

# Exhibit E

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**From:** [Molly Erickson](#)  
**To:** [Spencer, Craig x5233](#)  
**Cc:** [Swanson, Brandon xx5334](#); [Dugan, John x6654](#); [Taylor, Kenny x5096](#); [McDougal, Melissa x5146](#); [Priscilla Walton](#); [Dy, Johanna x5748](#); [Ron DeHoff](#)  
**Subject:** Re: PLN180257 -- 11721 Hidden Valley Rd or 11729 Hidden Valley Road, Carmel Valley. Applicant: 11721 HIDDEN VALLEY LLC, 7 LOMITAS CT, MENLO PARK CA 94025  
**Date:** Tuesday, April 2, 2019 3:03:27 PM

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Mr. Spencer:

Thank you for responding.

As to the application, it is a key document. It allows the public to compare the County staff's project description with the applicant's statements and plans. These documents together allow a more complete understanding of the proposed project, zoning, water source, and other fundamental issues.

I ask the County to make a practice of posting the applications online. They are usually only a few pages long so this should not be a burden, and the benefit to the public and decision makers is significant. Please let me know if the County disagrees.

As to the plans, it may help for the County to save the file as a reduced size .pdf.

Additional concerns about the project have arisen regarding the following:

- A. The information about the water source, supply (sustainability), and demand. MPWMD review is appropriate given that CalAm is the water supplier, as the application states.
- B. The winery use and office use do not appear to be listed uses in the zoning ordinance and there does not appear to be a residence on the parcel.
- C. If the project is on a private road, which is a possibility as shown by the County location map showing "Las Ninas" road, the issue of compliance with the County's private road ordinance should be considered in the County analysis. Clarification of the project's access route and physical address of the APN (instead of mailing address of the applicant) would be helpful on this point.
- D. Possible review by the GMP LUAC in light of the proposed uses, zoning, access, and other concerns. I am cc'g this email to the chair of the GMP LUAC for that reason.

There are concerns in the community about winery uses and private road uses in light of other sites/projects in the area and the County's approach toward them, and CVA appreciates the County's attention to these issues in this particular matter with the goals which CVA hopes the County

shares, of transparency, consistency, precedent, and informed analysis.  
Thank you.

Regards,

Molly Erickson  
**STAMP ERICKSON**  
479 Pacific St., Suite One  
Monterey, CA 93940

On Apr 2, 2019, at 9:21 AM, Spencer, Craig x5233 <[SpencerC@co.monterey.ca.us](mailto:SpencerC@co.monterey.ca.us)> wrote:

Ms. Erickson,

In response to your email:

#### Key Documents

Application forms are not posted online because the County does not usually receive an electronic version of the completed application form from the applicant.

A hard copy of the application forms are kept in the project file and they are available for inspection.

In this case, and at your request, we have scanned the application and attached it to this email.

The project plans are over 51 megabytes in size. The large size of the plans may make downloading difficult. Our records team will respond to your request for plans.

The complete letter provided by the planner for the project is now posted online. In some cases, complete memos were not prepared by individual reviewing agency when they deemed the project complete.

Concerns and Notice Request – Thank you for your comments. We will set this matter for a public hearing, look into the concerns you have raised, and add you and Ms. Walton to the list for notification for this project.

Address – Multiple addresses have been assigned to the property including both 11721 Hidden Valley Road and 11729 Hidden Valley Road. We will verify if one or both addresses should be listed for the project.

Thank you

Craig Spencer

Monterey County, RMA-Planning Division

Phone: (831) 755-5233

Email: [spencerc@co.monterey.ca.us](mailto:spencerc@co.monterey.ca.us)

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**From:** Molly Erickson [<mailto:erickson@stamplaw.us>]

**Sent:** Friday, March 29, 2019 3:08 PM

**To:** Swanson, Brandon xx5334 <[SwansonB@co.monterey.ca.us](mailto:SwansonB@co.monterey.ca.us)>; Spencer, Craig x5233 <[SpencerC@co.monterey.ca.us](mailto:SpencerC@co.monterey.ca.us)>; Dugan, John x6654 <[DuganJ@co.monterey.ca.us](mailto:DuganJ@co.monterey.ca.us)>; Taylor, Kenny x5096 <[TaylorK2@co.monterey.ca.us](mailto:TaylorK2@co.monterey.ca.us)>

**Cc:** McDougal, Melissa x5146 <[McDougalM@co.monterey.ca.us](mailto:McDougalM@co.monterey.ca.us)>; Priscilla Walton <[priswalton@sbcglobal.net](mailto:priswalton@sbcglobal.net)>

**Subject:** PLN180257 -- 11721 Hidden Valley Rd or 11729 Hidden Valley Road, Carmel Valley. Applicant: 11721 HIDDEN VALLEY LLC, 7 LOMITAS CT, MENLO PARK CA 94025

Messrs. Dugan, Swanson, Spencer, Taylor:

I write on behalf of the Carmel Valley Association to point out that key documents are not available on the County website and to express concerns about the project.

