

Attachment D

This page intentionally left blank.

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
ALEX J. LORCA

RECEIVED
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

MONTEREY COUNTY
2017 AUG 10 AM 8:33
CLERK OF THE BOARD
OF COUNSEL
DEPUTY
LEWIS L. FENTON
1925-2005
CHARLES R. KELLER
THOMAS H. JAMISON

Hand delivered

August 10, 2017

JOHN S. BRIDGES

JBridges@FentonKeller.com
ext. 238

VIA HAND DELIVERY

Clerk of the Board
168 W. Alisal Street
Salinas, CA 93901

Re: Notice of Appeal - Director's Interpretation of Zoning Ordinance
Our File: 33799.31683

Dear Clerk of the Board:

Attached is a Notice of Appeal (including required noticing envelopes) regarding the above matter, which has been signed by Richard Lumpkin. As noted on page two of the Appeal, we understand the appeal fee has been waived (see also attached email). If that is incorrect, please advise us immediately so we can submit the required fee. If any other information is required for you to accept this appeal, please also advise of that immediately. Thank you.

Very truly yours,

FENTON & KELLER
A Professional Corporation


John S. Bridges

JSB:kmc

Enclosures

cc: Carl Holm (via email)
Jacqueline Onciano (via email)
Hilltop Ranch (via email)



NOTICE OF APPEAL

Monterey County Code
Title 19 (Subdivisions)
Title 20 (Zoning)
Title 21 (Zoning)

RECEIVED
MONTEREY COUNTY
August 10, 2017
~~2017 AUG 26~~ AM 8:32

CLERK OF THE BOARD

JP

DEPUTY

No appeal will be accepted until a written decision is given. If you wish to file an appeal, you must do so on or before August 14, 2017 (10 days after written notice of the decision has been mailed to the applicant). Date of decision July 26, 2017.

1. Please give the following information:

- a) Your name Hilltop Ranch (Richard Lumpkin) / c/o John Bridges, Fenton & Keller
- b) Phone Number 373-1241
- c) Address P.O. Box 791 City Monterey Zip 93942
- d) Appellant's name (if different) _____

2. Indicate the appellant's interest in the decision by checking the appropriate box:

Applicant

Neighbor

- ☒ Other (please state) Aggrieved vineyard owner

3. If you are not the applicant, please give the applicant's name:

N/A (Director's Interpretation of Zoning Ordinance)

4. Indicate the file number of the application that is the subject of the appeal and the decision making body.

- | | File Number | Type of Application | Area |
|---------------------------|---|---------------------|------|
| a) Planning Commission: | <u>Resolution 17-029 (PLN170488/170489) Director's Interpretation/Monterey County</u> | | |
| b) Zoning Administrator: | _____ | | |
| c) Subdivision Committee: | _____ | | |
| d) Administrative Permit: | _____ | | |

5. What is the nature of the appeal?

- a) Is the appellant appealing the approval ☐ or the denial ☐ of an application? (Check appropriate box) **Purported reversal of Director's Interpretation of Zoning Ordinance**
- b) If the appellant is appealing one or more conditions of approval, list the condition number and state the condition(s) being appealed. (Attach extra sheets if necessary).

6. Check the appropriate box(es) to indicate which of the following reasons form the basis for the appeal:

- ☐ There was a lack of fair or impartial hearing; or
- ☐ The findings or decision or conditions are not supported by the evidence; or
- ☐ The decision was contrary to law.

You must next give a brief and specific statement in support of each of the bases for appeal that you have checked above. The Board of Supervisors will ***not*** accept an application for appeal that is stated in generalities, legal or otherwise. If the appellant is appealing specific conditions, you must list the number of each condition and the basis for the appeal. (Attach extra sheets if necessary).

See attached.

7. As part of the application approval or denial process, findings were made by the decision making body (Planning Commission, Zoning Administrator, Subdivision Committee or Director of Planning). In order to file a valid appeal, you must give specific reasons why the appellant disagrees with the findings made. (Attach extra sheets if necessary).

See attached.

8. You are required to submit stamped addressed envelopes for use in notifying interested persons that a public hearing has been set for the appeal. The Resource Management Agency – Planning will provide you with a mailing list.

