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## **APPEAL STAFF REPORT: SUBSTANTIAL ISSUE DETERMINATION ONLY**

**Appeal Number:** A-2-MAR-19-0007

**Applicant:** North Marin Water District

**Appellant:** Owl Mountain LLC on behalf of the Young Family

**Local Government:** Marin County

**Local Decision:** County Coastal Development Permit (CDP) P1927 approved by the Marin County Board of Supervisors on December 18, 2018.

**Project Location:** The terminus of Drakes View Drive (APN 114-120-09) in Inverness, Marin County.

**Project Description:** Replacement of a previously destroyed 25,000-gallon public water supply storage tank and an existing 50,000-gallon tank with a new 125,000-gallon concrete tank.

**Staff Recommendation:** No Substantial Issue

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**Important Hearing Procedure Note:** This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeal raises a substantial issue. Generally and at the discretion of the Chair, testimony is limited to three minutes total per side. Please plan your testimony accordingly. Only the Applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify.

Others may submit comments in writing. If the Commission determines that the appeal does raise a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which the Commission will take public testimony. (California Code of Regulations, Title 14, Sections 13115 and 13117.)

## **SUMMARY OF STAFF RECOMMENDATION**

The Marin County Board of Supervisors approved a coastal development permit (CDP) to replace a previously destroyed 25,000-gallon water storage tank and an existing 50,000-gallon tank with a new 125,000-gallon tank (with a height of 20 feet 8 inches above existing grade and 34 feet in diameter) located at the terminus of Drakes View Drive, in the Paradise Ranch Estates neighborhood of the unincorporated Inverness area of Marin County.

The Appellant contends that the County-approved project raises Marin County Local Coastal Program (LCP) consistency issues relating to height restrictions for the Coastal Residential Single-Family Planned District (C-RSP), the protection of visual resources and community character, and grading and excavation standards. Specifically, the Appellant contends that the County-approved project is taller than the allowed maximum height for the designated zoning district's standards for ridgetop lots, its design is inconsistent with the visual resources and community character of the surrounding neighborhood and would result in impacts to both public and private views, and construction of the proposed project would result in runoff to and erosion of the Appellant's property.

While the project site is located near the top of a topographic knoll at the crest of Inverness Ridge, the tank site is predominately wooded and not visible from public highways or other public viewing areas. The existing public view of the site from Shoreline Highway on the east side of Tomales Bay looking west only presents densely wooded hills, with few residences even visible. Additionally, Point Reyes National Seashore is on the opposite side of the knoll, however the tank would not be visible from the National Park or the Inverness Ridge Trail. In short, the only views affected by the proposed project are *private* views, which aren't protected by the LCP.

In terms of the Appellant's height allegation, the project location is not considered a ridge lot and does not otherwise implicate ridgetop requirements, and thus the applicable height standard is a maximum of 25 feet. Because the proposed tank would be just less than 21 feet tall, it meets LCP height requirements. In terms of visual resources and community character, the proposed tank is comparable in bulk and scale to surrounding development and has also been designed to minimize impacts on the surrounding viewshed, particularly for neighboring residences, through the use of a vegetated berm and native landscape. The proposed tank would use building materials that are earth-toned with a patina intended to mimic the visual appearance of the existing redwood tank. Therefore, the proposed tank would effectively blend in with its surroundings consistent with applicable LCP policies protecting visual resources and community character as well. Lastly, the proposed water storage tank would be in conformance with the LCP's grading and excavation standards policies because the proposed project does not involve extensive grading and excavation, and would be appropriately sited and designed to minimize and otherwise address potential runoff/erosion impacts to the neighboring properties. Specifically, native vegetation would be used to stabilize slopes, and an erosion and sediment

control plan with appropriate best management practices is required to be implemented under the County's CDP, consistent with applicable LCP policies regarding grading and excavation.

As a result, staff recommends that the Commission determine that the appeal contentions do not raise a substantial LCP conformance issue and decline to take jurisdiction over the CDP for this project. The single motion necessary to implement this recommendation is found on page 5 below.

