

**Before the Board of Supervisors in and for the  
County of Monterey, State of California**

**Resolution No. 12-224**

Resolution by the Monterey County Board of Supervisors: )  
a. Denying an appeal by Katherine Richardson from the )  
Planning Commission’s adoption of a Negative )  
Declaration and approval of an application by )  
California American Water Company for a Combined )  
Development Permit consisting of: 1) a Use Permit to )  
replace two (2) existing 20,000 gallon water tanks with )  
one (1) 120,000 gallon water tank and Design )  
Approval; 2) a Use Permit 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); )  
b. Denying the Appellant’s request to waive the appeal fee )  
and require Appellant to pay the appeal fee; )  
c. Adopting the Negative Declaration prepared for the )  
project; and )  
d. Approving the 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). )  
[Appeal of a Combined Development Permit - PLN090087/ )  
Richardson (Cal-Am), 24522 Rimrock Canyon Road,  
Salinas, Toro Area Plan]

**An appeal by Katherine Richardson from the Planning Commission approval of the Richardson (Cal-Am) application (PLN090087) came on for public hearing before the Monterey County Board of Supervisors on July 10, 2012. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Monterey County Board of Supervisors hereby finds and decides as follows:**

**FINDINGS**

1. **FINDING:** **PROCESS** – The subject Combined Development Permit (PLN090087/ Richardson (Cal-Am)) complies with all applicable procedural requirements.
- EVIDENCE:** a) On October 8, 2010, California American Water Company (“Cal-Am”) applied for a Combined Development Permit to allow the replacement

- of two existing 20,000 gallon water tanks with one 120,000 gallon water tank in an easement owned by California American Water Company on the Appellant's property. The Project consists of a Combined Development Permit consisting of: 1) a Use Permit to replace two (2) existing 20,000 gallon water tanks with one (1) 120,000 gallon water tank and Design Approval; 2) a Use Permit 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). ("Project").
- b) Lewis Richardson signed the application as applicant for the Combined Development Permit and owns the underlying property on which California American Water Company holds an easement. California American Water Company (Cal Am) holds an easement on Lewis Richardson's property and is listed as "agent." The appellant is Katherine Richardson, the spouse of Lewis Richardson, and Ms. Richardson cites to her husband's and her collective inability to afford the appeal fee in her request for a waiver of the appeal fee. Thus, there is not a clear separation between the applicant and appellant, and it appears that appellant is challenging the approval of the Combined Development Permit for which appellant applied. To the extent that the appeal pertains to a dispute over the use of the easement between appellants and Cal Am, as servient and dominant tenements, the County does not have jurisdiction over that private dispute. Moreover, to the extent appellant's dispute is with Cal Am, appellant has remedies to resolve disputes with Cal Am other than appeal of the County's decision on this permit application.
  - c) The proposed water tank replacement was referred to the Toro Land Use Advisory Committee on two separate occasions November 8, 2010 and December 13, 2010. Several issues were reviewed at the November meeting which resulted in the item being continued to the December meeting in order to allow the applicant time to address questions from the LUAC. The applicant responded to the LUAC's concerns at the December 13, 2010 meeting.
  - d) On April 25, 2012, the Planning Commission adopted a Negative Declaration (ND) and approved the proposed Combined Development Permit.
  - e) On May 7, 2012, Katherine Richardson ("Appellant") timely filed an appeal from the Planning Commission's adoption of the ND and approval of the Combined Development Permit. The Appellant also requested that the appeal fees be waived. 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. The Appeal is Attachment C to the July 10, 2012 staff report. The appellant and applicant agreed to the planner's request to schedule the hearing on the appeal on July 10, 2012.
  - f) The Board of Supervisors conducted a public hearing on the appeal on July 10, 2012. Notices of the public hearing on the appeal were

published in *The Californian* and mailed to neighbors within 300 feet on June 29, 2012 pursuant to Monterey County Code Chapter 21.78.