9. Your appeal is accepted when the Clerk of the Board's Office accepts the appeal as complete on its face, receives the filing fee (Refer to the most current adopted Monterey County Land Use Fees document posted on the RMA Planning website at http://www.co.monterey.ca.us/planning/fees/fee_plan.htm) and stamped addressed envelopes.

* Fee waived;
see attached
email

APPELLANT SIGNATURE

David Lupton

DATE

8-10-17

ACCEPTED

DATE

(Clerk to the Board)

ATTACHMENT TO NOTICE OF APPEAL
(Items 6 & 7)

The hearing notice was expressly limited to consideration of the Director's May 16, 2017, interpretation letter. In that letter, the Director explained that only "some new interpretive information that was not in my April 11th letter" gave rise to a new appeal period. The Director subsequently defined those "new interpretive" matters as limited to questions 2-6 answered in the May 16, 2017, letter. County Code section 21.82.040.C says that once the defined appeal period relating to a Director's interpretation expires, "no subsequent appeal on this issue may be heard." Therefore, the issue addressed in the April 11, 2017, interpretation letter became final at 5:01 p.m. on April 21, 2017, and thereafter no further appeal may be heard on that issue (namely, the scope of principally permitted viticulture activities under section 21.14.030.N).

Not only did the notice of the Planning Commission hearing not mention the April 11, 2017, letter, the Commission was precluded by law from hearing an appeal on the April 11, 2017, letter. The only items the Commission could legally hear and act upon were questions 2-6 in the May 16, 2017, letter (i.e., the new interpretive information). The Commission's authority in this context is limited to its appeal authority. Absent a timely appeal by an aggrieved person, the Commission does not have independent jurisdiction or a unilateral right to affirm, reverse, or modify an interpretation of the Director once it becomes final (Cf. Woody's Group, Inc. v. City of Newport Beach (2015) 233 CA4 1012) and, moreover, the code expressly provides that "no subsequent appeal on this issue may be heard." The authority to interpret the Zoning Code is delegated to and vested in the Director. Absent a timely appeal by an aggrieved person, neither the Planning Commission nor, with due respect, the Board of Supervisors, can usurp that authority. Absent a timely appeal by an aggrieved person, if the Commission or Board disagrees with a final interpretation of the Director, the recourse is to amend the zoning ordinance. Further, neither the public nor the Commission nor the Board may subvert the clear intent and finality of a Director's interpretation through the charade of an email asking for "clarifications." If such were the case then the mandate "no subsequent appeal on this issue may be heard" would be rendered meaningless and no past interpretation of any Director (of which there are very many and upon which countless property owners and businesses in Monterey have and continue to rely upon daily) would ever be truly final. Certainty in understanding, applying and relying on what the zoning ordinance means is essential to property values in and the economic health of Monterey County.

Accordingly, we ask the Board to declare the Commission's resolution a nullity to the extent it purports to undermine the finality of the April 11, 2017, interpretation. We also ask the Board to concur with the Director's May 16, 2017, new interpretive information answers to clarification questions 2-6.

Without compromising the above defined legal position, and without waiving any right or position regarding the same and/or the finality of the April 11, 2017, Director's interpretation letter (e.g., reference Attachment A, July 21, 2017, letter to the Planning Commission), to establish an accurate context for the benefit of the Board and in defense of Mr. Holm's reasonable interpretation, we will also address the error of the Commission's logic in attempting to overrule the final April 11, 2017, interpretation. After careful consideration of all relevant

facts and circumstances and the manner in which similar circumstances are handled in other jurisdictions, the Director's April 11, 2017, letter carefully delineated limitations on the scope of principally permitted viticulture activities in the LDR zone to ensure those activities would be "incidental and subordinate" to residential uses on the property. In practice, the activities acknowledged by the Director as being within the scope of principally permitted viticulture happen only occasionally. At Hilltop, for example, such activities occur perhaps once or twice a month on average and last approximately 2-4 hours. Residential use of the Hilltop property, on the other hand, happens 365 days a year, 24 hours a day (i.e., the property is lived on for residential purposes full time). Comparing the annual duration of these respective uses, the viticulture activities defined in Mr. Holm's April 11 letter occupy 48-96 hours per year whereas residential activities occupy 8,760 hours per year. This means, on average, the viticulture activities outlined as principally permitted under the zoning ordinance by Mr. Holm amount to less than 1% of the use of the property. By any reasonable definition that is incidental and subordinate.