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### EXHIBITS

Exhibit 1 – Location Map

Exhibit 2 – Parcel Location

Exhibit 3 – Project Site Plan

Exhibit 4 – Project Site Images

Exhibit 5 – Marin County Final Local CDP Action Notice

Exhibit 6 – Appeal of Marin County Local CDP Action

## I. MOTION AND RESOLUTION

Staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of no substantial issue would mean that the Commission will not hear the application de novo and that the local action will become final and effective. To implement this recommendation, staff recommends a **YES** vote on the following motion. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission determine that Appeal Number A-2-MAR-19-0007 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603. I recommend a yes vote.*

***Resolution.** The Commission finds that Appeal Number A-2-MAR-19-0007 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.*

## II. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

### A. PROJECT LOCATION AND DESCRIPTION

The County-approved project is located on Drakes View Drive in the Paradise Ranch Estates neighborhood of the unincorporated Inverness area of Marin County (see **Exhibit 1** for a location map). The project site is near the top of a wooded topographic knoll on an east-facing side of Inverness Ridge on the Point Reyes peninsula. The 0.126-acre parcel is zoned Residential Single-Family Planned District (C-RSP), is surrounded by single-family residential parcels (of the same zoning) on all sides, and is owned by North Marin Water District (NMWD). Currently the parcel is developed with one wooden water storage tank and an access road for NMWD construction and maintenance (with access via the adjacent property at 420 Drakes View Drive). The parcel previously contained a second redwood water storage tank that was destroyed in the 1995 Mount Vision Fire. In Inverness, NMWD uses water storage tanks to meet the community's domestic water needs and maintain adequate water reserves for fire protection. The proposed tank would be located approximately 22 feet 6 inches from the western front property line, 5 feet from the northern side of the property line (which is also the property line for the adjacent, Appellant's property at 25 Buck Point Drive), 22 feet 6 inches from the southern side property line, 22 feet from the western rear property line, and about 250 feet east of the Inverness Ridge Trail within the Point Reyes National Seashore. See **Exhibit 2** for a depiction of parcel locations.

The proposed project would replace the previously destroyed 20-foot high, 16-foot diameter, 25,000-gallon redwood water storage tank and the existing 20-foot high, 22-foot diameter, 50,000-gallon redwood tank (which would be demolished) with a new 125,000-gallon tank with

a height 20 feet 8 inches above existing grade and 34 feet in diameter. According to NMWD the existing 50,000-gallon tank has surpassed its design life and is being replaced to meet the recommendations made in NMWD's 2001 West Marin Long Range Plan and the 2014 West Marin Water System Plan, as well as the recommendations provided by the Marin County Fire Department for fire storage requirements. The current 50,000 gallon tank does not provide an adequate amount of fire storage capacity. The new larger capacity tank will ensure adequate water supply for the Paradise Ranch Estates neighborhood on the Point Reyes Peninsula, plus expand water storage capacity to protect properties within the subdivision from fire hazards. The new tank will modernize the current water treatment system and storage capacity. Please see **Exhibit 3** for the project site plan; and **Exhibit 4** for photographs of the site and surrounding area, as well as a rendering of the proposed water storage tank with viewpoints from 420 Drakes View Drive.

## **B. MARIN COUNTY CDP APPROVAL**

Marin County received a coastal development permit (CDP) application for the proposed development on February 7, 2018. On March 1, 2018, the County posted a pending application notice on the project site and on August 28, 2018, mailed out a public notice identifying the applicant, describing the project and its location, and providing the date of the Deputy Zoning Administrator (DZA) hearing. This notice was sent to all property owners within a 325-foot radius from the boundaries of the subject property, including the Appellants, and was posted online on the County's project website. On September 13, 2018, the County DZA held a duly noticed public hearing and adopted a resolution conditionally approving the NMWD's CDP. On September 24, 2018, Ryan J. Patterson, on behalf of Jesse Colin Young, submitted an appeal of the NMWD CDP approval to the County Planning Commission raising issues related to public noticing, visual resources, and environmental impacts.

The County Planning Commission held a duly noticed public hearing to take public testimony and consider the project on October 22, 2018. The Planning Commission upheld the DZA's decision, approving the CDP for the project with conditions. These conditions required lowering the proposed tank height from the approved 20 feet 8 inch height above grade to 18 feet above grade, and required that the NMWD fund additional landscaping to reduce visual impacts at the boundary between the NMWD and Young's properties. On October 30, 2018, NMWD appealed the Planning Commission's decision approving the project with said conditions to the County Board of Supervisors. NMWD raised concerns regarding the 18 foot height restriction, asserting the reduction in height would not allow for adequate fire water storage. At the public hearing on December 18, 2018, the Board of Supervisors found that the basis of appeal by NMWD was sufficient to overturn the Planning Commission's decision. Ultimately, the Board of Supervisors determined that the DZA-approved project height was consistent with LCP height limits for the C-RSP zoning district, and the Board removed the Planning Commission conditions limiting project height, but maintained the Planning Commission's requirement to provide a landscaping fund to the Appellant.

