

Attachment A  
Discussion

Lewis & Katherine Richardson  
PLN090087



# DISCUSSION

## I. INTRODUCTION

On October 8, 2010, California American Water Company applied for a Combined Development Permit Combined Development Permit consisting of: 1) a Use Permit for the California American Company to replace two (2) 20,000 gallon water tanks at the "Upper Rimrock" site with one (1) 120,000 gallon water tank and Design Approval; 2) a Use Permit pursuant to section 21.62.030.B of the Monterey County Code to exceed the 15 foot height limit of the zoning district to allow a water tank 18 feet high; and 3) a Use Permit for the removal of a protected tree (one 8-inch oak tree) in an easement owned by California American Water Company on the Appellant's property. On April 25, 2012, the Planning Commission adopted a Negative Declaration and approved the Combined Development Permit for the project (**Attachment E**).

On May 7, 2012, the Appellant, Katherine Richardson, filed a timely appeal (**Attachment C**) to the Planning Commission's approval of the Combined Development Permit. The appeal is brought on the basis that there was a lack of a fair or impartial hearing, that Findings 1, 2, 3, 4, 5 and 6 and the decision are not supported by the evidence, and that the decision is contrary to law contending:

- There was a lack of a fair or impartial hearing because the only person from the Planning Department that visited the site went on maternity leave before the staff report was completed. None of the Planning Commissioners viewed the cliff top where the tank is proposed to be located. Only seven out of ten Planning Commissioners were present to hear this application;
- The findings or conditions are not supported by the evidence;
- The decision is contrary to law; and
- The Appellant disagrees with the Findings made in Findings 1 through 6 in the April 25, 2012 staff report.

The Appellant also requests waiver of the appeal fee.

## II. ANALYSIS

### A. Factual Background

The project consists of a Combined Development Permit consisting of: 1) a Use Permit to place one (1) 120,000 gallon California American Company water tank at the "Upper Rimrock" site replacing two (2) 20,000 gallon tanks and Design Approval; 2) a Use Permit pursuant to 21.62.030.B in order to exceed the 15 foot height limitation of the district to allow a water tank of 18 feet high; and 3) Tree Removal Permit for the removal of a protected tree (one 8-inch oak tree). The site is a 0.40 acre water tank easement within a 4.76 acre parcel located within the developed Harper Canyon subdivision recorded February 5, 1991, Cities and Towns, Volume 17, Page 33 as Lot 11. The site is accessible through a dirt road located to the southwest of the existing single family dwelling. The property is zoned LDR/B-6-D or "Low Density Residential with a Building Site and Design Review overlay." Pursuant to Monterey County Code Section 21.14.050.Q, this zoning designation allows for the development of water storage tanks serving 15 or more service connections with a Use Permit.

The project was referred to the Toro Land Use Advisory Committee (LUAC) on November 8, 2010 and continued to December 13, 2010 (**Attachment F**). Staff requested the LUAC provide feedback on colors of the replacement however, no guidance was given in regards to suggested colors. The LUAC discussed several concerns which included the tank location above ground,

the validity of the geotechnical report, the size of the proposed tanks, adequacy of the tank size, whether or not the replacement tank was going to be used for fire protection or future growth, construction impacts to the roads leading to the tank, and maintenance of the tanks. After lengthy discussion, the LUAC supported the tank replacement on a 3 to 1 vote with recommended changes. The storage tank should be placed underground, ok to slightly infringe on 25% slopes and a guarantee from Cal-Am that no construction damage will occur on the existing roads from the tank replacement. Staff received verbal and written communication during Toro Land Use Advisory Committee review (LUAC). See **Attachment F**. Staff's responses to the LUAC's concerns are as follows:

#### *Colors of the tank*

Staff has implemented a standard condition of approval stating that prior to the issuance of building or grading permits the applicant shall submit the color of the water tank and landscaping to blend the tank in with the existing surrounding vegetation. The applicant plans to keep the tank the same as the existing, a tan beige called "TNEMEC Warm Sun."

#### *Fire Suppression*

To address the concern of fire suppression and the adequacy of the proposed tanks for fire suppression, staff provided the LUAC with a letter from the Fire Department addressing fire suppression (**Attachment J**).