### Key Documents

There is no application available to the public on Accela for this project. This happens a lot for County projects. Does the County RMA use a checklist to make sure that application and other planning documents are placed online?

The project plans appear to be posted on Accela but they will not download. I get an error message.

Please promptly send me both the complete application including all amendments and supplements and the complete plans including all amendments and supplements. Also please post the records on Accela in usable format.

Three IDR "incomplete" memos are posted. The "complete" memos from at least three County departments are not online. Please post them as soon as possible, if they exist. Thank you.

### Concerns

Here are some brief comments based on project information gleaned to date from the small amount of documentation on Accela:

- If the project proposes to use CalAm water, please explain how the project would be permitted under the CDO.
- The 5,000 CY grading and winery were not disclosed in the public notice.
- The project does not appear to fit within the class 3 CEQA exemption that staff has proposed because the 3,018-sf barn/winery is not a "small" structure and is more than 2500 sf.
- The application should be considered at a public hearing.

### Address

The County documents refer to the project site as 11721 Hidden Valley Rd at times and at times as 11729 Hidden Valley Road in Carmel Valley. The vicinity map show the project on "Las Ninas" road. Please clarify which is accurate.

### Request for notice

Please place Carmel Valley Association on the distribution list for this project. Send advance notice of all actions to me at [erickson@stamplaw.us](mailto:erickson@stamplaw.us) and to CVA president Pris Walton at [priswalton@sbcglobal.net](mailto:priswalton@sbcglobal.net). Thank you.

Regards,

Molly Erickson  
**STAMP | ERICKSON**  
479 Pacific Street, Suite One  
Monterey, CA 93940  
tel: 831-373-1214, x14

<Project Application PLN180257.pdf>

**PLN180257 (11721 Hidden Valley LLC)**  
**CEQA Comments regarding Initial Study**

Review period of November 27, 2019 through January 2, 2020

1. January 2, 2020 – Moises Carvalho, Department of Toxic Substances Control
2. January 2, 2020 – Molly Erickson, The Open Monterey Project



**Taylor, Kenny x5096**

**RECEIVED**

**JAN 02 2020**

Monterey County  
Resource Management Agency

**From:** Swanson, Brandon xx5334  
**Sent:** Thursday, January 2, 2020 9:03 AM  
**To:** Spencer, Craig x5233; Taylor, Kenny x5096  
**Cc:** Carvalho, Moises@DTSC  
**Subject:** RE: CEQA Mitigated Negative Declaration Review - Hidden Valley LLC PLN # 180257 - SCH # 2019119091

**Importance:** High

Craig and Kenny,

Please see comments below from Mr. Moises Carvalho, with the Department of Toxic Substances Control (DTSC). Where appropriate, please response to Mr. Carvalho's questions, or update the Initial Study as needed.

Thank you,

-Brandon

Brandon Swanson  
Interim RMA Chief of Planning  
Monterey County Resource Management Agency  
1441 Schilling Place - Salinas, CA 93901  
Phone: 831-755-5334 - [www.co.monterey.ca.us/rma/](http://www.co.monterey.ca.us/rma/)

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**From:** Carvalho, Moises@DTSC <Moises.Carvalho@dtsc.ca.gov>  
**Sent:** Thursday, January 2, 2020 8:51 AM  
**To:** Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us>  
**Cc:** Lemus-Arreola, Jacqueline@DTSC <Jacqueline.Lemus-Arreola@dtsc.ca.gov>; Roman, Isabella@DTSC <Isabella.Roman@dtsc.ca.gov>; Boruck, Jennifer@DTSC <Jennifer.Boruck@dtsc.ca.gov>  
**Subject:** CEQA Mitigated Negative Declaration Review - Hidden Valley LLC PLN # 180257 - SCH # 2019119091

[CAUTION: This email originated from outside of the County. Do not click links or open attachments unless you recognize the sender and know the content is safe. ]

Dear Brandon Swanson,

I am representing a responsible agency (The Department of Toxic Substances Control; DTSC) reviewing the Initial Study Report (ISR) with Proposed Mitigated Negative Declaration for the 11729 Hidden Valley LLC (Hidden Valley LLC) project, file number PLN180257 (SCH # 2019119091).

