

**PLANNING COMMISSION  
COUNTY OF MONTEREY, STATE OF CALIFORNIA**

RESOLUTION NO. 04004

A. P. # 187-571-002-000

In the matter of the application of  
**Frank and Elizabeth Crist (PLN030307)**

**FINDINGS & DECISION**

to deny the appeal of administrative interpretation of Section 21.66.030(c)1 (Conversion of Uncultivated Land to Cropland Shall not be Permitted on Slopes over 25%) in which the Director has determined that a violation of said section exists at 50 Via Milpitas, Carmel, Carmel Valley Master Plan area, came on regularly for hearing before the Planning Commission on January 28, 2004.

Said Planning Commission, having considered the application and the evidence presented relating thereto,

- 1. FINDING:** The subject property is located at 50 Via Milpitas, Carmel Valley. The site is zoned “LDR/1-D-S-RAZ (Low Density Residential). On or about May of 1998, the appellant planted approximately 0.6 acres of vineyards, a portion of which were planted on slopes in excess of 25 percent.

**EVIDENCE:** File PLN030307; Administrative Record.
- 2. FINDING:** On November 13, 2002, the County filed a Notice of Violation (CE020384) for violation of Sections 21.66.030.C.1 & 21.84.040, Monterey County Code (Zoning) for the conversion of uncultivated land to cropland on slopes exceeding 25%, an unpermitted land use. The appellant was also requested to restore the site in accordance with the county code.

**EVIDENCE:** Section 21.66.030.C.1 provides that “Conversion of uncultivated land to cropland shall not be permitted on slopes over 25%; Section 21.84.040 prohibits use of land not permitted under the zoning ordinance.

**EVIDENCE:** File PLN030307; Administrative Record.
- 3. FINDING:** On May 27, 2003, the Appellant requested that the County lift the Notice of Violation and allow the vineyard to remain on the grounds of infeasibility of restoration of the site, the vineyard’s use as a firebreak, and the purported risk of increased erosion and slope instability should the site be restored.

**EVIDENCE:** File PLN030307; Administrative Record.

**EVIDENCE:** May 9, 2003 correspondence from Robert A. Patton, Fire Management Specialist with the U.S. Forest Service.

**EVIDENCE:** Correspondence dated December 17, 2002 from Michael Joyce, Professional Civil Engineer with the firm Kennedy/Jenks Consultants, stating that removal of the property may result in potential erosion and slope failure.

- 4. FINDING:** On July 10, 2003, the Planning and Building Inspection Department provided the Appellant with a written interpretation of Sections 21.66.030.C.1 in accord with Section 21.82.040 of the zoning code, and rejected the Appellant's request to lift the Notice of Violation, and requested a restoration plan that meets the requirements of the county code.

**EVIDENCE:** File PLN030307; Administrative Record.
- 5. FINDING:** On July 11, 2003, the Appellant submitted an appeal of the administrative interpretation of Section 21.66.030.C.1 to the Secretary of the Planning Commission.

**EVIDENCE:** File PLN030307; Administrative Record.
- 6. FINDING:** On July 31, 2003, the Appellant submitted an aerial photograph to the Planning and Building Inspection Department which appeared to demonstrate that the existing vineyard was previously cultivated in hay and oats. This evidence purported to establish that the vineyard was not located on "uncultivated" land and therefore, did not violate the Section 21.66.030.C.1 prohibition against converting uncultivated land to cropland found in Section 21.66.030.C.1. The Planning and Building Inspection Department agreed with the Appellant and lifted the Notice of Violation (CE020384) on August 15, 2003.

**EVIDENCE:** File PLN030307; Administrative Record.
- 7. FINDING:** On August 27, 2003, Mr. Crist officially requested to withdraw his appeal of said administrative decision.

**EVIDENCE:** Correspondence dated August 27, 2003.
- 8. FINDING:** On September 18, 2003, the Planning & Building Inspection Department notified Mr. Crist that the Department had re-examined, in consultation with County Counsel, the determination that a code violation of Section 21.60.030.C.1 did not exist on the subject parcel and found that the evidence did not support the August 15, 2003 decision to lift the Notice of Violation. Consequently, the Notice of Violation of Section 21.60.030.C.1 was reinstated.

**EVIDENCE:** File PLN030307 & CE020384; September 18, 2003 letter from Hennessy to Crist; the Administrative Record.
- 9. FINDING:** On October 3, 2003, the Appellant reinstated his July 11, 2003 appeal of the administrative interpretation of Section 21.66.030.C.1. The Planning Commission hearing on the matter, scheduled for December 10, 2004, was continued to January 14, 2004, with assent of the parties.

**EVIDENCE:** File PLN030307; Administrative Record.
- 10. FINDING:** On January 14, 2004, the Planning Commission conducted a public hearing on Mr. Crist's appeal from the Director's administrative interpretation. The Planning Commission passed a resolution of intent to approve the Appellant's appeal to allow the existing vineyard to remain and continued the matter to January 28, 2004 in order to allow staff to prepare findings and evidence.

**EVIDENCE:** File PLN030307; Administrative Record

- 11. FINDING:** Mr. Crist had assumed planting the vineyard was permissible because, prior to planting, he had inquired whether a permit was needed and was told no permit was needed. In addition, based on the release of CE020384, the Appellant assumed financial obligations related to construction activities on his property.

**EVIDENCE:** Testimony at the January 14, 2004 Planning Commission Meeting; Administrative Record

- 12. FINDING:** Section 21.66.030 of the Monterey County Code applies to the subject property because the regulation applies to all zoning districts where agricultural uses are allowed. The zoning district in which the property is located, LDR, allows viticulture and horticulture.

**EVIDENCE:** Section 21.66.030 of the Monterey County Code

**EVIDENCE:** Section 21.06.010 of the Monterey County Code defines “agriculture” to include horticulture.

**EVIDENCE:** Testimony at the January 14, 2004 Planning Commission public hearing.

- 13. FINDING:** The area in question was not “uncultivated” land because the subject site was cultivated in 1992 at the time that Section 21.66.030 was adopted, and though the land was subsequently idled, the vineyards are permitted at the subject site as a legal nonconforming use.

**EVIDENCE:** Oral testimony and documentary evidence presented at the January 14 and 28, 2004, public hearing of the Planning Commission; administrative record; file PLN030307

**EVIDENCE:** File PLN030307; Photographic evidence in the Administrative Record.

## **DECISION**

NOW, THEREFOR, based on the above findings and evidence, the Planning Commission hereby upholds the appeal of Scott Crist from the Planning and Building Inspection Department Director’s administrative interpretation and, on the particular set of facts presented by this appeal, interprets Section 21.66.030.C.1 of the Monterey County Code to allow the 0.6 acres of vineyards planted on slopes in excess of 25 percent at the appellant’s property located at 50 Via Milpitas Road, Carmel Valley.

**PASSED AND ADOPTED** this 28th day of January, 2004, by the following vote:

AYES: Errea, Hawkins, Padilla, Sanchez, Diehl, Salazar, Rochester, Wilmot  
 NOES: None  
 ABSENT: Parsons  
 ABSTAIN: Vandever

Original Signed By:
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JEFF MAIN, SECRETARY

COPY OF THIS DECISION MAILED TO APPLICANT ON

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 CLERK OF THE BOARD OF SUPERVISORS ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE

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 90<sup>th</sup> day following the date on which this decision becomes final.