Also, viticulture activities (e.g., grape farming) which are inherently commercial in nature (grapes are cultivated, marketed and sold) are clearly "compatible" with allowable land uses in the area. First, and foremost, viticulture is a "principally permitted" land use in the area (i.e., it is not only allowable but it is actually allowed – MCC 21.14.030.N). Other allowable land uses in the area include such things as country clubs, commercial kennels, Bed and Breakfast facilities, cottage industries, oil exploration, and large residential care facilities. Clearly, the limited viticulture activities Mr. Holm defined are compatible with these allowable land uses. Moreover, simply declaring, as the Planning Commission attempted to, a private vineyard tour or educational seminar or dinner involving fewer than 75 people to be "large scale," does not make it so. The kinds of "events" contemplated as large scale special events in the code are such things as "carnivals, festivals, races, and circuses." If, as the Commission believes, the limited activities defined by Mr. Holm "should be vetted through a permit process" then they can propose an amendment to the zoning ordinance to ensure such happens in the future. But they cannot, by unauthorized fiat, simply declare it to be a requirement and thus effectively rewrite the zoning ordinance. Again, Mr. Holm has the delegated authority to interpret the existing code and, absent a timely appeal by an aggrieved person, the Planning Commission does not.

Regarding "special events" (as distinguished from occasional normal/routine/ongoing viticulture activities), Hilltop Ranch has made separate application to hold 10 such special events on their property per year. That application was not before the Planning Commission (nor for that matter was the issue of special events throughout Carmel Valley and Monterey County) but that is precisely what the vast majority of public testimony at the Planning Commission hearing was about. Reference in the Commission's findings to potential impacts associated with special events (stated in Finding 2.c as "large-scale marketing events") are not relevant to the subject at hand (the definition of viticulture). Indeed, much of the public testimony focused on special events that had nothing whatsoever to do with Hilltop Ranch (for example, much discussion was had about Holman Ranch and Folktale Winery and Holly Farms which are designated special event venues not simple vineyards practicing and educating about viticulture). Past code enforcement complaints regarding Hilltop Ranch activities have been thoroughly investigated by the County and closed. There is no open code enforcement case involving Hilltop Ranch. To avoid any future questions about their activities, however, Hilltop applied for the above

referenced 10 special event use permit and in the interim has very carefully limited its activities to those defined in the April 11, 2017, Director's interpretation. That special event permit application will be coming forward for public discussion at a future time, but that time is not now. To reiterate, the Hilltop viticulture related activities at issue are not special events as that term is defined in the Zoning Ordinance and has long been applied in Monterey County. We also note that the whole topic of "special events" will be the subject of a future ordinance debate, but that debate is also not the topic at issue. Legally permitted viticulture activities at Hilltop Ranch cannot be restrained unless/until the zoning ordinance is properly amended.

The Planning Commission also cannot rewrite CEQA to define, by unilaterally declaring in a "finding," what the legal baseline use is for a future project.

ATTACHMENT A

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
ALEX J. LORCA

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

LEWIS L. FENTON
1925-2005

OF COUNSEL
CHARLES R. KELLER
THOMAS H. JAMISON

July 21, 2017

JOHN S. BRIDGES

JBridges@FentonKeller.com
ext. 238

VIA EMAIL (nickersonj@co.monterey.ca.us)

Monterey County Planning Commission
c/o Jackie Nickerson
168 W. Alisal Street, 2nd Floor
Salinas, CA 93901

Re: Appeal of May 16, 2017, Director's Interpretation
Our File: 33799.31683

Dear Planning Commissioners:

This letter is submitted on behalf of the owners of the Hilltop Ranch and Vineyard in Carmel Valley.

On March 16, 2017, pursuant to Chapter 21.82 we submitted a request for a Director's Opinion regarding the scope of activities falling within principally permitted viticulture use (21.14.030.N). Written response to that question was given on April 11, 2017. The response advised (as set forth in the code) that any appeal of the response must be filed no later than 5:00 p.m. on April 21, 2017. No timely appeal was filed and the response therefore became final at 5:01 p.m. on April 21, 2017.

The Director's response and Monterey County Code section 21.82.040.C both state that once the defined appeal period expires "NO SUBSEQUENT APPEAL ON THIS ISSUE MAY BE HEARD."