#### *Placement of Tank Underground*

The applicant justifies their proposal to replace the 2 existing above ground 20,000-gallon water tanks with one above ground 120,000 gallon water tank. The replacement of the existing tanks was not submitted as an underground water tank because the proposed above ground water tank meets the development standards of the zoning district and is consistent with the policies of the 2010 General Plan and Toro Area Plan. Consequently, because cost estimates for underground tanks of similar size are 4-5 times higher, the water purveyor (Cal-Am) considers this before it submits a budget to the California Public Utilities Commission (PUC) for approval. Cal-Am maintains that justification for proposing the above ground tanks is to minimize the cost of the project and thereby reduce the cost of the project to the rate payers. Cal-Am stated that the PUC considers these issues before approving a budget and is less likely to approve the additional cost of a below ground tank when the county did not require it.

#### *Construction Impacts to the Road*

Construction impacts with the tank replacement and maintenance of the road were addressed in the Negative Declaration; specifically, the applicant shall submit a Construction Management Plan (CMP) to the RMA - Planning Department and the Department of Public Works for review and approval as a standard condition of approval. The CMP shall include measures to minimize traffic impacts during the construction/grading phase of the project and shall provide the following information: Duration of the construction, hours of operation, estimated number of truck trips that will be generated, truck routes, number of construction workers, parking areas for both equipment and workers, locations of truck staging areas and Best Management Practices to be implemented throughout the project. Approved measures included in the CMP shall be implemented by the applicant during the construction/grading phase of the project. Maintenance of the tanks will not change; Cal-Am personnel will continue to inspect the tanks weekly.

*Development on slopes over 25%*

Infringement on slopes of over 25% will comprise a total area of 227 square feet. The 2010 Monterey County General Plan, Section OS-3.5, states that where proposed development impacting slopes in excess of twenty five percent (25%) does not exceed ten percent (10%), or 500 square feet of the total development footprint (whichever is less), a discretionary permit shall not be required. The total development footprint is 2,273 square feet; therefore, the 10% limit equals 227 square feet. The project will only affect approximately 227 square feet and therefore complies with the rule for this exception.

The Draft Negative Declaration for PLN090087 (**Attachment H**) was prepared in accordance with CEQA and circulated for public review from January 11, 2012 to February 9, 2012. Potential impacts to Aesthetics, Biology, Air Quality, Cultural Resources, Geology/Soils, Greenhouse Gases, and Hydrology and Water Quality were identified in the Initial Study. Site investigations and technical reports determined that no significant impacts would occur as a result of the proposed project activities.

The following clarifying revisions to the circulated Negative Declaration were made::

- 1) the number of units the Upper Rimrock system serves is 69, rather than 41; and
- 2) that the existing tanks are 20,000 gallon tanks not 25,000 gallons as stated in the environmental document.

This information does not make significant modifications to the Negative Declaration or change the conclusions made in the Initial Study regarding impacts from the project; rather, it serves to correctly describe the service area identified as the Rimrock upper gradient and to clarify correctly the number of existing connections. Because the information merely clarified and amplified the negative declaration, recirculation is not required. (CEQA Guidelines section 15073.5(c) (4)). Staff received a comment from Mike Weaver (See **Attachment I**) during the 30 day public comment period. The comments were addressed in the project analysis and not found to be substantive as indicated below in the following explanations:

Water System Infrastructure:

Public service utility company infrastructure is exempt from building regulations pursuant to Monterey County Code Section 18.02.050 (E) (34). Oversight of the Cal Am water system is the responsibility of the California Department of Health Services.

Road Congestion during Construction:

Staff has added a non-standard condition (Condition No. 11) to establish construction hours in conjunction with Public Works condition requiring a Construction Management Plan (CMP). The CMP will include measures to minimize traffic impacts during the construction/grading phase of the project and shall provide the following information:

- Establish duration of the construction, hours of operation; and
- Provide an estimate of the number of truck trips that will be generated; and
- Identify truck routes, number of construction workers; and
- Identify parking areas for both equipment and workers; and
- Identify locations of truck staging areas; and
- Identify Best Management Practices to be utilized throughout construction.

With the aforementioned conditions of approval, it has been determined that implementation of the CMP in conjunction with specified hours of operation will reduce the potential impact of road congestion to a less than significant level.

