESOLVED** that the Alta Tierra Association objects to the issuance of a permit concerning the ROSSEEL GEERT & POWELL TRACY TRS application (PLN220054) because water use for short term rentals / transient use is not a domestic use of water and is not permitted under the Water Use Agreement dated October 29, 1963, and no additional use for water for short term rentals / transient use has been requested or approved.

I, the undersigned Secretary of the Alta Tierra Association, hereby certify that the foregoing is a full, true, and correct copy of the Resolution passed by the Alta Tierra Association homeowners held on the day and at the place therein, and that said Resolution has never been revoked, rescinded, or set aside, and is now in full force and effect.

  
Tamara Hennessy  
Alta Tierra Association Secretary

**Wrongly** defining the Alta Tierra Association as an  
HOA

# 1963 Agreement – The ONLY legal document related to the Alta Tierra Association

REEL 245 PAGE 324

AGREEMENT

AGREEMENT, made and entered into this 29th day of October, 1963, by and between Thomas H. Rowland and Anna Caroline Rowland, his wife, sometimes hereinafter called First Party, Barbara Robbins, sometimes hereinafter called Second Party, and Robert V. Antle and Sue M. Antle, his wife, sometimes hereinafter called Third Party,

WITNESSETH:

This Agreement is made with reference to the following facts:

(1) First party is owner of Parcels "A", "B", "C", and "D", as said parcels are shown on "Record of Survey for Tom H. Rowland", etc., filed for record August 15, 1963 in Book 6 of Surveys at page 194, Monterey County Records.

Second party is owner of Parcels "1", "2", "3" and "4" as said parcels are shown on "Record of survey for Barbara Robbins, etc." filed for record August 15, 1963 in Book 6 of Surveys at page 192, Monterey County Records.

Third party is owner of the following described property: Property conveyed by Harry L. Rhodes to Robert V. Antle and Sue M. Antle, his wife by deed dated August 9, 1962, recorded August 15, 1962 in Reel 85 at page 282, Official Records of Monterey County, excepting therefrom that portion thereof conveyed to Barbara Robbins by deed dated October 15, 1962, recorded October 24, 1962 in Reel 108 at page 314, Official Records of Monterey County, also excepting therefrom that portion thereof conveyed to Thomas H. Rowland and Anna Caroline Rowland, his wife by deed dated October 15, 1962, recorded October 24, 1962 in Reel 108 at page 324, Official Records of Monterey County.

(2) Property of First and Second party is subject to easements for road and/or utility purposes, more particularly set forth in deed from First Party to Second Party, dated October 22, 1963; and in deed from second Party to First Party, dated October 22, 1963; both deeds being recorded concurrently herewith; and also additionally Parcel "A" as described in that certain deed from Robert V. Antle and Sue M. Antle, his wife, to Thomas H. Rowland and Caroline Rowland, his wife, dated

1.

REEL 245 PAGE 327

October 15, 1962 and recorded October 24, 1962 in Reel 108 Official Records at page 324, Monterey County Records.

(3) The parties hereto intend by this Agreement to provide for the maintenance of roads, well, pumping equipment, water line, storage tank, and to provide water for each of the parcels described in Paragraph 1 herein.

(4) For the purposes of this Agreement, the parties hereto will be referred to collectively as the ALTA TIERRA ASSOCIATION.

NOW, THEREFORE, it is agreed as follows:

A meeting of the Alta Tierra Association shall be held on the 15th day of November, 1963, and at times thereafter as determined by the Association, for the purpose of establishing charges for water and the maintenance of the roadway and water system. It shall be the intention of the Association to establish charges sufficient to provide for maintenance of the road and water system in a good and serviceable condition at all times.

The owners of each of the parcels of land described in Paragraph (1) herein, and subsequent owners thereof, shall be entitled to equal use of the road constructed on the easement for right of way across property of First Party and Second party herein, and shall be entitled to receive water for domestic purposes, landscaping, swimming pools, and such additional uses as may be determined by the ownership of a majority of said parcels. However, Third party, and their successors shall be additionally entitled to water sufficient for sprinkling of that portion of their parcel westerly of barn now existing on said parcel so long as this use does not deprive other parcels of an adequate supply of water for domestic purposes, landscaping, and swimming pools.

