

1 CHARLES J. McKEE (SBN 152458)
County Counsel
2 WENDY S. STRIMLING (SBN 136243)
Senior Deputy County Counsel
3 ROBERT M. SHAW (SBN 243300)
Deputy County Counsel
4 Office of the County Counsel
County of Monterey
5 168 W. Alisal Street, Third Floor
Salinas, California 93901-2653
6 Telephone: (831) 755-5045
Facsimile: (831) 755-5283
7 E-Mail: stirlingw@co.monterey.ca.us
shawrm@co.monterey.ca.us
8 Attorneys for Respondents/Defendants COUNTY
OF MONTEREY and BOARD OF SUPERVISORS
9 OF THE COUNTY OF MONTEREY

Filing fee exempt: Gov. Code § 6103

10 DAVID S. SWEIGERT (SBN 159830)
11 ALEX J. LORCA (SBN 266444)
JOHN S. BRIDGES (SBN 121343)
12 Fenton & Keller, A Professional Corporation
2801 Monterey-Salinas Highway
13 Post Office Box 791
Monterey, CA 93942-0791
14 Telephone: (831) 373-1241
Facsimile: (831) 373-7219
15 Email: dsweigert@fentonkeller.com
alorca@fentonkeller.com
16 jbridges@fentonkeller.com
Attorneys for Petitioner/Plaintiff HILLTOP RANCH
17 AND VINEYARD, LLC

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19 COUNTY OF MONTEREY

20 HILLTOP RANCH AND VINEYARD,
21 LLC,
22 Petitioner/Plaintiff,
23 vs.
24 COUNTY OF MONTEREY, BOARD OF
SUPERVISORS OF THE COUNTY OF
25 MONTEREY, and DOES 1-20, inclusive,
26 Respondents/Defendants.

CASE NO. 17CV004539

**JOINT CASE MANAGEMENT
STATEMENT**

**[Case Deemed Complex assigned for
all purposes to Honorable Lydia M.
Villarreal]**

Hearing Date: April 25, 2018
Time: 2:00 p.m.
Department: 1

1 Petitioner HILLTOP RANCH AND VINEYARD, LLC (“Petitioner”), and Defendants
2 COUNTY OF MONTEREY and BOARD OF SUPERVISORS OF THE COUNTY OF
3 MONTEREY (collectively, the “County”) (Petitioner and County are collectively referred to
4 herein as “Parties”), met and conferred telephonically on April 16, 2018 and hereby submit this
5 Joint Case Management Statement pursuant to the Court’s Complex Litigation Procedure and
6 the Court’s Order Granting Extension of Time dated April 10, 2018. This joint status report
7 sets forth the areas of agreement and disagreement among the Parties, and in the case of
8 disagreement, the report summarizes the Parties’ respective positions. Further, given the
9 County’s recently filed demurrer, the Parties have stipulated, pending the Court’s order, to
10 continue the case management conference currently scheduled for April 25, 2018 at 2:00 p.m.
11 to May 30, 2018 or as soon after hearing the County’s demurrer as may be convenient for the
12 Court and the Parties.

13 **1. Central Legal Issues**

14 Petitioner and County agree that the central legal issue in the Petition for Writ of
15 Administrative Mandamus (the “Petition”) is whether the County followed its own rules and
16 statutory obligations when it heard appeals from the April 11 and May 16, 2017 administrative
17 interpretations.

18 **2. Status of Pleadings**

19 The pleadings are not yet at issue. The Parties agree that only the Petition, on remand
20 from the United States District Court for the Northern District of California, is currently before
21 the Court. All other portions of the original complaint have been severed and stayed before
22 United States District Court pending resolution of the Petition.

23 The County’s demurrer is currently scheduled to be heard on May 30, 2018.

24 **3. Discovery**

25 The Parties agree that should this matter survive demurrer, or other dispositive motion,
26 review is appropriately limited to an administrative record review.

27 The Parties agree that the administrative record should include at least the applicable
28 portions of the Monterey County Code, the 2010 General Plan, the materials and evidence

1 before the Planning Commission and Board of Supervisors and the transcripts of the actual
2 hearings. The Parties will continue to meet and confer regarding the appropriateness of
3 including other materials as part of the certified administrative record.

4 The Parties will meet and confer further regarding a schedule for the preparation and
5 production of the administrative record.

6 **a. Petitioner’s Position with Respect to Formal Discovery**

7 Petitioner contends that reasonable discovery may be necessary and reserves its right to
8 conduct such reasonable discovery if necessary.

9 **b. County’s Petition with Respect to Formal Discovery**

10 The County contends that this matter is a straightforward review of the County’s
11 interpretation and application of its County Code that can be decided on matters of law and that
12 no formal discovery permitted because review is limited to the administrative record. Code of
13 Civ. Proc. § 1094.5(a). The California Supreme Court held that extra-record evidence is
14 generally not admissible in traditional mandamus actions challenging quasi-legislative
15 decisions like the one the Board made here. Western States Petroleum Assn. v. Superior Court,
16 9 Cal.4th 559, 575-576 (1995), see also Carrancho v. California Air Resources Board, 111
17 Cal.App.4th 1255 (2003) (“[a]n unbroken line of cases holds that, in traditional mandamus
18 actions challenging quasi-legislative administrative decisions, evidence outside the
19 administrative record “extra-record” evidence is not admissible.” Id. at 1269.)

20 Record review is the standard even in the quasi-judicial context. In Cadiz Land Co. v.
21 Rail Cycle LP, the trial court granted motions to quash and issued protective orders against
22 discovery initiated by the petitioner in a case challenging the approval of a landfill. Cadiz
23 Land Co. v. Rail Cycle LP, 83 Cal.App.4th 74, 116-117 (2001). The appellate court affirmed,
24 finding Western States prohibited discovery because petitioner was attempting to show either
25 that the agency had not considered all relevant factors or that the evidence it had relied upon
26 did not support its decision. Id. at 123.