The ISR, draft by Laura Lawrence on behalf of the Law Offices of Aengus Jeffers and applicant and modified by Monterey County Resource Management Agency – Planning, notes that the project area comprises the Monterey County Assessor's Parcel Number 185-051-019-000.

The ISR notes that the project area is zoned in a low-density residential area, consisting of 11.3 acres property that is currently improved with a single-family dwelling, an accessory dwelling unit, a garage, and approximately 1.35 acres of vineyards; and the proposed project would result in 2,500 cubic yards of cut.

DTSC has comments on historical land uses at the proposed construction area and hazards and hazardous materials "no impacts" evaluation under ISR's Sections 9(a) and 9(d).

Comments are provided below as follows:

## **1. Historical Land Uses**

- ISR does not include or mention of historical land uses at the proposed construction area. Is the proposed construction area used in the past for any agricultural beneficial use? If true, historical land uses may have resulted in hazardous materials releases within the proposed construction area.
- DTSC would like to be informed if a Phase I Environmental Site Assessment (ESA) or Phase II ESA has previously been conducted for the project area/proposed construction area?
- If available, DTSC would like a copy of this document. Past land uses may have resulted in hazardous materials releases within the project area that should be investigated prior to the proposed development project for public health protection.

## **2. ISR's Section 9**

- Section 9(a) evaluation should be a "*Less Than Significant Impact*", rather than "*No Impact*" as is currently assessed. Most construction projects would involve at least minimal use of hazardous materials (e.g. fuels, paints). However, these should be less than significant because they are typical to any construction project and would be used in accordance with applicable regulations. This should be discussed in the text;
- Section 9(d) should describe whether the project area location is on any sites compiled pursuant to Government Code Section 65962.5. This section should also include a discussion of nearby EnviroStor or Geotracker sites and how these may impact the project.

Please feel free to reach out if you have any questions or concerns.

Sincerely,

Moises Carvalho

Moises (Moux) Carvalho, PG, MBA, PhD  
Hazardous Substances Engineer  
Department of Toxic Substances Control  
700 Heinz Avenue, Suite 200  
Berkeley, CA 94710  
(510) 540 3757

## Friedrich, Michele x5189

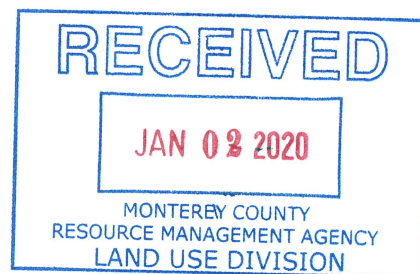
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**From:** Molly Erickson <erickson@stamplaw.us>  
**Sent:** Thursday, January 2, 2020 4:52 PM  
**To:** Holm, Carl P. x5103; Swanson, Brandon xx5334; ceqacomment  
**Cc:** 100-District 5 (831) 647-7755  
**Subject:** PLN180257, Hidden Valley Road, Carmel Valley – comments on CEQA initial study  
**Attachments:** 20.01.02.TOMP.ltr.to.County.re.Hidden Hills.PLN180257.pdf

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Please see attached. Thank you.

Molly Erickson  
**STAMP | ERICKSON**  
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Monterey, CA 93940  
tel: 831-373-1214, x14



**STAMP | ERICKSON**  
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January 2, 2020

County Planning Commission  
Carl Holm  
Brandon Swanson  
County of Monterey



Subject: PLN180257, Hidden Valley Road, Carmel Valley – comments on CEQA  
initial study

Dear County Planning Commission:

My client The Open Monterey Project has asked me to provide the following comments.

The County has taken a unwise and anti-public approach by circulating the initial study starting the afternoon before Thanksgiving and ending the day the County reopens after its lengthy winter break. The County has been closed two thirds of the circulation period, and the County has not been available. The County's schedule has the effect of chilling public involvement. The County action is an eery echo of the ugly approach taken by the RMA historically. For example, past planning director Alana Knaster specifically directed a public review period to run at the most inconvenient time for the public. She said: "I want the 45 days to start before Thanksgiving and end right after New Years." RMA Director Holm has taken a similar anti-public approach. While the County staff is on vacation, the County expects public to use its vacation to review the draft County/applicant document. During that time the County has not been available for questions, my clients could not access the paper copy of file and references.