No expenditure for maintenance or improvement of road, well, pumping system or pipe line shall be made by the Alta Tierra Association except by vote indicating concurrence by the ownership of a majority of the parcels described in Paragraph 1 herein. Each parcel shall be represented by one vote only, without regard to the number of individuals comprising ownership of any of the subject parcels.

2.

REEL 245 PAGE 326

It is covenanted and agreed that there shall be no additional parties to the water system without a majority concurrence of the ownership.

Each of the owners agree to hold harmless the other owners from any damages caused by breakage of water transmission lines upon the parcels, and each owner further waives any right of action, either at law or equity, against remaining owners for damages from breakage or failure of equipment.

Each parcel owner will install a meter or meters for measuring water consumption. Owner's prorata share of the cost of supplying water will be made in that amount as determined by actual cost plus any additional amount for contingencies as may be determined by majority vote of the ownership.

The purchasers of each parcel shall, at the time of purchase, deposit \$50.00 with the ALTA TIERRA ASSOCIATION, such deposit to be placed in a fund to be used if and when necessary for the maintenance of water system and/or roadway.

It is intended that this Agreement shall have the force and effect of a covenant running to and with the land of each of the owners, and that this agreement shall be binding upon their heirs, assigns and successors in interest.

ALTA TIERRA ASSOCIATION

By: Thomas H. Rowland  
Anna C. Rowland  
Barbara Robbins  
Robert V. Antle  
Sue M. Antle

True Assurance and Trust Company  
 1963 OCT 17  
 REEL 245 PAGE 326

TO ALL WHOM THESE PRESENTS SHALL COME, I, the undersigned, do hereby certify that the within instrument and the signature thereon are true and correct copies of the original instrument and the signature thereon as they appeared to me at the time the same were presented to me for recording.

WITNESSED and recorded at Monterey, California, this 17th day of October, 1963.

3

# The Alta Tierra Association is Acting Outside of the Scope of Its Authority

- The bounds of its authority are set by the Water Agreement.

NOW, THEREFORE, it is agreed as follows:

A meeting of the Alta Tierra Association shall be held on the 15th day of November, 1963, and at times thereafter as determined by the Association, for the purpose of establishing charges for water and the maintenance of the roadway and water system. It shall be the intention of the Association to establish charges sufficient to provide for maintenance of the road and water system in a good and serviceable condition at all times.



## The Alta Tierra Association Wants to be an HOA When it Suits Them, But Not When it Comes to Abiding by State Law

- The Alta Tierra Association does not comply with California law in any way.
- Common interest developments and homeowners associations are subject to stringent regulation under the Davis-Stirling Act.
- ALL Common Interest Developments, whether incorporated or unincorporated, are required to file a Statement of Information every year with the Secretary of State. This has not been done.
- The Association does not have any governing documents as defined by California Civil Code § 4150 (“Governing documents” means the declaration and any other documents, such as bylaws, operating rules, articles of incorporation, or articles of association, which govern the operation of the common interest development or association.)
- The Association has never provided the annual disclosures it is required to by law.

