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**Before the Planning Commission in and for the
County of Monterey, State of California**

In the matter of the application of:

**APPEAL OF ADMINISTRATIVE
INTERPRETATION – PRINCIPALLY
PERMITTED VITICULTURE USES
RESOLUTION NO. 17-029**

Resolution by the Monterey County Planning
Commission:

- 1) Granting the Appeal of an Administrative Interpretation dated May 16, 2017 relative to uses allowed as part of a commercial vineyard located in a residential zone filed by 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; and
- 2) Granting the Appeal of an Administrative Interpretation dated May 16, 2017 relative to uses allowed as part of a commercial vineyard located in a residential zone filed by Carmel Valley Association (CVA); and
- 3) Approving the request by CVA to waive the appeal fee; and
- 4) Reversing the Administrative Interpretation relative to uses allowed as part of a commercial vineyard (viticulture) located in the inland Low Density Residential zone.

WHEREAS, Monterey County Code (MCC) Chapter 21.82 establishes a process whereby a person may make a written request for a written administrative interpretation of the County Zoning ordinance (Title 21) by the Director of Planning and a person aggrieved by that administrative interpretation may appeal the interpretation to the Planning Commission, which interpretation is appealable to the Board of Supervisors; and

WHEREAS, Monterey County Code Chapter 2.30 authorizes the Chief of Planning (formerly known as the Director of Planning) to “*provide administrative interpretations of County zoning ordinance*”; and

WHEREAS, the Director of the Resource Management Agency (RMA) has authority to issue such interpretations because Chapter 2.27 of the Monterey County Code provides that the Director of the Resource Management Agency “*shall direct and oversee the operations of the Resource Management Agency*” and the RMA was “*created as a comprehensive local agency to administer, coordinate, and oversee the development and implementation of policies and regulations concerning land use planning, building inspection, code compliance, public works, and general services*”; and

WHEREAS, by letter dated March 16, 2017 (received March 17, 2017), Mr. John Bridges, on behalf of Hilltop Ranch and Vineyard (62 E. Carmel Valley Road; APNs 197-011-012, 013, 014, & 015), requested an Administrative Interpretation pursuant to section 21.82.040.B of the Monterey County Code regarding whether activities described in his letter are “within the scope and definition of viticulture as an allowed use” (Principally Permitted Uses) in the Low Density Residential zoning district under Section 21.14.030 of the Monterey County Code; and

WHEREAS, on April 11, 2017, the RMA Director issued a written response (“Administrative Interpretation”) regarding Principally Permitted Viticulture Use under section 21.14.030, subject to an appeal period ending 5:00 pm on April 21, 2017; and

WHEREAS, by email dated May 10, 2017, Mr. Tony Lombardo requested clarification of several points of the April 11th interpretation by the Director and indicated it was a request for interpretation with right of appeal; and

WHEREAS, on May 16, 2017, the Director issued a written response as an “Addendum to April 11th letter” regarding Principally Permitted Viticulture Use under section 21.14.030.N, subject to an appeal period ending 5:00 pm on May 26, 2017; and

WHEREAS, on May 26, 2017, 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 filed an appeal of the Administrative Interpretation as set forth in the Director’s letters of April 11 and May 16, 2017; and

WHEREAS, on May 26, 2017, Molly Erickson representing Carmel Valley Association (CVA) filed an appeal of the May 16 and April 11, 2017 letters and a February 11, 2016 email; and

WHEREAS, a fee of \$2678.08 to file an appeal of administrative interpretation in accordance with the duly adopted fee schedule was paid by CVA with a request to waive the fee; and

WHEREAS, pursuant to the fee waiver policy adopted by the Board of Supervisors, the Director of Planning has authority to waive fees if certain criteria are met, and the Planning Commission has authority to consider all requests for fee waivers not meeting the criteria and to consider appeals of the Director’s decisions on fee waiver requests; and

WHEREAS, the Director determined that CVA’s request for fee waiver did not fit within the categories for which the Director has authority to waive fees, and as such, the request was denied, and the appellants paid the fees and requested the Planning Commission grant a waiver of the fees; and

WHEREAS, on July 11, 2017, at least 10 days prior to the public hearing on the appeals of the Administrative Interpretation, notices of the public hearing were published in the *Monterey County Weekly* and were mailed to the property owners within 300 feet of the subject property as well as interested parties; and

WHEREAS, the appeals of the Administrative Interpretation came on for public hearing before the Monterey County Planning Commission on July 26, 2017, where all persons had an opportunity to be heard.