Piecemeal and growth inducing:

The applicant has provided the following information regarding the increase in capacity serving the existing residents. The Ambler Park Water System is a multi-pressure zone system which is very common in canyon areas. This means that although the different zones are part of one water system they are not interconnected. The Upper Rimrock Tanks serve the highest zone in the Rimrock community. The neighboring Lower Rimrock Tanks serve a particular lower pressure zone and the Paseo Privado tanks serve a different lower pressure zone which includes the Meadows Subdivision. The supply from the Upper Rimrock Tanks cannot be used for the lower pressure zone residents such as the Meadows residents, because it would be delivered at too high a pressure to customers. In addition, the Upper Rimrock gradient has a significant storage deficit (based on equalization and fire protection requirements) of 135,000 gallons based on 2006 demands. The storage requirements for this gradient (and subsequent storage deficit) are based on the following criteria:

- Equalization: 30% of Maximum Day Demand
- Fire Storage: 1,000 gpm Fire Flow for a duration of two (2) hours = 120,000 gallons.

California American Water requires this upgrade to ensure that adequate water supply and fire protection can be provided in the Upper Rimrock gradient. The Monterey County Regional Fire Protection District has asked the applicant to increase fire capacity. Because the increase in capacity will correct existing deficiencies in domestic storage and fire flow capacity within an area identified as the Upper Rimrock gradient and because the hydraulic pressure limits the use of Upper Rimrock tanks as explained above, the increase in size of the replacement tank is not growth inducing.

The Meadows water tank project is a separate application to resolve similar issues in that area. The projects are not interconnected. These projects are not designed to increase the service area by adding capacity. The purpose of increased capacity is to address existing water demand and fire flow inadequacies. The proposed tank replacement is needed for fire safety for the existing connections the current tanks serve. There will be no cumulative impacts as a result of the replacement, as the tanks will use existing water and no expansion is proposed. Therefore, the project was found to have no cumulative impact.

Geology:

The Geotechnical Report prepared by Pacific Crest Engineering, dated March 2009 states, "The results of our slope stability analysis are presented in Appendix B of this report, and indicate that the computed factors of safety (FS) meet or exceed minimum industry standard requirements for the stipulated failure surface under static and pseudo-static conditions." Page 6, "Our analysis of the project site indicates that the potential for liquefaction to occur is low and consequently the potential for lateral spreading is also low."

Aesthetics:

The current tanks are located on an already existing water tank easement, located approximately 230 feet northeast of the Richardson home, and sit on a hill that is approximately 80 feet higher than the Richardson home. In this case, the site is not visible from Highway 68 and the zoning designation already requires design review of structures to ensure development matches the neighborhood character and visual integrity of the

neighborhood. Design control has been implemented to ensure that the replacement tank match the colors and materials of the surrounding vegetation. The replacement tank will match the existing colors of "TNEMEC Warm Sun" (tan beige). Therefore, there will be a less than significant impact to a scenic vista or a scenic resource. (See Finding 1d in **Attachment B**)

#### B. Staff Response to Appellant Contentions

The appellant challenges the Planning Commission Decision to approve the Combined Development Permit on April 25, 2012 on the following grounds: there was not a fair and impartial hearing; the findings and decision or conditions are not supported by the evidence; and that the decision was contrary to law. Staff's response to each of the Appellant's contentions follows:

##### **Appellant's Contention No. 1:**

There was a lack of a fair or impartial hearing because the only person from the Planning Department that visited the site went on maternity leave before the staff report was completed. None of the Planning Commissioners viewed the cliff top where the tank is proposed to be located. Only seven out of ten Planning Commissioners were present to hear this application.

##### Staff's Response No. 1:

The original planner visited the site and prepared the Initial Study for the project before going on leave. The planner that completed the staff report for the Planning Commission after the project was reassigned had the benefit of the previous planner's notes, the information in the Initial Study, photographs, plans and other information in the file was adequate for the analysis. Prior to the Board of Supervisors' hearing, the planner conducted a site visit on June 29, 2012. Staff does not have any information regarding how many Planning Commissioners individually visited the site prior to the hearing. The Planning Commission consists of ten commissioners, and a quorum of Planning Commissioners was present at the hearing. The hearing was duly noticed and all members of the public present had an opportunity to be heard. The Planning Commission voted 6-1 with three members absent in favor of the project.