- g) Public hearing notices for the appeal were posted in three different public places on or near the subject property by Planning Department staff on June 29, 2012 pursuant to Monterey County Code Chapter 21.78.
- h) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File PLN090087.

2. **FINDING:** **CONSISTENCY** – The Project, as conditioned, is consistent with the applicable plans and policies which designate this area as appropriate for development.

**EVIDENCE:** a) During the course of review of this application, the project has been reviewed for consistency with the text, policies, and regulations in:

- The 2010 Monterey County General Plan; and
- Toro Area Plan; and
- Monterey County Zoning Ordinance (Title 21).

No conflicts were found to exist. No communications were received during the course of review of the project indicating any inconsistencies with the text, policies, and regulations in these documents.

- b) The property is located at 24522 Rimrock Canyon Road, Salinas (Assessor's Parcel Number 416-601-011-000), Toro Area Plan. The parcel is zoned LDR/B-6-D or "Low Density Residential with a Building Site and Design Review overlay," which allows water tanks. Therefore, the project is an allowed land use for this site. The subject water tank is a replacement of an existing water tank within a designated water tank easement.
- c) The subject property is located within a Design Control District, which provides for the regulation of location, size, configuration, materials, and colors of structures to ensure protection of the public viewshed, neighborhood character, and visual integrity of structures. 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.
- d) Monterey County General Plan policies T-3.1 and T-3.2 require land use, architectural, and landscaping controls be applied and to encourage sensitive site design to preserve Toro's visually sensitive areas and scenic entrances of River Road and Highway 68 intersections. 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. The replacement tank will match the existing colors of



- “TNEMEC Warm Sun” (tan beige). In addition, as a standard condition of approval, the replacement tank will be painted the same as the existing tank, beige to blend with the dense vegetation surrounding the tank. A condition of approval has been added to require that prior to the issuance of grading or building permits, the applicant/owner shall submit the color of the tank along with the landscaping design. Landscaping will be required to grow taller than the 18 foot high tank.
- e) The proposed 120,000 gallon tank will be 18 feet high. Monterey County Zoning Code (Title 21) designates a district height limit for a non-habitable accessory structure of 15 feet. However, Monterey County Zoning Code Title 21 height and setback exceptions Section 21.62.030. B. provides that “towers, poles, water tanks and similar structures may be erected to a greater height than the limit established for the district” with a Use Permit. A non-standard condition of approval requiring landscaping screening vegetation to grow to a height of 18 feet was required for consistency with the visual resource policies.
  - f) The project is consistent with the 2010 Monterey County General Plan, policy Section OS-3.5, which 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 of the proposed project is 2,273 square feet; therefore, the 10% limit equals 227 square feet. The project will only affect approximately 227 square feet and as a result complies with the rules of this exception. Therefore, no discretionary permit for development on slopes in excess of 25% is required.
  - g) The replacement tank will involve the removal of two (2) Coast live oak trees, one 8 inches in diameter, and the other 4 inches in diameter. Monterey County Code Section 21.64.260 requires a tree removal permit for any protected tree which is 6 inches or more in diameter. Therefore, the Combined Development Permit includes a tree removal permit for the removal of one (1) 8-inch oak tree. The removal is the minimum required in the circumstances of the case and removal will not involve an adverse environmental impact. In this case, tree removal is unavoidable (See Finding 7).
  - h) The project planner conducted a site inspection on May 21, 2010, November 8, 2010 and on June 29, 2012 to verify that the project on the subject parcel conforms to the plans listed above.
  - i) The project was referred to the Toro Land Use Advisory Committee (LUAC) for review on November 8, 2011 and then again on December 13, 2010. Based on the LUAC Procedure guidelines adopted by the Monterey County Board of Supervisors per Resolution No. 08-338, this application warranted referral to the LUAC because it was development requiring CEQA review. 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, tanks usage for fire protection or future growth, construction impacts to the roads leading to the tank, and maintenance of the tanks. The LUAC