The County's Final Local Action Notice (FLAN) of its CDP decision was received in the Coastal Commission's North Central Coast District Office on Monday January 14, 2019 (see **Exhibit 6** for the County FLAN). The Coastal Commission's ten-working day appeal period for this action

began on Tuesday, January 15, 2019 and concluded at 5 p.m. on Friday, January 29, 2019. One valid appeal was received during the appeal period (see **Exhibit 7**).

### **C. APPEAL PROCEDURES**

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP (Sections 30603(a)(1)-(4)). In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission (Section 30603(a)(5); see also California Code of Regulations Title 14 Section 13012). The County's decision on the CDP for this project is appealable to the Commission because the project is a major public works project (i.e., it entails improvements to a public works facility that exceed the cost of \$277,033), and because the use is not the principally-permitted use in this zoning district.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the certified LCP or to the public access policies of the Coastal Act. Section 30625(b)(2) of the Coastal Act requires the Commission to consider a CDP for an appealed project de novo unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission conducts the de novo portion of an appeals hearing (upon making a determination of "substantial issue") and ultimately approves a CDP for a project, the Commission must find that the proposed development is in conformity with the certified LCP. If a CDP is approved for a project that is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act. This project is not located between the nearest public road and the sea, and thus the additional public access and recreation finding is not needed if the Commission were to approve a project following a de novo hearing.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo CDP determination stage of an appeal.

### **D. SUMMARY OF APPEAL CONTENTIONS**

The Appellant contends that the County-approved project raises LCP consistency issues relating to visual resources and community character standards, applicable grading standards and height limits. Specifically, the Appellant asserts that (1) the proposed tank is significantly larger than

the existing redwood tank that it will replace, and that it would impact both public and private views inconsistent with LCP requirements that require new development to be sited and designed to blend in with the surroundings, maintain appropriate scale and design, and not obstruct existing coastal views from Highway 1; (2) the project violates LCP grading and excavation standards because it has not been designed to avoid significant erosion or damage to adjacent properties caused by runoff; and (3) the project violates LCP maximum height limits, including because the project site should be regarded as a ridgetop lot, thus requiring a more restrictive height limit. Please see **Exhibit 6** for the Appellants full appeal contentions.

## **E. SUBSTANTIAL ISSUE DETERMINATION**

The term “substantial issue” is not defined in the Coastal Act or in its implementing regulations. In previous decisions on appeals, the Commission has generally been guided by the following factors in making substantial issue determinations: the degree of factual and legal support for the local government’s decision; the extent and scope of the development as approved or denied by the local government; the significance of the coastal resources affected by the decision; the precedential value of the local government's decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance. Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of a local government’s CDP decision by filing a petition for a writ of mandate pursuant to the Code of Civil Procedure, Section 1094.5.

In this case, and for the reasons discussed further below, the Commission exercises its discretion and determines that the development approved by the County does not raise a substantial issue with regard to the Appellant’s contentions.

### **1. Visual Resources and Community Character**

#### ***Applicable Policies***

The LCP includes policies that require that new development be sited and designed to blend in with the surroundings, and specifically with prominent wooded areas; to maintain appropriate scale and design compatible with the character of the surrounding environment; and to not obstruct existing coastal views from Highway 1 as follows:

#### ***LUP Appendix A page A-8***

*30251. The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

#### ***LUP Policy 3***

*a. The height, scale, and design of new structures shall be compatible with the character of the surrounding natural or built environment. Structures shall be designed to follow*



*the natural contours of the landscape and sited so as not to obstruct significant views as seen from public viewing places.*

*b. Development shall be screened with appropriate landscaping; however such landscaping shall not, when mature, interfere with public views to and along the coast. The use of native plant material is encouraged.*

**LUP Policy 8(c)(4)(c)(2)**

*a. In areas where structures may be seen from the adjacent parklands (primarily the north, south and west sides of the subdivision) structures shall be screened by the existing vegetation to the maximum extent possible. Structures shall not be higher than the tree canopy, even if Section 22.47.024(2)(e) of the Zoning Ordinance would otherwise permit taller buildings. The purpose of this measure is to prevent the presently tree-covered silhouette of the ridgeline from being broken up. In addition, the structures will be better-screened. It is noted that the west side is adjacent to the Park Wilderness area.*

*b. In areas where structures may be visible, dark earth-tones shall be used to ensure the least amount of visual intrusion into the landscape. ...*

*f. Use of colors and materials consistent with the woodland character of the subdivision and the vernacular building style of the area should be observed to avoid obtrusive visual impact.*

**IP Section 22.56.130I(O)**

...