# Required Annual Disclosures and Filings That Have Not Been Made

<b>ANNUAL BUDGET REPORT</b> <b>30 to 90 days Prior to Start of Fiscal Year</b> (Civil Code § 5300)	
1.	<b>Pro Forma Budget.</b> A full budget or a summary ( <a href="#">Civ. Code § 5320</a> ) showing the estimated revenue and expenses on an accrual basis. [NOTE: Boards must notify members, not less than 30 nor more than 60 days prior to any increase in <a href="#">regular assessments</a> or any <a href="#">special assessment</a> . ( <a href="#">Civ. Code § 5615</a> .)]
2.	<b>Reserve Summary.</b> A <a href="#">summary</a> of the <a href="#">reserves</a> .
3.	<b>Reserve Funding Plan.</b> A summary of the <a href="#">reserve funding plan</a> .
4.	<b>Major Component Repairs.</b> A statement as to whether the board will defer or not undertake repairs or replacement of any major component with a remaining life of 30 years or less, including a justification for the deferral or decision not to undertake the repairs or replacement.
5.	<b>Anticipated Special Assessments.</b> A statement as to whether one or more special assessments will be required to repair, replace, or restore any major component or to provide adequate reserves. If so, the statement shall set out the estimated amount, commencement date, and duration of the assessment.
6.	<b>Reserve Funding Mechanism.</b> A statement as to the mechanism or mechanisms (including assessments, borrowing, other assets, deferral of selected replacements or repairs, or alternative mechanisms) by which reserves will be funded to repair or replace major components.
7.	<b>Procedures for Calculating Reserves.</b> The procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to major components the association is obligated to maintain. The statement shall include, but need not be limited to, reserve calculations made using the formula described in paragraph (4) of subdivision (b) of <a href="#">Section 5570</a> , and may not assume a rate of return on cash reserves in excess of 2% above the discount rate published by the Federal Reserve Bank of San Francisco at the time the calculation was made.
8.	<b>Outstanding Loans.</b> A statement as to whether the association has any outstanding loans with an original term of more than one year, including the payee, interest rate, amount outstanding, annual payment, and when the loan is scheduled to be retired.
9.	<b>Insurance Summary.</b> Distribute a summary of the association's <a href="#">insurance</a> .
10.	<b>Assessment &amp; Reserve Form.</b> The Assessment and Reserve Funding Disclosure Summary form, prepared pursuant to <a href="#">Section 5570</a> , shall accompany each annual budget report or summary of the annual budget report.
11.	[FOR CONDOS ONLY] <b>FHA/VA Certification.</b> As part of the annual budget report, condominium associations must disclose in 10-point font on separate pages whether they are or are not certified by the FHA and VA. For the language to use in the disclosure, see <a href="#">FHA/VA disclosure</a> .
12.	<b>Charges for Documents Provided.</b> The completed "Charges For Documents Provided" disclosure identified in <a href="#">Section 4528</a> .
<p><b>NOTE #1:</b> <a href="#">Full Report</a>. If a member requests full reports, the association must deliver full report to that member, rather than a summary of the report. (<a href="#">Civ. Code § 5320</a>.)</p> <p><b>NOTE #2:</b> <a href="#">Secondary Address</a>. Upon request pursuant to <a href="#">Section 5260</a>, an additional copy of those notices must be delivered to a member's secondary address. (<a href="#">Civ. Code § 4040</a>.)</p>	

# Required Annual Disclosures and Filings That Have Not Been Made

## 120 days After Close of Fiscal Year

**Financial Statement.** Unless the governing documents impose more stringent standards, a review of the [financial statement](#) of the association must be prepared per GAAP by a CPA for any fiscal year in which the gross income to the association exceeds \$75,000 and distributed to members. ([Civ. Code § 5305.](#))

## Secretary of State

**Secretary of State Filing.** Every association, whether incorporated or unincorporated must annually and biennially file [statements of information](#) with the Secretary of State.

# Required Annual Disclosures and Filings That Have Not Been Made

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1.	<b>Pro Forma Budget.</b> A full budget or a summary ( <a href="#">Civ. Code § 5320</a> ) showing the estimated revenue and expenses on an accrual basis. [NOTE: Boards must notify members, not less than 30 nor more than 60 days prior to any increase in <a href="#">regular assessments</a> or any <a href="#">special assessment</a> . ( <a href="#">Civ. Code § 5615</a> .)]
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8.	<b>Outstanding Loans.</b> A statement as to whether the association has any outstanding loans with an original term of more than one year, including the payee, interest rate, amount outstanding, annual payment, and when the loan is scheduled to be retired.
9.	<b>Insurance Summary.</b> Distribute a summary of the association's <a href="#">insurance</a> .
10.	<b>Assessment &amp; Reserve Form.</b> The Assessment and Reserve Funding Disclosure Summary form, prepared pursuant to <a href="#">Section 5570</a> , shall accompany each annual budget report or summary of the annual budget report.
11.	[FOR CONDOS ONLY] <b>FHA/VA Certification.</b> As part of the annual budget report, condominium associations must disclose in 10-point font on separate pages whether they are or are not certified by the FHA and VA. For the language to use in the disclosure, see <a href="#">FHA/VA disclosure</a> .
12.	<b>Charges for Documents Provided.</b> The completed "Charges For Documents Provided" disclosure identified in <a href="#">Section 4528</a> .
<p><b>NOTE #1:</b> <a href="#">Full Report</a>. If a member requests full reports, the association must deliver full report to that member, rather than a summary of the report. (<a href="#">Civ. Code § 5320</a>.)</p> <p><b>NOTE #2:</b> <a href="#">Secondary Address</a>. Upon request pursuant to <a href="#">Section 5260</a>, an additional copy of those notices must be delivered to a member's secondary address. (<a href="#">Civ. Code § 4040</a>.)</p>	