supported the tank replacement if the tanks would be placed underground, only slightly infringe on 25% slopes, and guarantee no construction damage will occur on the existing roads from the tank replacement. The tank will encroach on 227 square feet, which does not require a discretionary permit in accordance with the Monterey County 2010 General Plan Policy OS 3-5. A standard condition of approval was added by Public Works requiring a Construction Management Plan (CMP). The CMP includes measures to minimize traffic impacts during the construction/grading phase of the project. The plan requires the specified duration of the construction, hours of operation, an estimate of the number of truck trips that will be generated, truck routes, number of construction workers, parking areas for both equipment and workers, and locations of truck staging areas. With this standard condition of approval, this impact is not considered significant. Maintenance of the tanks will not change; Cal-Am personnel will continue to inspect the tanks weekly.

- j) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File PLN090087.

3. **FINDING:** **SITE SUITABILITY** – The site is physically suitable for the use proposed.

- EVIDENCE:**
- a) The project has been reviewed for site suitability by the following departments and agencies: RMA - Planning Department, Monterey Regional Fire Protection District, Public Works, Environmental Health Bureau, and Water Resources Agency. There has been no indication from these departments/agencies that the site is not suitable for the proposed development. Conditions recommended have been incorporated.
- b) Staff identified potential impacts to Archaeological Resources, Soil/Slope Stability, and Geological. Technical reports by outside consultants indicated that there are no physical or environmental constraints that would indicate that the site is not suitable for the use proposed. County staff independently reviewed these reports and concurs with their conclusions. The following reports have been prepared:
- “Geotechnical and Geological Investigation for Upper Rimrock Canyon Tank Site” (LIB100154) prepared by Pacific Coast Engineering, Watsonville, CA, March 18, 2009.
  - “Preliminary Archeological Reconnaissance of Assessor’s Parcel Number 416-601-011-000” (LIB100190) prepared by Archaeological Consulting, Salinas, CA, March 10, 2010.
  - “Letter of Findings for a Reconnaissance Level Biological Site Assessment, Upper Rimrock Site” (LIB110081) prepared by EMC, Monterey, CA, November 5, 2010.
- c) Staff conducted a site inspection on May 21, 2010, November 8, 2010, and on June 29, 2012 to verify that the site is suitable for this use.

- d) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File PLN090087.

4. **FINDING:** **HEALTH AND SAFETY** - The establishment, maintenance, or operation of the project applied for will not under the circumstances of this particular case be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County.

- EVIDENCE:**
- a) The project was reviewed by RMA - Planning Department, Monterey Regional Fire Protection District, Public Works, Environmental Health Bureau, and Water Resources Agency. The respective departments/agencies have recommended conditions, where appropriate, to ensure that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood.
  - b) Necessary public facilities are available. The site has public water from Cal-Am. The project will not generate wastewater so a connection to public sewer is not required. The Environmental Health Bureau reviewed the project and required the applicant (Cal-Am) to submit a permit amendment application to California Department of Public Health (CDPH) including plans and specifications demonstrating compliance with California Waterworks Standards and documentation on CEQA compliance prior to construction.
  - c) Preceding findings and supporting evidence for PLN090087.

5. **FINDING:** **NO VIOLATIONS** - The subject property complies with all rules and regulations pertaining to zoning uses, subdivision, and any other applicable provisions of the County's zoning ordinance. No violations exist on the property.

- EVIDENCE:**
- a) Staff reviewed Monterey County RMA - Planning Department and Building Services Department records and is not aware of any violations existing on subject property.
  - b) Staff conducted a site inspection on May 21, 2010, November 8, 2010 and on June 29, 2012 and researched County records to assess if any violation exists on the subject property.
  - c) There are no known violations on the subject parcel.
  - d) The application, plans and supporting materials submitted by the project applicant to the Monterey County Planning Department for the proposed development are found in Project File PLN090087.

6. **FINDING:** **CEQA (Negative Declaration)** - On the basis of the whole record before the Monterey County Planning Commission, there is no substantial evidence that the proposed project as designed and conditioned, will not have a significant effect on the environment. The



Negative Declaration reflects the independent judgment and analysis of the County.