##### **Appellant's Contention No. 2:**

The findings or conditions are not supported by the evidence because:

- a) The findings minimize the potential danger of the new tank and numerous environmental concerns.
- b) The conditions of approval appear to be based on conditions for a single family home.
- c) There is evidence of sloughing and erosion below the site where the tank would be located and this is not addressed in the findings.
- d) This is an example of a piecemeal project because the Planning Commission was told that there are plans for another tank on the site.
- e) The Planning Commission was told that Cal Am has requests before the California Public Utilities Commission (CPUC) to extend water mains and the service area of Ambler Water from wells in Corral de Tierra that are in the County's B-8 Zone.
- f) Cal Am also has plans to build another water storage tank on adjacent property in Encina Hills while they are installing the new 120,000 gallon tank.
- g) The project description changed just prior to the public hearing to indicate that the two tanks that were previously represented as 25,000 gallon in size were actually 20,000 gallons each and that fire protection for 44 homes became protection for 69 homes.

##### Staff's Response No. 2:

- a) Finding #2 is that the site is physically suitable for the proposed use. Potential impacts to soil/slope stability were addressed in the Initial Study and the Geotechnical Report prepared by Pacific Coast Engineering for the project. The Geotechnical Report states: *"The results of our slope stability analysis are presented in Appendix B of this report, and indicate that the computed factors of safety (FS) meet or exceed minimum industry standard requirements for the stipulated failure surface under static and pseudo-static conditions."* Page 6 of the report states: *"Our analysis of the project site indicates that the potential for liquefaction to occur is low and consequently the potential for lateral spreading is also low."* Other issues that were addressed in the Initial Study include aesthetics, air quality, biological resources, cultural resources, greenhouse gas emissions and hydrology/water quality.
- b) The conditions of approval are based on the proposed project, not a single family home.
- c) See response to Contention 2.a.
- d) Aman Gonzales from Cal-Am stated at the LUAC meeting on December 13, 2010 that a second 60,000 tank at the site might be explored in the future, but Cal-Am would have to get PUC approval first (p. 4-5 of LUAC minutes). If there are plans for another tank on the site, it would be evaluated if and when an application is submitted to the Planning Department.
- e) The Ambler Park Water System is a multi-pressure zone system which is very common in canyon areas. This means that although the different zones are part on one water system they are not interconnected. The Upper Rimrock Tanks serve the highest zone in the Rimrock community. The neighboring Lower Rimrock Tanks serve a particular lower pressure zone and the Paseo Privado tanks serve a different lower pressure zone which includes the Meadows Subdivision. The supply from the Upper Rimrock Tanks cannot be used for the lower pressure zone residents, such as the Meadows residents, because it would be delivered at too high a pressure to customers. In addition, the Upper Rimrock gradient has a significant storage deficit (based on equalization and fire protection requirements) of 135,000 gallons based on 2006 demands. The storage requirements for this gradient (and subsequent storage deficit) are based on the following criteria:  
Equalization: 30% of Maximum Day Demand  
Fire Storage: 1,000 gpm Fire Flow for a duration of two (2) hours = 120,000 gallons. Cal Am requires this upgrade to ensure that adequate water supply and fire protection can be provided in the Upper Rimrock gradient. The Monterey County Regional Fire Protection District has asked the applicant to increase fire capacity. Therefore, because the increase in capacity will correct existing deficiencies in domestic storage and fire flow capacity within an area identified as the Upper Rimrock gradient and because the hydraulic pressure limits the use of Upper Rimrock tanks, the increase in water storage is consistent with current demand and not growth inducing. The Meadow water tank project is considered a separate application to resolve similar issues in that area. The projects are not interconnected. These projects are not designed to increase the service area by adding capacity. The purpose of increased capacity is to address existing water demand and fire flow inadequacies. The proposed tank replacement is needed for fire safety for the existing connections the current tanks serve. There will be no cumulative impacts as a result of the replacement, as the tanks will use existing water and no expansion is proposed. Therefore, the project was found to have no cumulative impact on projects in the area.
- f) See response to Contention 2.e.
- g) Non-substantive changes were made to the project description after release of the Initial Study/Mitigated Negative Declaration as described by the Appellant. However, the project description was reflected accurately in the April 25, 2012 Planning Commission public hearing notice, staff report, and the findings and evidence in the Resolution