*2. To the maximum extent feasible, new development shall be designed and sited so as not to impair or obstruct existing coastal views from Highway 1 or Panoramic Highway.*

*3. The height, scale and design of new structures shall be compatible with the character of the surrounding natural or built environment. Structures shall be designed to follow the natural contours of the landscape and sited so as not to obstruct significant views as seen from public viewing places.*

*4. Development shall be screened with appropriate landscaping; however, such landscaping shall not, when mature, interfere with public views to and along the coast. The use of native plant material is encouraged.*

**IP Section 22.57.086I(2)(f)**

*Materials and colors shall blend into the natural environment unobtrusively, to the greatest extent possible.*

**Analysis**

The Appellant contends that the County-approved project does not comply with LUP Policies 3 and 8 that require that all new development not impair coastal views from Highway 1, the Panoramic Highway, or significant public views from public viewing places; that the scale and design of new development be compatible with the surrounding natural and built environment; and that new development be appropriately screened and constructed using materials and colors that blend with the natural environment. These standards are implemented by LCP Implementation Plan (IP) Sections 22.56.130I(O) and 22.57.086I(2)(f).

As required by LUP Policy 8(c)(4)(c)(2), which outlines the location and density of new development in Inverness Ridge, new development must be sited and designed to blend in with the surroundings, and specifically with prominent wooded areas. The Appellant claims that the proposed tank is significantly larger than the existing redwood water storage tank, and will negatively impact both public and private views. However, the LCP does not protect private views. The proposed tank does not significantly impact public views because the surrounding trees are taller than the proposed tank on three sides, shielding it from view from public vantage points. While the project site is adjacent to Point Reyes National Seashore, it is located on the eastern side of the park and would not be visible to park goers. See **Exhibit 4** for project site images.

Likewise, LUP Policy 3 requires development to maintain appropriate scale and design compatible with the character of the surrounding environment and screened with appropriate landscaping. The Appellant contends that the proposed tank is not compatible with the character of the surrounding environment; and therefore, violates the visual resources and community character standards. Surrounding residences vary in architectural styles, thus, residences in the area have varying heights and the area is quite densely vegetated. At a height of 20 feet 8 inches, the tank is about two stories tall, and occupies an area of approximately 908 square feet (16.5%) of the 5,500 square foot lot. Previously destroyed tank 4A and existing tank 4B occupy 201.06 square feet (3.65%) and 380.13 square feet (6.91%), respectively. To avoid visual impacts, the proposed development has been designed to blend into the landscape, including in relation to the neighboring residences at 420 Drakes View Drive and 25 Buck Point Road, through the design of a vegetated earthen berm composed of non-fire prone shrubs and three to five native trees on the west and northwest sides of the tank. The Applicants was also required by the County CDP to provide \$5,000 in funds to the Appellant, located on 25 Buck Point Road, for them to pursue additional landscape screening as the Appellant sees fit. Because the tank is of similar size to neighboring residences and includes native vegetation screening, the proposed tank is consistent with the scale of other structures in the surrounding neighborhood and blends with the surrounding vegetation.

LCP Section 22.56.130I(O) requires that new development must not obstruct existing coastal views from Highway 1. The Appellant contends that the proposed tank will negatively impact both public and private views because it is larger than the existing redwood tank. However, the ordinance protects only public views from the highway. The site is shielded by intervening topography and vegetation from views from the distant lower vantage point along Drakes View Drive, Sir Frances Drake Boulevard, and State Highway 1. Views of the tank's western side are partially shielded by ceanothus shrubs. Additionally, the proposed building materials incorporate earth toned, reinforced concrete that will mimic the visual appearance of the existing redwood tank. Thus, public views are not affected by the proposed project, and rather are protected.