The initial study is muddled, confused, internally inconsistent, and contains material omissions that are fundamental flaws. The IS inconsistently uses the term mitigated negative declaration and negative declaration, which confuses my clients and other members of the public, and decision makers.

The proposed MND is incorrect when it states that the decision maker is the Zoning Administrator. That is not accurate. The Planning Commission is the decision maker for all cottage industry permits. It should be considered as a whole by the Planning Commission. The project cannot be piecemealed under CEQA or within the zoning code under several permits.

The initial study and proposed MND contain many material inaccuracies and flawed analyses, including the following. The errors and omissions make the document inadequate under CEQA. It should be revised and recirculated. The comments in this letter are made under general titles and the titles are not intended to limit the breadth and scope and meaning of the comments.



Inaccurate project description:

- Fails to identify and disclose the required use permit for the Cottage Industry. Instead, lists only the admin permit and design approval.
- The grading information is stated inconsistently throughout the document. The MND cover page claims 1815 cut and 2150 fill. Elsewhere the document claims claimed 2500 cut and 2500 fill (e.g., pp. 22, 33). The IS does not provide support for the claimed figures by a qualified engineer.
- The grading is not quantified adequately by project element. The disclosed grading fails to identify, quantify and analyzes the impacts of the grading for the lined pond/reservoir, the size of the reservoir, and the grading that has already taken place for the conversion of slopes.
- Fails to include the after-the-fact permit for conversion of acres of 15-24% slope to vineyard, which was apparently done without the required permit and reports and conditions.

Land use:

Wineries and wine processing facilities are not permitted uses in the LDR zone. The IS fails to discuss this. There are specific areas identified for winery uses in the General Plan. The project site is not in one of those specific designated areas. The proposed project would have significant cumulative impacts as a precedent.

The initial study claims that the project will produce 3600 bottles of wine and involve wholesale commercial sales from the project site. The initial study should place as mitigations many of the assumptions that the analysis makes about this site.

The IS makes confusing and inconsistent statements about “existing vineyards.” (E.g., pp. 5, 7, 22, 26.) The IS should clearly state which vineyards were re=existing the application, and which have been recently converted without benefit of permit and thus are seeking an after-the-fact permit through this application. The County has lumped them all together in a misleading way.

Unless they are enforceable conditions and mitigations, the project could have significant impacts that have not been analyzed and mitigated.

The suggestion that the winery should be treated differently because it is “private” and run by a “family” (e.g., p. 32) are misleading and meaningless. Scheid is family run, as is Gallo. The claims have no relevance to any land use concerns. The claims neither predict nor ensure any level of impacts. Numerous wineries and vineyards are owned by families. Gallo is perhaps the most well known. Gallo is a huge

operation in Monterey County and elsewhere. Its land uses can and do have major impacts on the environment. Additional examples of family operations are Scheid Vineyards, Pisoni Family, Hahn Family, J Lohr Vineyard and Wines, and more.

Nothing prevents a family operation from being a corporate entity or from being publicly traded. Nothing limits the size of a family operation. Nothing controls the water that a “family” operation uses, or the noise, traffic, lighting, or other. The Hidden Valley project is owned and proposed by an LLC, or limited liability corporation.

The conclusions in the IS are not supported by any biological analysis by an expert. They are not meaningful and should be disregarded.

There are no legible and meaningful drawings of the complete proposed project provided attached to the IS, as CEQA recommends/requires, and no map showing the various scenic and conservation easements and slope protection easements. Absent that information, my clients are unable to comment, which prejudices them.

The IS Fails to state that the project would require a permit from the Regional Water Quality Control Board for waste discharge and another permit for the reservoir and water storage.

Water use:

The IS fails to disclose the location of the existing water well permitted improperly in September 2019.

To make matters worse, the County improperly issued a ministerial permit for the well in September 2019 (IS, p. 27), during the pendency of the project application and before the initial study was prepared and circulated. This is a material procedural error by the County. The entirety of the project must be considered. The County may not piecemeal the CEQA review, but that is what the County did here. The IS fails to analyze the impacts of the well.

It appears that the well may not be on the same property, and a permit is required to cross property lines and for other reasons, if the water can be used at all at a different property.