adopted by the Planning Commission. The changes were not substantive and the Planning Commission adopted a finding, with supporting evidence, that the project will not have a significant effect on the environment. Further, the Planning Commission found that the changes did not make significant modifications to the Negative Declaration or change the conclusions made in the Initial Study regarding the impacts of the project. The changes merely clarified the number of service connections in the Upper Rimrock system and the correct tank sizes.

**Appellant's Contention No. 3:**

The decision is contrary to law because:

- a) A Baseline Study of the Ambler water system was asked for by area residents. There are two other applications being processed by the Planning Department for larger water storage tanks in the Ambler Water System.
- b) The conditions of approval do not reflect potential impacts to the B-8 Zone District which calls for no intensification of use. The tanks can be growth inducing.
- c) Neighbors in the Meyer Road area have revealed that two 8" Ambler Water mains go up Meyer Road and make a right turn then continue to the top of the hill above the Rimrock subdivision.
- d) Residential water use has been trending downward with plumbing retrofits, more dryscape landscaping and water rate increases. Why the need for multiple larger water tanks, and in different locations?

Staff's Response No. 3:

- a) The Meadows Water Tank project (PLN080527) is a separate application to resolve similar issues in that area. The Harper Canyon/Encina Hills Subdivision water requirements were not analyzed in this project because there is currently no proposal to increase water capacity for additional connections under this application. This project's interconnectivity as part of the Ambler water system was not considered an issue because the purpose of increased capacity is to address existing water demand and fire flow inadequacies for the upper Rimrock area. The proposed tank replacement is needed for fire safety for the existing connections the tanks currently serve. Staff confirmed that no other water tank projects are currently approved within the proposed Encina Hills Subdivision coinciding with this application. The Initial Study prepared for the project determined in the Mandatory Findings of Significance (c), found the following: No Impact – The proposed tank replacement is needed for the fire safety of the existing connections. As a result, the project, as proposed, was analyzed as a stand alone project, and would not warrant the establishment of baseline for the entire Ambler Water system. For those reasons, there is no cumulative impact because the replacement tanks do not expand the existing service connections.
- b) The project does not violate the B-8 zoning. "The purpose of the B-8 zone is to restrict development and/or intensification of land use in areas where, due to water supply, water quality, sewage disposal capabilities, traffic impacts or similar measurable public-facility type constraints, additional development and/or land use is found to be detrimental to the health, safety, and welfare of the residents of the area, or the County as a whole." (Monterey County Code, sec.21.42.030.H.) "Intensification" means the change in use of a building site which increases the demand on the constraint. This replacement tank does not increase water demand. See response to Contention 2.e and 3.a.
- c) Staff confirmed that the 8" water main on Meyers Road is served by a separate tank which is isolated from the Upper Rimrock tank proposed for replacement. There is no indication from the evidence submitted by the applicant (Map delineating the water

service lines in the street) that those 8" lines extend beyond Meyers Road or that they area connected to the Upper Rimrock service area.

- d) See response to Contention 2.e.

#### **Appellant's Contention No. 4:**

The Appellant disagrees with the Finding made in Finding 1: Consistency, area is inappropriate for development.

- a) The area is not appropriate for development because it is at the top of a tall steep cliff.
- b) The tank isn't a replacement for one that it "intermittently leaking" but a huge new tank.
- c) The tank is so huge the orange flagging can be seen from the hilltops in Corral de Tierra.
- d) What dense vegetation? It's not there.
- e) Testimony in the record reflects it is difficult to grow things atop Rimrock; a decade or more could go by before achieving 18 foot high vegetation. Type of landscaping is undefined. If trees are planned, they will add to the weight on that cliff top that can only increase risk and danger.
- f) The current tree removal is not unavoidable. It was suggested to replace the one "intermittently leaking" tank with a tank of the same size.
- g) Valerie Negrete made a site inspection on November 8, 2010. She is now gone.
- h) The LUAC and Rimrock area neighbors also discussed various categories of "risk" including what the term "ordinary risk" means. It is a higher category of risk. The cliff top location was also discussed, the risks, dangers, and history, as reflected in the LUAC notes on file in the Planning Department.