- EVIDENCE:**
- a) Public Resources Code Section 21080.d and California Environmental Quality Act (CEQA) Guidelines Section 15064.a.1 require environmental review if there is substantial evidence that the project may have a significant effect on the environment.
  - b) The Monterey County Planning Department prepared an Initial Study pursuant to CEQA. The Initial Study is on file in the offices of the Planning Department and is hereby incorporated by reference (PLN090087).
  - c) The following new information is hereby incorporated into the Negative Declaration: 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 Initial Study that circulated for public review. 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 connection. These revisions do not require recirculation of the Negative Declaration pursuant to CEQA Guidelines Section 15073.5.(c) (4) which provide that “recirculation is not required when new information is added to the Negative Declaration which merely clarifies, amplifies, or makes insignificant modifications to the Negative Declaration.”
  - d) The Initial Study provides substantial evidence based upon the record as a whole, that the project would not have a significant effect on the environment. Staff accordingly prepared a Negative Declaration.
  - e) All project changes required to avoid significant effects on the environment has been incorporated into the project and/or are made conditions of approval.
  - f) The Draft Negative Declaration (“ND”) for PLN090087 was prepared in accordance with CEQA and circulated for public review from January 11, 2012 to February 9, 2012 (SCH#: 2012011018).
  - g) Issues that were analyzed in the Negative Declaration include: aesthetics, air quality, biological resources, cultural resources, geology/soils, greenhouse gas emissions, and hydrology/water quality. Site investigations and technical reports, determined that no significant impacts would occur as a result of the proposed project.
  - h) Evidence that has been received and considered includes: the application, technical studies/reports (*see Finding 3/Site Suitability*), staff reports that reflect the County’s independent judgment, and information and testimony presented during public hearings (as applicable). These documents are on file in the RMA-Planning Department (PLN090087) and are hereby incorporated herein by reference.
  - i) Staff analysis contained in the Initial Study and the record as a whole indicate the project could result in changes to the resources listed in Section 753.5(d) of the Department of Fish and Game (DFG) regulations.



All land development projects that are subject to environmental review are subject to a State filing fee plus the County recording fee, unless the Department of Fish and Game determines that the project will have no effect on fish and wildlife resources. The site supports native wildlife. For purposes of the Fish and Game Code, the project will have a significant adverse impact on the fish and wildlife resources upon which the wildlife depends. The Initial Study/proposed ND was sent to the State Department of Fish and Game. Therefore, the project will be required to pay the State fee plus a fee payable to the Monterey County Clerk/Recorder for processing said fee and posting the Notice of Determination (NOD).

- j) Staff received a comment from Mike Weaver during the 30 day public comment period. The County has considered the comments received during the public review period, (See **Attachment I** of the July 10, 2012 staff report) and they do not alter the conclusions in the Initial Study.
- k) The Monterey County Planning Department, located at 168 W. Alisal, 2nd Floor, Salinas, California, 93901, is the custodian of documents and other materials that constitute the record of proceedings upon which the decision to adopt the negative declaration is based.

7. **FINDING:** **TREE REMOVAL** – The tree removal is the minimum required under the circumstances and the removal will not involve a risk of adverse environmental impacts.

- EVIDENCE:**
- a) The project includes application for the removal of one 8-inch oak tree. In accordance with the applicable policies of the Toro Area Plan and the Monterey County Zoning Ordinance Title 21, a Tree Removal Permit is required and the standards for granting said permit have been met.
  - b) Monterey County Code Section 21.64.260 requires a tree removal permit for any protected tree; an oak tree which is 6-inches or more in diameter is a protected tree. The project will include a tree removal permit for the removal of one (1) 8-inch oak tree for the proposed 120,000 gallon water tank. The General Plan policy T-3.7, states that removal of healthy, native oak trees in the Toro Planning Area shall be discouraged and requires an ordinance to be developed to identify required procedures for removal of these trees. To date, an ordinance has not been adopted specifically addressing the Toro Planning Area trees; however, regulations for tree removal under Monterey County Code Title 21 are consistent with General Plan policy and continue to be in force.
  - c) Due to the small size of the 8 and 4-inch oak trees, it is unlikely that the trees would support nesting. Typically, trees 15 feet in height or larger would be considered suitable habitat for nesting raptor habitat. However, as a condition of approval, in order to disturbance to potentially nesting migratory birds, the applicant will be required to schedule tree removal outside of the breeding migratory bird nesting season (September through January 31<sup>st</sup>). If tree removal is scheduled during breeding season (February 1<sup>st</sup> to August 31<sup>st</sup>), the applicant will be required to have a qualified biologist conduct a pre-construction