27 **4. Additional Parties**

28 The County anticipates that some number of the adjoining real-property owners and

1 original appellants before the Planning Commission may seek to intervene in this action. The
2 County expects the motion(s) to be filed prior to the April 25, 2018 case management
3 conference.

4 **5. Settlement**

5 The Parties are willing to engage in settlement discussions to the extent settlement can
6 be reached.

7 **6. Productions**

8 The Parties agree to produce relevant records and materials in searchable electronic
9 .PDF format except where—such as in the case of spreadsheets—.PDF format would limit
10 usability and functionality of the record. In such cases, the Parties agree to produce records in
11 the format that maximizes usability, which may require production in native file format.

12 The Parties agree to provide the administrative record and declarations in searchable
13 .PDF format and tabbed for ease of the Court's use. A tabbed hardcopy of the administrative
14 record and submitted declarations will also be provided.

15 **7. Motions**

16 The County's demurrer is set to be heard on May 30, 2018. The County also anticipates
17 a motion to intervene filed by some number of the adjoining real-property owners and original
18 appellants before the Planning Commission.

19 While not now anticipated, the Parties reserve their rights to file other necessary
20 motions, including but not limited to motions related to the disposition of this matter, the
21 production and verification of evidence, the conduct of the hearing, and post-hearing matters.

22 **8. Continuance of CMC**

23 The Parties agree and stipulate that given the County's pending demurrer and the
24 anticipated motion to intervene by interested parties, good cause exists to continue the case
25 management conference currently scheduled for April 25, 2018 to May 30, 2018 or as soon
26 thereafter as may be convenient for the court and the Parties.

27 **9. Other Matters**

28 **a. Petitioner's Position Regarding Trial Setting**

1 Petitioner has requested a non-jury trial and estimates trial to require five (5) to seven
2 (7) days. Petitioner is unavailable for trial the weeks of:

- 3 • September 17, 2018;
- 4 • October 15, 2018;
- 5 • March 25, 2019, and;
- 6 • May 13, 2019.

7 **b. County's Position Regarding Trial Setting**

8 Assuming the participation of intervening parties, the County estimates trial to require
9 one (1) to three (3) days. County is unavailable for trial during the following time periods:

- 10 • June 11, 2018 through June 15, 2018;
- 11 • July 12, 2018 through July 23, 2018;
- 12 • August 9, 2018 through August 17, 2018, and;
- 13 • September 3, 2018 through September 19, 2018.

14 **10. Obstacles to Settlement**

15 The Parties remain open to potential settlement discussions, however, the Parties' core
16 contentions regarding the interpretation of the County's zoning ordinances and required
17 processes make settlement unlikely.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

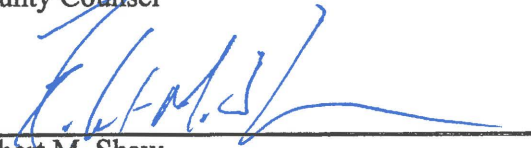
Joint Case Management Statement and Stipulation

The Parties hereby submit this joint case management statement for the Court's consideration.

The Parties further agree and stipulate that given the County's pending demurrer and the anticipated motion to intervene by interested parties, good cause exists to continue the case management conference currently scheduled for April 25, 2018 to May 30, 2018 or as soon thereafter as may be convenient for the court and the Parties.

Dated: April 19, 2018

CHARLES J. McKEE
County Counsel

By 
Robert M. Shaw
Deputy County Counsel
Attorneys for Defendants COUNTY OF
MONTEREY and BOARD OF SUPERVISORS OF
THE COUNTY OF MONTEREY

Dated: April 19, 2018

Fenton & Keller, PC

By 
ALEX J. LORCA
Attorneys for Petitioner/Plaintiff HILLTOP
RANCH AND VINEYARD, LLC

Pursuant to the stipulation of the parties and for good cause, the Court hereby continues the April 25, 2018 case management conference to _____.

SO ORDERED.

By _____
HON. JUDGE LYDIA M. VILLAREAL

PROOF OF SERVICE

I am employed in the County of Monterey, State of California. I am over the age of 18 years and not a party to the within action. My business address is 168 W. Alisal Street, 3rd Floor, Salinas, California.

On April 19, 2018, I served a true copy of the following document(s):

JOINT CASE MANAGEMENT STATEMENT

on the interested parties to said action by the following means:

- BY HAND-DELIVERY:** By causing a true copy thereof, enclosed in a sealed envelope, to be hand-delivered.
- BY MAIL:** By placing a true copy thereof, enclosed in a sealed envelope, for collection and mailing on that date following ordinary business practices, in the United States Mail at the Office of the County Counsel, 168 W. Alisal Street, 3rd Floor, Salinas, California, addressed as shown below. I am readily familiar with this business's practice for collection and processing of correspondence for mailing with the United States Postal Service, and in the ordinary course of business, correspondence would be deposited with the United States Postal Service the same day it was placed for collection and processing.
- BY ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed below.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 19, 2018, at Salinas, California.


Cassandra Gonzalez

NAMES AND ADDRESSES OF EACH PARTY SERVED:

David S. Sweigert, Esq.
Alex J. Lorca, Esq.
John S. Bridges, Esq.
FENTON & KELLER
A Professional Corporation
2801 Monterey-Salinas Highway
Post Office Box 791
Monterey, CA 93942-0791
dsweigert@fentonkeller.com
alorca@fentonkeller.com
jbridges@fentonkeller.com
Attorneys for Petitioner/Plaintiff