#### Staff's Response No. 4:

- a) See response to Contention 2.a.
- b) Staff observed the poor condition of the tank at the site visit, and photos were presented at the April 25, 2012 Planning Commission hearing to demonstrate that the tank is leaking. However, the project as described is to replace the tanks in order to increase capacity for fire flow. The fact that the tanks are leaking was not the principle reason for the replacement. See response to Contention 2.e.
- c) The project was staked for a visual assessment according to the Monterey County Staking Criteria adopted by the Board of Supervisors, Resolution No. 09-360. It was determined that the proposed project is not visible from a public road and not considered ridgeline development, which by definition in the Monterey County Code Title 21, Section 21.06.950, is defined as development which has the potential to create a silhouette on the crest of a hill when viewed from a common public viewing area. The hilltops in Corral de Tierra are not a common public viewing area.
- d) Staff observed dense vegetation on the project site during the site visits. Photos presented at the April 25, 2012 Planning Commission hearing illustrate the density of the existing vegetation which is consistent with the surrounding area.
- e) The project has been conditioned to submit a landscaping plan (Condition No. 7) that includes location, species, and size of plantings to reduce the visibility of the water tank. The condition requires the Owner/Applicant/Landscape Architect to submit a plan with success criteria to ensure the vegetation is established at the required 18 foot height within 5 years of planting, including a replacement plan should the vegetation not survive or achieve the 18 foot height. The root systems of the vegetation that is planted will provide stabilization of the slope not weight that will increase risk or danger.
- f) The proposed tree removal was found to be the minimum required for the project, as proposed, which is constrained by available area within the easement. Therefore, the

proposed tree removal may be allowed to accommodate the 120,000 gallon tank to achieve the water flow capacity for fire protection.

- g) Valerie Negrete conducted site inspections on May 21, 2010 and November 8, 2010 for the proposed water tank replacement and prepared an Initial Study for the project. Ramon Montano conducted a follow-up site visit on June 29, 2012.
- h) See response to Contention 2.a.

**Appellant's Contention No. 5:**

The Appellant disagrees with the Finding made in Finding 2: Site Suitability

- a) The site is not suitable for the water tank proposed and the finding offers no evidence that any County Department made a field trip inspection to the site with the exception of Ms. Negrete who is gone.
- b) Technical consultants hired by Cal Am found the site to be categorized as Ordinary Risk, a higher level of risk. This is not a risk we are willing to assume for the edge of an earthquake prone cliff with a history of erosion.

Staff's Response No. 5:

- a) See response to Contention 2.g.
- b) According to the "Geotechnical and Geological Investigation for Upper Rimrock Canyon Tank Site" prepared by Pacific Coast Engineering, "Ordinary Risk" applies to the vast majority of structures: most commercial and industrial buildings, small hotels and apartment buildings, and single family residences. Characteristics of this level of risk include, but are not limited to, no significant potential for loss or injury and that damage would be limited to repairable damage in most cases. See response to Contention 2.a.

**Appellant's Contention No. 6:**

The Appellant disagrees with the Finding made in Finding 3: Health and Safety

- a) This finding and evidence ignores the B-8 zoning.
- b) It ignores the cliff top location.
- c) It ignores a Baseline Study of what exists now in the Ambler Water system.
- d) The Planning Department Director and the RMA Acting Deputy Director are aware of issues raised with the Ferrini Oaks project, the request by Washington Union School District to tie into the Ambler System, the need for larger water storage tanks for the Corral de Tierra Shopping Center project, and a proposal by the Encina Hills Subdivision to tie into the well at Ferrini Oaks.

Staff's Response No. 6:

- a) See response to Contentions 2.e and 3.a and 3.b.
- b) See response to Contention 2.a.
- c) See response to Contentions 2.e and 3.a.
- d) This project is independent of other projects. See response to Contentions 3.a and 3.c.

**Appellant's Contention No. 7:**

The Appellant disagrees with the Finding made in Finding 4: No Violations

- a) The County Planning Department is currently out of compliance with project conditions and mitigation monitoring on the Ferrini Oaks project.
- b) There needs to be a Baseline Study of the Ambler Water system.