# Required Annual Disclosures and Filings That Have Not Been Made

As-Needed
<b>Assessment Increases.</b> Notify members, not less than 30 nor more than 60 days prior to any increase in <a href="#">regular assessments</a> or any <a href="#">special assessment</a> . (Civ. Code § 5615.)
<b>Board Meetings.</b> See notice requirements for <a href="#">board meetings</a> , <a href="#">executive session</a> meetings and <a href="#">emergency meetings</a> .
<b>Board Minutes.</b> The minutes, draft minutes or a summary of the minutes, of any board meeting (other than an executive session) must be available to members <a href="#">within 30 days</a> of the meeting.
<b>Borrowing from Reserves.</b> Disclose both intent to borrow as well as actual <a href="#">borrowing from reserves</a> . Any delays in repayment of monies borrowed from reserves also requires disclosure to the membership. (Civ. Code § 5515 and § 5520.)
<b>Committee Minutes.</b> Minutes of meetings of committees with <a href="#">decision making authority</a> for meetings commencing on or after January 1, 2007, within 15 calendar days following approval.
<b>Construction Defects.</b> Disclose litigation against the declarant (i) any agreements with the developer; (ii) any defects needing correction or replacement, (iii) an estimate of when defects will be corrected or replaced, and (iv) which defects will not be corrected or replaced. "Defects" includes damage resulting from the defects and (v) an settlement agreements. (Civ. Code § 6100 and § 6150.)
<b>Copy Costs.</b> Allow inspection of <a href="#">books and records</a> . Disclose in advance, any <a href="#">copying costs</a> that will be billed to the requesting party. (Civ. Code § 5205.)
<b>Disciplinary Hearings.</b> Give notice of <a href="#">disciplinary hearings</a> and the <a href="#">results</a> of those hearings. (Civ. Code § 5855.)
<b>Election Results.</b> Publish the <a href="#">results</a> of membership <a href="#">elections</a> (special assessments, amendments, board elections, etc.). (Civ. Code § 5120.)
<b>Escrow Disclosures.</b> Within 10 days of written request by a unit owner, provide <a href="#">information and documents</a> to seller or seller's agent for escrow disclosures. (Civ. Code § 4525, § 4528, § 4530.)
<b>Fine Policy Changes.</b> Give notice of any changes in the <a href="#">association's fine policy</a> .
<b>Hazardous Materials.</b> Notify members of known hazardous materials such as asbestos. (H&S Code § 25915.2.)
<b>Insurance Changes.</b> Notify members if <a href="#">insurance policies</a> are canceled and not immediately replaced or if there are any significant changes.
<b>Lawsuits.</b> Give notice of lawsuits <a href="#">when appropriate</a> .
<b>Lender Foreclosures.</b> Boards should record a blanket " <a href="#">Request for Notification</a> " of lender foreclosures so the association will know who to bill for assessments.
<b>Litigation Expenses.</b> Prepare an accounting of litigation expenses on at least a quarterly basis and make it available for inspection by members. (Civ. Code § 5520.)
<b>Management Change.</b> Within 60 days of a change in management, file a notice with the Secretary of State. (Civ. Code § 5405(c).)
<b>Manager Certification.</b> Managers must disclose to the board their <a href="#">certification status</a> .
<b>Membership Meetings.</b> Publish notice of <a href="#">membership meetings</a> .
<b>Rule Changes.</b> Give notice of <a href="#">proposed rule changes</a> . (Civ. Code § 4360.)
<b>Security Disclosure.</b> Although not required, associations should annually notify members they are responsible for their own safety and <a href="#">security</a> .
<b>Transaction with Officer or Director.</b> Provide notice of any transaction between the association and a director involving more than \$50,000. (Corp. Code § 8322.)
<b>Unlawful Restrictions.</b> Provide cover page for CC&Rs containing language prohibiting discriminatory restrictions. See statute for specific language and size of type-font. (Gov. Code § 12956.1.)
<b>Workplace Hazards.</b> Notify employees of workplace hazards. (Labor Code § 6401.7.)