NOW, THEREFORE, BE IT RESOLVED, by the Monterey County Planning Commission having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, finds and decides as follows:

FINDINGS

- 1) The issue raised by the appeals is the scope of a commercial vineyard as an allowed use, without a discretionary permit, in the non-coastal Low Density Residential zone. The Commission is not limited to the questions addressed in the May 16 letter and may reach the April 11 letter, notwithstanding that an appeal of the April 11 letter was not timely filed. Pursuant to section 21.82.050 of Chapter 21.82 of the MCC, “the Planning Commission may, after its consideration of the administrative interpretation, affirm, reverse, or modify the interpretation” and provide the reasons therefor. Accordingly, the Commission has authority to interpret the zoning ordinance and is not limited to specific points in the May 16 letter. Moreover, the May 16 letter clarifies the April 11 letters, thus incorporating the April 11 opinion and making them inseparable, as they raise the same issue for interpretation. The issue is the scope of the uses allowed without a permit under “viticulture” in the Low Density Residential zone. Hence, the Commission has authority to render an interpretation on the issue.
- 2) The Planning Commission finds that the Director’s Administrative Interpretation of uses allowed under “viticulture” under section 21.14.030.N is overly broad for the following reasons:
 - a. General Plan Policy LU-2.34 characterizes Low Density Residential (LDR) areas as “appropriate” for “*limited agricultural activities that are incidental and subordinate to the residential use.*” The uses allowed per the Administrative Interpretation are not “incidental and subordinate” to the residential use.
 - b. Monterey County Code Section 21.14.010 states that the purpose of the Low Density Residential (LDR) zoning district is to “*provide a district to accommodate low density and intensity uses and to insure that allowable land uses are compatible in the area.*” The uses allowed per the Administrative Interpretation are not compatible without the public permit process that would enable environmental review, public hearing, and conditions of approval if the use is permitted.
 - c. Monterey County Code Section 21.14.030 provides a list of “Uses Allowed” in the non-coastal LDR zone, including but not limited to viticulture, but viticulture does not include large-scale marketing events.
 - d. Large-scale marketing events are not a normal part of a vineyard (viticulture) in a residential zone. Such uses do not qualify as “*limited agricultural activities that are incidental and subordinate to the residential use.*” Impacts from this type of use include traffic and noise. Such uses should be vetted through a permit process because neighbors would have notice and opportunity to be heard, the proposed use would be subject to environmental review as part of the permit process, and the County decision-maker would weigh benefits and impacts and impose appropriate conditions of approval.
 - e. If a permit is applied for, events that have taken place under the Administrative Interpretation should not be considered part of the baseline use.
- 3) A Fee Waiver is appropriate in this case because the appeal conferred a broader public benefit, beyond a specific property or the specific appellant, relative to vineyards in the LDR zone and relative to the process in the County Code for administrative interpretations

DECISION

NOW, THEREFORE, BE IT FURTHER RESOLVED, based on the above findings and evidence, the Monterey County Planning Commission does hereby:

- 1) Grant the Appeal of an Administrative Interpretation dated May 16, 2017 relative to uses allowed as part of a commercial vineyard located in a residential zone filed by Anthony 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; and
- 2) Grant the Appeal of an 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
- 3) Waive the fee paid by CVA to file its appeal and refund the fee in the amount of \$2678.08 to CVA or its authorized representative; and
- 4) Reverse the Administrative Interpretation (April 11, 2017 as clarified on May 16, 2017) relative to uses allowed as part of a commercial vineyard (viticulture) located in the inland Low Density Residential zone.

PASSED AND ADOPTED this 26th of July 2017 upon motion of Commissioner Vandevere, seconded by Commissioner Diehl, by the following vote:

AYES: Ambriz, Diehl, Duflock, Padilla, Roberts, Rochester, Vandevere
NOES: None
ABSENT: Hert, Mendez
ABSTAIN: Getzelman



Jacqueline R. Onciano, Planning Commission Secretary

COPY OF THIS DECISION MAILED TO APPLICANT ON AUGUST 2, 2017 .

THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS.

IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE SECRETARY OF THE PLANNING COMMISSION ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE AUGUST 14, 2017 .

This decision, if this is the final administrative decision, is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90th day following the date on which this decision becomes final.