Staff's Response No. 7:

- a) Compliance with the Ferrini Oaks project conditions is irrelevant to the Richardson project, as that project is on a different property, involves different facts and circumstances, and is not before the Board of Supervisors as part of this project.
- b) See response to Contentions 2.e and 3.a.

**Appellant's Contention No. 8:**

The Appellant disagrees with the Finding made in Finding 5: CEQA (Negative Declaration)

- a) There is substantial evidence that the proposed project will have a substantial effect on the environment. The Department of Fish and Game found a significant impact to wildlife necessitating the payment of a fee if the project goes forward.
- b) Intensification of water use violates B-8 zoning.
- c) The evidence of three Cal Am Ambler Water annexations outside of the B-8 was introduced into the record.
- d) Piecemeal applications for larger storage tanks were introduced into the record.
- e) The Initial Study as referenced as being "on file" in the offices of the Planning Department is a hidden document unknown to us, the property owners and unwilling applicants in this process.
- f) A 59% increase in the number of units (41 to 69) is significant. Where is the map or descriptive information as to the location of the 41 versus the 69?
- g) Cal-Am has reported numbers of tanks and tank sizes differently to the California Department of Public Health, the California Public Utilities Commission, Monterey County Rural Fire Department, and Monterey County Planning Department.
- h) The County did not investigate or do a Baseline Study.
- i) The County does not identify how many households, or single-family dwellings are located in Rimrock Subdivision Phases I and II.
- j) Project Planner Valerie Negrete received several comments before and during the comment period. Now the County can only find one?

Staff's Response No. 8:

- a) The applicant did not apply for a determination of "no effect" from the California Department of Fish and Game. The Fish and Game fee will be paid at the time the Notice of Determination (NOD) is filed. The Fish and Game fee is required of all Negative Declarations and Mitigated Negative Declarations unless the Department of Fish and Game issues a determination of "no effect."
- b) See response to Contentions 2.e and 3.a and 3.b.
- c) Comment noted. See response to Contention 3.a.
- d) See response to Contention 3.a.
- e) According to the "Notice of Intent to Adopt the Negative Declaration", a copy of the Initial Study was distributed to the Appellant. The Appellant acknowledged receipt of the Initial Study in a letter dated February 8, 2012, included as part of the Appeal. The Initial Study was available for public review on the Planning Department website and at the Planning Department, located at 168 West Alisal Street, Salinas, during the public review period between January 11, 2012 and February 9, 2012. The project file is available for public review at the same location. The contents of the file are public record.
- f) The map showing the service areas is located in the file and was also presented at the public hearing before the Planning Commission held on April 25, 2012.
- g) Comment noted. See response to Contention 3.a.
- h) See response to Contentions 2.e and 3.a.
- i) The map showing the service areas is located in the file and was also presented at the public hearing before the Planning Commission held on April 25, 2012.

- j) Staff received a comment from Mike Weaver (See Attachment I of the July 10, 2012 staff report) during the 30 day public comment period. The comments were addressed in the project analysis in the April 25, 2012 Planning Commission staff report and not found to require a change in the environmental analysis and conclusions of the ND.

**Appellant's Contention No. 9:**

The Appellant disagrees with the Finding made in Finding 6: Tree Removal

- a) Because project alternatives are not considered or listed, the removal of an oak tree larger than 8" has no evidence as to necessity.
- b) The replacement oak location is not identified. It is our property and we were not consulted.
- c) There was one Planning site inspection by Ms. Negrete. Where are Ms. Negrete's notes as evidence on the issue? We have not seen them.

Staff's Response No. 9:

- a) Negative Declarations are not required to analyze alternatives to the project. Because Cal-Am is limited in area on the Richardson Property, there was no alternative site within the easement area. See response to Contention 4.f.
- b) Condition No. 10 for the project requires the Owner/Applicant to replace the tree within the same general location as the tree being removed. There is sufficient area within the easement to allow for replacement in the easement area without impacting the Appellant's property.
- c) The project file is available for public review at the Planning Department, located at 168 West Alisal Street, Salinas. The Planner's notes and the contents of the file are public record.