**Wrong** re-interpretation of section 21.64.280.D.2.g



# Planning Office Opinion – March 22, 2023

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*parcels*". There is a substantive dispute regarding the applicant's right to use the water source for the proposed use, as evidenced by the Alta Tierra Association's objection resolution. The road and water agreement is a private agreement between respective property owners, and as such it would not be appropriate for the County to decide how this private agreement should be interpreted. Therefore Condition No. 9 is

incorporated, which requires the owner to demonstrate either that a Court, arbitrator, or other appropriate entity with the authority to review, approve, validate, or otherwise act on the proposed use has found that applicant has the right to use the water for the purposes set forth in this Resolution or that the Association has withdrawn its objections.

Evidence of such a right shall include, but not be limited to:

- A writing from the Alta Tierra Association withdrawing its objections;
- An agreement with the Alta Tierra Association reached via mediation;
- An award from an arbitrator affirming the right of the applicant to use the water for the proposed project; or
- A decision of a court with the authority to decide on the relevant issues affirming the right of the applicant to use the water for the proposed project.

The dispute regarding the nature of the proposed water use also creates a potential inconsistency with Title 21 section 21.64.280.D.2.g, the first sentence of which requires that transient use for remuneration not "*violate any applicable conditions, covenants, or other restrictions on real property.*" The water agreement is a covenant running with the land, and while the County is not making a finding on the nature of the water use, Condition No. 9 also ensures that the project would be consistent with this section by requiring that applicant provide appropriate evidence that the water use is allowed for the project.

## “Substantial disagreement on Water Use”

- There is “no substantial disagreement on water use”
- The term “domestic water use” is consistently defined at local, municipal, county, state and federal level.
- The Planners office agreed that there is no violation of the water agreement
- The Planning Commission agreed that the re-interpretation of domestic water was wrong by demanding to strip it out of all public records.

## 21.64.280.D.2.g

*The use of a residential unit for a transient use shall not violate any applicable conditions, covenants, or other restrictions on real property. The applicant shall provide notice to any affected homeowners' association in a manner consistent with the notice requirements for a use permit. In the event the homeowners' association objects to the issuance of the permit, the permit shall not be approved until the homeowners' association's objection has been withdrawn or the right of the applicant to use the subject residential property for transient use has been validated, approved, or otherwise ordered by a Court, arbitrator, or other appropriate entity with the authority to review, approve, validate, or otherwise act on the proposed use of the action of the homeowners' association.*

- The Planning Office claims the first sentence should be interpreted in isolation of the rest of the paragraph and applies to the water and road agreement
  - This is a wrong interpretation
  - A CCR is legally defined in the Stirling-Davis Act as pertaining particularly to an HOA. That is how the text reads. The CCR is invariably tied to an HOA, in accordance with California Law
  - This interpretation is also in direct contradiction with earlier email communications of the Planning Office

# CCR in California Law

In California, a Covenant, Conditions, and Restrictions (CCR) document is a legal agreement that governs the use and management of real property **within a homeowners association (HOA) or a planned community**. CCRs are typically created by the developer of a community and are designed to ensure that the community maintains certain standards and functions smoothly.