Approximately three weeks later, "clarifications" of the April 11 interpretation were requested by Mr. Lombardo and a response was provided by the Director on May 16, 2017. An appeal period was allowed to address "some new interpretive information" that was not in the April 11th response (which was at that time and is now final and not appealable). As noted at page 1 of staff report Attachment A, the "new interpretive information" was limited to items 2-6 in the May 16 response.

Those items (2-6) are what is now before the Planning Commission on appeal. No other matters are subject to appeal because "NO SUBSEQUENT APPEAL ON THIS ISSUE (i.e., the April 11 response) MAY BE HEARD."

Appellants are attempting to circumvent the clear language of 21.82.040.C that "NO SUBSEQUENT APPEAL ON THIS ISSUE MAY BE HEARD" by bootstrapping their request for

"clarifications" and trying to drag the April 11 response back into debate. That is clearly not allowed.

On July 18, 2017, the Board of Supervisors discussed the Director's Interpretation procedure and acknowledged its legal legitimacy. They also proposed prospective adjustments to the procedure to provide broader notice of decisions in the future but in so doing did nothing to change or challenge the effectiveness of past Interpretations, including the one issued on April 11. Specifically, the Board unanimously rejected a request by Appellants to suspend the Interpretation procedure because they recognized the necessity and importance of such in the ongoing, day-to-day operations of businesses throughout Monterey County. In making their decision, the Board was advised that "Director's Interpretations are not necessarily limited to a specific property" and "do not change what is allowed, but rather analyze whether something being requested" (i.e., the question posed) "is consistent with the existing policy/regulatory framework." The Board was also advised and understood that "the scope of an appeal is limited to the content of the Director's Interpretation letter that is being appealed." In other words, an appeal regarding certain "clarifications" cannot reach back to undermine a prior, final, decision.

Lest the Commission be confused by the misdirection intended by the appeals, Hilltop does have a pending application for permission to hold 10 non-vineyard related events (e.g., weddings) per year on its property. That application will be coming to the Planning Commission at a future date. That application has nothing to do with the appeals before you now. The only questions properly before the Commission at this time are the five items listed in the middle of page 1 of staff report Attachment A.

In closing, we concur with the staff recommendation to deny the appeals.

Very truly yours,

FENTON & KELLER
A Professional Corporation


John S. Bridges

JSB:kmc

cc: Commissioner Jose Mendez (via email)
Commissioner Ana Ambriz (via email)
Commissioner Cosme Padilla (via email)
Commissioner Don Rochester (via email)
Commissioner Paul Getzelman (via email)
Commissioner Melissa Duflock (via email)
Commissioner Amy Roberts (via email)
Commissioner Luther Hert (via email)
Commissioner Keith Vandevere (via email)
Commissioner Martha Diehl (via email)
Carl Holm (via email)
Wendy Strimling (via email)
Charles McKee (via email)
Hilltop Ranch (via email)

Kristie M. Campbell

From: Nickerson, Jacquelyn x5240 <NickersonJ@co.monterey.ca.us>
Sent: Tuesday, August 08, 2017 11:07 AM
To: Kristie M. Campbell
Cc: Onciano, Jacqueline x5193
Subject: RE: PC Reso 17-029 / Administrative Interpretations (PLN170488 & PLN170489)
Attachments: Fee Waiver Request Form.pdf

Hi Kristie,

Based off of the decision that the PC took with waiving the fee for the appeal of the Administrative Interpretation due to a broader implication of the general public, there would not be an appeal fee to appeal the decision to the BOS. However, you would still need to fill out a fee waiver request to provide for the record. I have attached it for your reference.

From: Kristie M. Campbell [mailto:kcampbell@fentonkeller.com]
Sent: Monday, August 7, 2017 3:59 PM
To: Nickerson, Jacquelyn x5240 <NickersonJ@co.monterey.ca.us>
Subject: RE: PC Reso 17-029 / Administrative Interpretations (PLN170488 & PLN170489)

Good afternoon, Jackie! Were you able to find out the appeal fee, if any, per my below email?