survey within 48 hours of commencement of ground disturbance. If nesting birds or raptors are found on the project site, an appropriate buffer plan or appropriate replacement shall be established by the project biologist.

- d) Monterey County Code Section 21.64.260.D.4, requires replacement on a one to one basis for protected trees that are removed. As a condition of approval, the applicant is required to replace the removed oak tree with one oak tree.
- e) The removal will not involve a risk of adverse environmental impacts. The majority of the tank area is disturbed and void of any native vegetation.
- f) Staff conducted a site inspection on May 21, 2010, November 8, 2010 and on June 29, 2012 to verify that the tree removal is the minimum necessary for the project and to identify any potential adverse environmental impacts related to the proposed tree removal.
- g) The application, plans and supporting materials submitted by the project applicant to the Monterey County Planning Department for the proposed development are found in Project File PLN090087.

8. **FINDING:** **APPEAL** - The appellant contends that the Planning Commission Decision to approve the Combined Development Permit on April 25, 2012 was not a fair and impartial hearing; and the findings and decision or conditions are not supported by the evidence; and that the decision was contrary to law. Upon consideration of the documentary information in the files, the staff report, the oral and written testimony, and all other evidences presented before the Board of Supervisors, the Board responds, as follows, to the Appellant's contentions:

**EVIDENCE:**

**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.

9. **FINDING:** **FEE WAIVER REQUEST** – The appeal fee does not exceed the estimated reasonable cost of staff time to process the appeal, and Appellant has not provided evidence demonstrating that they are unable to afford the fee or that the fee deprives Appellant of the exercise of their rights.

- EVIDENCE:**
- a) The Appellants have not paid the appeal fee. As part of their appeal filed on May 7, 2012, Katherine and Lewis Richardson contended that they were unable to afford the \$5,040.00 appeal fee, that the fee is “usurious,” and that high fees prohibit the public from fully participating in their local government. They requested an extension of time to file the appeal while the Board of Supervisors resolves the fee issue under consideration by the Board.
  - b) Pursuant to section 21.80.050.F of the Monterey County Code, the appeal must be filed within ten days after written notice of the decision of the Planning Commission was mailed to the applicant. Therefore, staff did not grant Appellant's request to extend time to file their appeal. The appeal was timely filed. The time to bring the appeal to hearing may be extended by mutual agreement of the applicant and appellant, as occurred in this case.
  - c) The fee for filing an appeal of a land use decision affecting the inland unincorporated area of the County is \$5,040.95, pursuant to Resolution No. 08-132, which was duly adopted following noticed public hearing by the Board of Supervisors on April 22, 2008. The fee is based on the estimated reasonable cost of staff time to process the appeal. This fee is authorized by and was duly adopted in accordance with California Government Code sections 66014 and 66016, which authorizes the County to charge fees for use permits and other land use entitlements, provided the fee does not exceed the estimated reasonable cost of providing the service for which the fee is charged. That the appeal fee does not exceed the cost of staff processing the application is not in dispute, and Appellants do not contend that the fee exceeds the cost of staff time.
  - d) The County has a process enabling applicants to apply for a waiver of land use application fees. Pursuant to the Board of Supervisors' Resolution No. 2000-342, the Director of Planning is authorized to waive land use fees for applications for permits for certain categories of uses such as special handling affordable housing projects and for certain categories of users, including “persons age 62 or over on a fixed, very low income as defined by Housing and Urban Development.” The Planning Commission considers requests for fee waivers not meeting the criteria. The Board of Supervisors also has discretion to grant a fee waiver.