**CCR is defined under California law under the Stirling-Davis Act :**

*A "Declaration of Covenants, Conditions and Restrictions" is referred to as "CC&Rs" or as a "Declaration." It is a recorded document that contains a legal description of the development and a statement that it is a community apartment project, condominium project, planned development, or stock cooperative.*

**A water and road maintenance agreement is not a CCR document**

A water and road agreement deals with specific issues related to water usage, road access, maintenance, and related matters. These agreements are often separate legal documents that address particular needs and circumstances of property owners or communities. Water agreements govern water rights, usage, supply, and related issues, while road agreements address road access, easements, maintenance responsibilities, and related road-related matters.

# Planning Office Opinion – March 22, 2023

On Wednesday, March 22, 2023 at 02:36:27 PM PDT, Angelo, Philip <[angelop@co.monterey.ca.us](mailto:angelop@co.monterey.ca.us)> wrote:

Hi Geert,

How this section has been applied is that “HOA” refers to an association with the power to enforce covenants, conditions, or restrictions.

# Planning Office Opinion - March 22, 2023

----- Forwarded Message -----

**From:** Angelo, Philip <angelop@co.monterey.ca.us>

**To:** geert rosseel

**Sent:** Wednesday, March 22, 2023 at 10:50:38 AM PDT

**Subject:** RE: PLN220054-ROSSEEL - Public Correspondence & HOA

Hi Geert,

Yes.

Per Title 21 section 21.64.280.D.2.g, the use can't violate any covenants, conditions, or restrictions on real property, **and if an HOA objects to the permit, it can't be approved until the associations objection** has been withdrawn or the use has been validated by a Court/arbitrator/other appropriate entity.

*“The use of a residential unit for a transient use shall not violate any applicable conditions, covenants, or other restrictions on real property. The applicant shall provide notice to any affected homeowners' association in a manner consistent with the notice requirements for a use permit. In the event the homeowners' association objects to the issuance of the permit, **the permit shall not be approved until the homeowners' association's objection has been withdrawn or the right of the applicant to use the subject residential property for transient use has been validated, approved, or otherwise ordered by a Court, arbitrator, or other appropriate entity with the authority to review, approve, validate, or otherwise act on the proposed use of the action of the homeowners' association.**”*



# Draft Resolution

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*parcels*". There is a substantive dispute regarding the applicant's right to use the water source for the proposed use, as evidenced by the Alta Tierra Association's objection resolution. The road and water agreement is a private agreement between respective property owners, and as such it would not be appropriate for the County to decide how this private

agreement should be interpreted. Therefore Condition No. 9 is incorporated, which requires the owner to demonstrate either that a Court, arbitrator, or other appropriate entity with the authority to review, approve, validate, or otherwise act on the proposed use has found that applicant has the right to use the water for the purposes set forth in this Resolution or that the Association has withdrawn its objections. Evidence of such a right shall include, but not be limited to:

- A writing from the Alta Tierra Association withdrawing its objections;
- An agreement with the Alta Tierra Association reached via mediation;
- An award from an arbitrator affirming the right of the applicant to use the water for the proposed project; or
- A decision of a court with the authority to decide on the relevant issues affirming the right of the applicant to use the water for the proposed project.

The dispute regarding the nature of the proposed water use also creates a potential inconsistency with Title 21 section 21.64.280.D.2.g, the first sentence of which requires that transient use for remuneration not "*violate any applicable conditions, covenants, or other restrictions on real property.*" The water agreement is a covenant running with the land, and while the County is not making a finding on the nature of the water use, Condition No. 9 also ensures that the project would be consistent with this section by requiring that applicant provide appropriate evidence that the water use is allowed for the project.

- The Planning Office is applying the regulations defined in 21.64.280.D.2.g for resolving a conflict with an HOA to individuals
- There is no such ordinance

# Conclusion

- The Planning Office and Planning Commission have gone through extra-ordinary lengths to accede to the demands of disgruntled neighbors
- This includes patently false legal opinions, many times in clear and obvious contradiction of accepted law. All false opinions have been retracted, at significant legal expense of the applicants.
- This latest “legal opinion” is also simply wrong

Thanks !