The IS fails to provide baseline water usage at the site and how the proposed usage would change that. It is not meaningful to provide merely an estimate of what the applicant proposes would be used by the new uses. The IS fails to ensure that those assumptions are placed as mitigations on the property. Absent those enforceable mitigations and conditions, the project could have significant impacts that have not been analyzed and mitigated as CEQA requires. Now is the time to place those mitigations. Otherwise, current LLC could sell to another LLC or a different corporation, and the County’s sloppy and unconditioned permit reasonably foreseeably

could be acquired by a large commercial operation that does not follow the mere representations of the current applicant.

The IS fails to present a meaningful discussion of the reasons why Cal Am has sought a moratorium on new Hidden Hills connections: because Cal Am is materially exceeding its allowed pumping. It is no excuse to claim that the CPUC has not yet issued the moratorium. The IS is required to look at the environmental impacts of pumping, not merely the regulatory limits. This IS has not met the CEQA requirements, and no significance criteria are identified and applied to the project.

Lack of required mitigations:

The assumptions that the IS relies on for its analysis and conclusion must be placed into enforceable and meaningful mitigations. These include:

- No more than 2 employees
- Timing of travel trips
- Water use
- Use of reservoir water
- Abandonment of Cal Am / Hidden Hills water use, or a specified maximum use that is no greater than current baseline (pre-project application).
- Conversion to dry farming in perpetuity after three years. Merely claims that the vines “can be” dry farmed is not the assurance that CEQA requires as a reasonable good faith analysis of impacts.
- Prohibition on any water use for the vineyard in August and September. Alternatively, the IS should be corrected to include the calculations for water use in August and September which are omitted from the analysis in the IS.
- Prohibition on use of the barn, wine cave, exterior space, vineyards, and the entire property to ensure no events, no public usage and no wine tasting.

Transportation:

The IS fails to disclose the number of trips before and after the project, and how the applicant would ensure that the trips are made outside of peak hours, and how that would be monitored by the County.



Energy:

The energy situation fails to discuss the energy of pumping water from the reservoir for irrigation purposes.

There is no disclosure of existing or proposed solar energy sources. There is a mere allusion on IS page 9 that contains insufficient quantification of baseline or proposed use. Does the solar exist, and if so where is it on the site, and is it sufficient for the entire operation? Is PG&E power used now? Is new construction required for solar power?

The archeological condition is a mitigation to prevent significant impacts. It should be described as a mitigation.

The project is a commercial activity, make no mistake.

Interest of The Open Monterey Project

The Open Monterey Project (TOMP) is an unincorporated association founded in 2002 and dedicated to transparency and accountability in public decision making, primarily in land use, and is directly involved in promoting governmental understanding and compliance with the California Environmental Quality Act ("CEQA," Pub. Resources Code, § 21000 et seq.). TOMP actively participates in the review of land use and water issues by the County of Monterey, as well as cities and public agencies throughout the County. TOMP was a successful petitioner in *Bernardi v. County of Monterey* (2008) 167 Cal.App.4th 1379 and in *Save Our Carmel River v. Monterey Peninsula Water Management District* (2006) 141 Cal.App.4th 677, among other CEQA and CPRA cases.

Thank you for considering these comments. Please add TOMP to the notification list for this project, including all notification under Public Resources Code section 21092.2.

Sincerely,

STAMP | ERICKSON

*Molly Erickson*

Molly Erickson



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

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

February 3, 2020

Via Email

Ron DeHoff, Chair

Greater Monterey Peninsula LUAC

Re: Feb. 5, 2020 GMP LUAC meeting, PLN180257, Hidden Valley Road,  
Carmel Valley – comments on application and need for Planning  
Commission review of this project

Dear Chair DeHoff and members of the Greater Monterey Peninsula LUAC:

My clients The Open Monterey Project respectfully present these comments. For decades TOMP has been involved in the public interest with issues around wineries and land use in Carmel Valley. Issues raised by this project application include:

- The proposed winery building would be used to process and produce wine for commercial sale.
- Wineries are not a permitted use at this site under the LDR zoning district.
- Wineries are not cottage industries under the County Code, and the County initial study claim to the contrary is inaccurate.
- The Agricultural and Winery Corridor Plan (AWCP) of the 2010 County General Plan has designated locations to encourage wineries: in the River Road, Metz Road and Jolon corridors, all in the Salinas Valley areas. The site is not in the 2010 General Plan winery corridor. The General Plan says this: "Wineries outside of the designated Agricultural and Winery Corridor are subject to conformance with the regulations of the underlying zoning district." (Section 4.2.)
- Wineries foreseeably could include industry-wide events, advertised fund raising events, winemaker dinners (for invitation only, subscriptions, and open to the general public), weddings, and private events such as private or company holiday parties, as shown by the discussion in the 2010 General Plan and its Agricultural and Winery Corridor Plan.
- The cumulative impacts of allowing wineries in the Carmel Valley/Corral de Tierra area would be potentially significant and would require an EIR. The 2010 General Plan states this: "Winery development within the corridor not processed under this Plan, or winery facilities outside of the corridor, must evaluate cumulative impacts of adding said facility to the buildout of the AWCP." (Agricultural and Winery Corridor Plan, § 4.3.)