Thanks~
Kristie

Kristie M. Campbell
Administrative Assistant
to John S. Bridges and David C. Sweigert
FENTON & KELLER
Post Office Box 791
Monterey, CA 93942-0791
Physical address (for Fed Ex/UPS or hand delivery):
2801 Monterey-Salinas Hwy.
Monterey, CA 93940
831-373-1241, ext. 217
831-373-7219 (fax)
kcampbell@fentonkeller.com
www.FentonKeller.com

FENTON & KELLER
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

EXPERIENCE INTEGRITY RESULTS

CONFIDENTIALITY NOTICE

This is a transmission from the Law Firm of Fenton and Keller. This message and any attached documents may be confidential and contain information protected by the attorney-client or attorney work product privileges. They are intended only for the use of the addressee. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this information is strictly prohibited. If you received this transmission in error, please immediately notify our office at 831-373-1241. Thank you.

From: Kristie M. Campbell
Sent: Thursday, August 03, 2017 11:30 AM
To: 'Nickerson, Jacquelyn x5240'
Subject: RE: PC Reso 17-029 / Administrative Interpretations (PLN170488 & PLN170489)

Thanks, Jackie! Is there an appeal fee to file this and if so, how much would that be?

Kristie M. Campbell
Administrative Assistant
to John S. Bridges and David C. Sweigert

FENTON & KELLER

Post Office Box 791
Monterey, CA 93942-0791
Physical address (for Fed Ex/UPS or hand delivery):
2801 Monterey-Salinas Hwy.
Monterey, CA 93940
831-373-1241, ext. 217
831-373-7219 (fax)
kcampbell@fentonkeller.com
www.FentonKeller.com

FENTON & KELLER
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

EXPERIENCE INTEGRITY RESULTS

CONFIDENTIALITY NOTICE

This is a transmission from the Law Firm of Fenton and Keller. This message and any attached documents may be confidential and contain information protected by the attorney-client or attorney work product privileges. They are intended only for the use of the addressee. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this information is strictly prohibited. If you received this transmission in error, please immediately notify our office at 831-373-1241. Thank you.

MONTEREY COUNTY

RESOURCE MANAGEMENT AGENCY

Carl P. Holm, AICP, Director

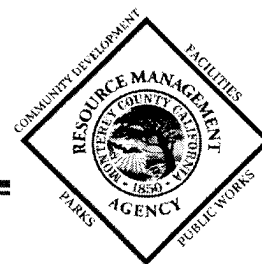
LAND USE & COMMUNITY DEVELOPMENT | PUBLIC WORKS & FACILITIES | PARKS

1441 Schilling Place, South 2nd Floor

Salinas, California 93901-4527

(831)755-4800

www.co.monterey.ca.us/rma



Director's Interpretation

FEE WAIVER REQUEST - (Already granted (see attached email). Waived by Planning Commission (Reso. 17-029).)

☒ **Permit No.** PLN170488/489

(Complete Section 1 and 3)

☐ **Parks Division**

(Complete Section 2 and 3)

(Attach additional information if needed)

Section 1:

Assessor Parcel Number: Monterey County Zoning Ordinance

Job Address: _____

Description of Project: Definition of viticulture activities

Fee Waiver Justification: 1) Director's Interpretation final/non-appealable; 2) Broad implication for general public

Section 2:

Park Name: _____

Park Area: _____

Date of Reservation: _____

Fee Waiver Justification: Aggrieved vineyard owner

Section 3:

☒ **Owner/Applicant** ☐ **Agent**

Requestor: Hilltop Ranch/Richard Lumpkin

Address: c/o John Bridges (attorney), P.O. Box 791, Monterey, CA 93942

Phone: 831-373-1241

Email: jbridges@fentonkeller.com

Department Use Only

Employee Received: _____ Date: _____

Given to Admin. Secretary: _____ Date: _____

Review by the following department/agencies:

Fee Amount:

Amount
Waived:

Approver
Initials

Date

- ☐ RMA - Building
- ☐ RMA - Environmental Services
- ☐ RMA - Parks
- ☐ RMA - Planning
- ☐ RMA - Public Works
- ☐ Water Resources Agency
- ☐ Health Department
- ☐ Other: _____

County Justification:

Total Approved Waiver Amount: \$

Signature of RMA Director/Deputy Director

Print Name

Date

☐ Approved

☐ Denied

☐ Entered into Tracking Spreadsheet by Secretary.

☐ Given to Cashier

BSD-FO-014/Fee WAIVER REQUEST-06-06-17

This page intentionally left blank