- e) The Planning Department exercised due diligence in determining whether Appellants have the ability to pay the appeal fee, and pending receipt of documentation requested from appellant, did not require payment of the appeal fee at time of filing. Therefore, Appellants had not paid the appeal fee as of the July 10, 2012 hearing, Appellants suffered no detriment prior to the Board hearing the appeal on the merits, and the Appellants were not required to pay the fee until they had an opportunity to be heard on the appeal and on their challenge to the appeal fee.
- f) Appellants have failed to provide substantial evidence of their inability to afford the appeal fee. In their May 7, 2012 letter accompanying the appeal, Dr. and Mrs. Richardson stated, “we are both Seniors, semi-retired and unable to afford the \$5,040.00 filing fee.” On May 16, 2012, the RMA-Planning Department provided the Appellants with the Department’s “Fee Waiver Request” form. On the form, Appellants stated “we simply cannot afford it” and provided no documentation supporting this assertion. On June 26, 2011, the Planning Department sent a letter to Appellants requesting Appellants to provide documentation supporting their statements of inability to pay the fee. Ms. Richardson submitted an e-mail explaining that they are seniors, struggling to pay their mortgage and bills, that their “real estate and stock market investments have dropped like everyone else’s,” that her husband has terminated his associates from his business due to lack of business, and they rely on Social Security to pay bills. Ms. Richardson orally informed staff that her husband is a dentist. This information indicates that Appellants have income, assets, and investments. Appellant provided no other documentation of financial hardship. The evidence does not support a finding of Appellants’ inability to pay the appeal fee.
- g) The appeal fee does not deny the Richardson’s due process or deprive the Richardson’s the exercise of their right to bring an appeal because they have not demonstrated an inability to pay the appeal fee. The County’s fee does not prohibit the public from bringing land use appeals. If a potential appellant cannot afford the fee, the County’s fee waiver policy provides persons desiring to bring an appeal the opportunity to request a fee waiver, authorizes the Director of Planning to grant fee waivers in outlined circumstances including for persons over age 62 on a fixed, very low income, and authorizes the Planning Commission to consider and grant fee waivers for requests not meeting the specified criteria. (Resolution No. 2000-342.) The Board also has discretion to grant a fee waiver and may be presumed to do so when the evidence shows that a fee waiver is merited.
- h) Because appellant is the servient tenement and Cal Am is the dominant tenement, appellant has remedies other than appeal of the County’s land use decision to resolve their private dispute with Cal Am. (See Finding 1, evidence b.)

## DECISION



NOW, THEREFORE, BASED ON THE ABOVE FINDINGS AND EVIDENCE, BE IT RESOLVED, that the Board of Supervisors does hereby:

- a. Deny the appeal by Katherine Richardson from the Planning Commission's adoption of a Negative Declaration and approval of an application by California American Water Company for a Combined Development Permit consisting of: 1) a Use Permit to replace two (2) existing 20,000 gallon water tanks with one (1) 120,000 gallon water tank and Design Approval; 2) a Use Permit 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);
- b. Deny the Appellant's request to waive the appeal fee and require Appellant to pay the appeal fee;
- c. Adopt the Negative Declaration prepared for the project; and
- d. Approve the 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 general conformance with the attached sketch (**Exhibit 2**) and subject to the conditions (**Exhibit 1**) both being attached hereto and incorporated herein by reference.

PASSED AND ADOPTED upon motion of Supervisor Salinas, seconded by Supervisor Calcagno, and carried this 10th day of July 2012, by the following vote, to wit:

AYES: Supervisors Armenta, Calcagno, Salinas, and Parker

NOES: None

ABSENT: Supervisor Parker

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 76 for the meeting on July 10, 2012.

Dated: August 7, 2012  
File Number: 12-634

Gail T. Borkowski, Clerk of the Board of Supervisors  
County of Monterey, State of California

By Denise Hancock  
Deputy