For helpful direction on some of the issues presented by this application, you may want to review these opinions:

- *Neighbors In Support of Appropriate Land Use v. County of Tuolumne* (2007) 157 Cal.App.4th 997 (rejecting a County's ad hoc exception allowing a special event use in an agricultural zoning district)
- *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714 (rejecting a County's mitigated negative declaration for a special events use in the Santa Cruz mountains; EIR required)

Wineries are not allowed in the Low Density Residential zoning district.

The application is for a winery structure, a crush pad, a wine cave, and use as a winery. The project is not consistent with the adopted plans and zoning. The LDR zone does not list "winery" as an allowed use. (County Code, Ch. 21.14 REGULATIONS FOR LOW DENSITY RESIDENTIAL ZONING DISTRICTS OR "LDR" DISTRICTS.) The County zoning code defines "winery" as follows:

21.06.1400 WINERY.

Winery means an agricultural processing plant used for the commercial purpose of processing grapes, other fruit products or vegetables, to produce wine or similar spirits. Processing includes wholesale sales, crushing, fermenting, blending, aging, storage, bottling, administrative office functions for the winery and warehousing. Retail sales and tasting facilities of wine and related promotional items may be permitted as part of the winery operations.

The proposed winery structure would be an agricultural processing plant in a residential zone.

21.06.020 AGRICULTURAL PROCESSING PLANT.

Agricultural processing plant means a structure, building, facility, area, open or enclosed, or any other location for the refinement, treatment, or conversion of agricultural products where a physical, chemical or similar change of an agricultural product occurs. Examples of agricultural processing include but are not limited to, coolers, dehydrators, cold storage houses, hulling operations, and the sorting, cleaning, packing, and storing of agricultural products preparatory to sale or shipment in their natural form including all customarily incidental uses. Agricultural processing plants include wineries.

The proposed winery is a commercial structure.

The proposed winery is not a barn or an structure accessory to the residence.

The RMA has used the terms "outbuilding" and "barn" for this application and the terms are misleading and inaccurate under the County Code. Let there be no mistake: the proposed structure is a winery. You should reject the RMA's inaccurate use of the term "out-building (barn)." The County has used the word "barn" improperly in misleading ways that appear to be intended to avoid the required environmental and planning analysis. The last time the County published a notice for this project, the RMA called the large new structure a "winery." Now the RMA has renamed the winery as a "barn." My clients sincerely hope that the County RMA is not deliberately trying to avoid scrutiny of projects by calling them "barns" regardless of foreseeable actual use.

The LDR zone does not list "winery" as an allowed use. It might be argued that the LDR district by implication might permit "Accessory structures used as barns, stables or farm out buildings" but these are listed under site development standards, not under uses allowed. The proposed winery is not a barn, a stable, or a farm out building. It is not an accessory structure or use under the County Code definitions because the winery is not subordinate and incidental to the main residential structure, and a winery is not customarily part of a residential use. The structure and its use are consistent with the Zoning Code definitions of accessory use and accessory structure because the winery. The definitions require that the new structure be "incidental to" the main structure, which is the residence, and that the winery use by "customarily part of the permitted use" and "clearly incidental" to the permitted use and that "does not change the character of the permitted use." That is not the situation here in this residential zone. A house with a winery is very different from a house without a winery.

#### 21.06.1230 STRUCTURE, ACCESSORY.

Accessory structure means a subordinate structure, the use of which is incidental to that of a main structure on the same building site, including but not limited to caretaker quarters, guesthouses, farm employee family housing facilities, farm worker housing facilities, and employee housing accessory to an allowed use.

#### 21.06.1330 USE, ACCESSORY.

Accessory use means a 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.

Nothing would require the existing home to be occupied by full-time residents.

The proper focus should be on the land use.

A vineyard is a vineyard. A winery is a winery. The ownership is immaterial.

The County initial study claims of a “private winery” are meaningless. The Zoning Code does not distinguish between “private” wineries and “private” vineyards, on the one hand, and commercial wineries and vineyards, on the other. This is because there is no difference from a land use perspective. E & J Gallo Winery is the largest family-owned winery in the United States. (<http://www.gallo.com/files/Gallo-Company-Fact-Sheet-2016.pdf>) (McCallion, Ruari. “Gallo Glass Company: Top of the glass”. The Manufacturer. Archived from the original on June 10, 2011. Retrieved December 31, 2009.) Similarly, Scheid Family Wines is still family-run, as are Pisoni Family Wines, Hahn Family Wines, and other examples show that many vineyards are essentially “private” and many are “family run.” However, that is not a meaningful land-use distinction. The land use impacts of a commercial winery, a “quasi-commercial” winery, and a family-run winery are largely the same.

The grape growing and the winery facility are agricultural uses. The grapes and/or the wine can and are proposed to be sold for commercial purposes, and the County would be unable to enforce any meaningful limits on it. The existing vineyards on the parcel as well as the proposed vineyards on the parcel are likely to produce thousands of cases of wine annually.

"1 ton of grapes yields about 60 cases or 720 bottles. If you put all that together, a very low-yielding vineyard that produces 2 tons per acre makes about 1,440 bottles, or 120 cases, while an acre that yields 10 tons produces about 7,200 bottles, or 600 cases."  
(<https://www.winespectator.com/articles/how-many-bottles-of-wine-are-made-from-1-acre-of-vineyard-5350>)

An applicant's promises should not be relied on because the promises have not been made into enforceable conditions and mitigations. In any event, the County's ability, funding, and desire to enforce detailed conditions is not reliable. An applicant's promises do not bind future owners of the property in any event. In this case, the Hidden Valley Road applicant is an LLC and its members can change without any discretionary review by the County. The proper focus is on the proposed land use, not the ownership. The County historically has not treated wineries differently depending on who the owner is – e.g., a corporation, a private individual, a non-profit. The County started out from the beginning by treating this application differently by calling it “family winery.” After TOMP commented on this unsupported new approach, the County changed tack and now is calling this application a “private” winery. This is new approach is not supported. The instant applicant is a corporate entity. A different corporate entity could purchase the property and continue and expand the winery use.

The details of corporate ownership are invisible to the County; the individual owner(s) could sell their ownership interests to others, and the County may not ever know. The County is unlikely to enforce against the type of ownership in any event, even if it could and was authorized to do so. The County has not regulated who is a "family" in a land use context and cannot meaningfully enforce any requirement of "family ownership" in any event. The winery could become publicly owned in whole or in part, and the County would not enforce against that, either.

The County has proposed the condition below which is ineffective and unenforceable. There is no definition of commercial wine tasting."

COMMERCIAL WINE TASTING / SPECIAL EVENT DEED  
RESTRICTION (NONSTANDARD)

Prior to issuance of building or grading permits, a notice shall be recorded with the Monterey County Recorder for parcel 185-051-019 which states: "Consistent with the approval of PLN180257, the subject property shall not be used as a venue for commercial wine tasting or special events."

A winery is not a "cottage industry" under the County Code.

A winery is not a cottage industry, which is defined as "a business in a residential area conducted primarily by the residents of the property manufacturing artistic, handicraft and other craft items." (County Code, § 21.06.220.) A winery is not an artistic, handicraft or craft item. Neither the ZA nor the Planning Commission has the authority to expand the definition of cottage industry beyond that stated in the Code.

The proposed winery is a habitable structure, and as a third habitable structure it is not permitted at this site under the LDR zoning district.

A barn is a non-habitable accessory structure, similar to a storage structure according to the County Code. (E.g., §§ 21.30.030, 21.32.030, 21.34.030.) In contrast, the proposed winery, renamed a "grape processing barn," is habitable. It has at least one full bathroom, at least one full bedroom space, an interior kitchen, an exterior kitchen, a large living room with tall windows, a large fireplace, and french doors to an expansive terrace with an exterior kitchen. The so-called "barn" is habitable under the County definition. The Monterey County Environmental Health Bureau uses the following definition of Habitable from Chapter 18.14.020 Definitions "U. Habitable Space. Space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces, and similar areas are not considered habitable spaces." (Sept. 3, 2019 email from Mr. Van Horn.)

The proposed barn main floor, showing the full bathroom, kitchen, living area with fireplace, with water feature outside to the right. Upstairs is a 530-square foot loft with windows on three sides. The proposed new structures total 3,850 sf plus some 20,000 sf of patios, driveways, and pathways, plus conversion of acres of undeveloped slopes into vineyards.

The property already has at least two existing dwelling units, according to public records. The plans for this application show the existing main house and the existing second single family dwelling that is identified on the drawing as "SECOND SFD". A third habitable unit (the proposed winery) is not allowed under the LDR zoning district.

The water and grading analysis is inaccurate, inadequate and incomplete.

The initial study states that "Water for the [proposed] structures will be provided by Cal-Am's Hidden Hills Water System" (at p. 9). There is no proposed mitigation that would prohibit the applicant from using Cal Am water for the new vineyard and the proposed winery uses. Given that fact, the County RMA has not explained how the project could be allowed in light of the acknowledged *zero water rights* available to Cal Am Hidden Hills unit under the Seaside Basin adjudication. Cal Am has applied to the California Public Utilities Commission for a moratorium in the Hidden Hills area. The fact that the moratorium has not yet been granted is not material. It is material that there are no water rights to serve this project, and nothing that would prohibit the project from using Cal Am water. There is no mitigation requiring the property to cease its existing usage of Cal Am water from the Hidden Hills system, contrary to the claim in the initial study (at p. 23). The assumptions made by the initial study are not enforceable. This means that post-project water usage may be much higher than the amount analyzed in the initial study, resulting in unanalyzed and unmitigated impacts.

The construction of the pond (a reservoir for water storage) is not exempt from grading permits. (County Code, § 16.08.040.J.) The project description should include grading permit and include the amount of grading for the proposed reservoir and the new vineyards, in addition to all other grading including for the winery building, crush pad, the landscaping, the driveways, and the wine cave.

The County RMA confusion is regrettable and time consuming for all concerned.

Unfortunately the County RMA has been confused about how to process this application, which has dragged out the process unnecessarily for all parties. The County RMA first claimed the project was exempt and could be approved administratively. Then after my clients objected, the County claimed the ZA could approve the project. Eventually the RMA did an initial study and claimed a mitigated negative declaration. The LUAC staff report shows that the County is still claiming a ZA action is appropriate. This is not accurate because the County initial study states that

Planning Commission action is required on a "Cottage Industry" permit for the proposed winery use. "The Winery use will require approval of a Use Permit by the Planning Commission as a Cottage Industry." (Initial Study at page 24.)

The Planning Commission should consider the project instead of the  
Zoning Administrator.

The Planning Commission in the first instance should review both (1) the draft environmental document that analyzes the entire project and (2) the combined County permits for the entirety of the proposed project. As the County Code states, "Should the Combined Development Permit include any permit normally considered by the Planning Commission, then the Planning Commission shall consider the entire Combined Development Permit..." (County Code, § 21.76.030; see § 21.74.030.)

Request: please recommend denial.

Please recommend denial of the project due to the lack of consistency with the zoning district and neighborhood. Refer this project to the Planning Commission due to the winery that is not allowed in the LDR zone, the unenforceable water assumption and the lack of water rights, and the need for an EIR.

If the applicant wishes to proceed, then an EIR is required and cumulative impacts should be analyzed due to the inconsistencies with the General Plan and the zoning ordinance. Assumptions and conditions should be proposed to be implemented through enforceable mitigations that would bind the current and future property owners. Thank you.

Very truly yours,

STAMP | ERICKSON

*Molly Erickson*

Molly Erickson

cc: Mike Novo, Zoning Administrator; John Dugan, RMA Deputy Director;  
RMA support staff (for distribution)

January 2, 2020

County of Monterey  
Resource Management Agency  
Attention: Brandon Swanson, Interim Chief of Planning  
1441 Shilling Place, South Second Floor  
Salinas, Ca 93901

Re: 11721 Hidden Valley LLC, File Number: PLN 180257

Mr. Swanson,

The Board of Directors of the Hidden Hills Homeowners Association objects to the proposed project.

1. A commercial facility is inappropriate for this location; in the heart of a residential community. The additional traffic of commercial vehicles necessary to service and maintain such a facility will undoubtedly impact the safety and wellbeing of the residents. Additional commercial traffic will create an undue burden on the maintenance of the narrow two-lane roads throughout the neighborhood. Access to this property is through three (3) residential homeowners' associations.
2. The restriction disallowing public access will not prevent the facility from hosting 'private' events that will further undermine traffic safety and disruption of our residential neighborhood.

We trust the RMA will take into consideration the concerns of the HHHOA and move to deny approval of this project.

Sincerely,

Stephen Bloch  
President, Board of Directors  
Hidden Hills Homeowners Association