Finally, the proposed building materials incorporate earth toned, reinforced concrete that will mimic the visual appearance of the existing redwood tank, and help it to blend in with the nearby wooded environs. The proposed tank has been designed to blend appropriately into the established community character of Inverness in accordance with LUP policies that require such.

Thus, the County-approved project does not raise substantial issue of LCP conformance with respect to visual resources and community character.

## **2. Grading and Excavation**

### ***Applicable Policies***

The LCP includes policies that require development to minimize grading and to implement grading and erosion control guidelines as follows:

#### ***LUP Watershed and Water Quality Protection/Grading Policy 6***

*In order to ensure the long-term preservation of water quality, protection of visual resources, and the prevention of hazards to life and property, the following policies shall apply to all construction and development, including grading and major vegetation removal, which involve the movement of earth in excess of 150 cubic yards.*

*a. Development shall be designed to fit a site's topography, soils, geology, hydrology, and any other existing conditions and be oriented so that grading, cut and fill operations, and other site preparation are kept to an absolute minimum. Natural features, landforms, and native vegetation shall be preserved to the maximum extent feasible. Areas of a site which are not suited to development because of known soil, geologic, flood, erosion or other hazards shall be kept in open space.*

*b. For necessary grading operations, the smallest practicable area of land shall be exposed at any one time during development and the length of exposure shall be kept to the shortest practicable time. The clearing of land shall be avoided during the winter rainy season and all measures for removing sediments and stabilizing slopes shall be in place before the beginning of the rainy season.*

*c. Sediment basins (including debris basins, desilting basins, or silt traps) shall be installed on the project site in conjunction with initial grading operations and maintained through the development process to remove sediment from runoff waters. All sediment shall be retained on site unless removed to an appropriate dumping location.*

#### ***LUP Watershed Protection Policy 8(c)(4)(c)(4)***

*b. Silt traps or other necessary erosion control measures shall be required for all new grading and construction.*

#### ***LUP Grading and Erosion Control Guidelines Policy 8(c)(4)(c)(1)***

*It is essential that grading be minimized in any new building area so that soils which are exposed during the construction process can be adequately revegetated and cuts avoided to minimize erosion. Erosion control practices should address management of surface water run-off to prevent gullyng through improper discharge of storm water[,] from downspouts and paved areas and down-stream transport of eroded sediments.*

*Revegetation practices for erosion control should specify use of indigenous ground covers and seed mixes.*

#### ***IP Section 22.57.0861(1)***

*a. Grading shall be held to a minimum. Every reasonable effort shall be made to retain the natural features of the land: Skylines and ridgetops, rolling land forms, knolls, native vegetation, trees, rock outcroppings, watercourses. Where grading is required, it shall be done in such a manner as to eliminate flat planes and sharp angles of intersection with natural terrain. Slopes shall be rounded and contoured to blend with existing topography...*

*c. Grading plans shall include erosion control and revegetation programs. Where erosion potential exists, silt traps or other engineering solutions may be required. The timing of grading and construction shall be controlled by the department of public works to avoid failure during construction. No grading shall be done during the rainy season, from November through March.*

*d. All construction shall assure drainage into the natural watershed in a manner that will avoid significant erosion or damage to adjacent properties. Impervious surfaces shall be minimized.*

### **Analysis**

The Appellant contends that the County-approved project violates LCP grading and excavation standards because it has not been designed to avoid significant erosion or damage to the adjacent properties. IP Section 22.57.0861(1)(d) requires that all construction assure that drainage to the natural watershed avoid significant erosion and damage to adjacent properties. Further, LUP Policies 6 and 8 are related to watershed and water quality protection, and ensuring that natural features, landforms, and native vegetation are preserved to the maximum extent feasible. To capture sediment from runoff waters and protect soils exposed during grading or development, the LCP requires the use of specific erosion control measures.

The proposed project entails the construction of a new water storage tank encompassing the footprint of a previously existing, smaller water tank that was previously destroyed and removed. The area surrounding the proposed tank will require grading, including cut and fill, to prepare the site for a larger tank footprint and for the construction of an earthen berm to provide additional visual screening for adjacent residential properties, including the Appellant's. The grading will result in removal of 170 cubic yards of soil from the site, intended to help lower the visual profile of the tank to reduce any impacts on neighbors. The tank will be situated three feet below grade. The Appellant contends that the project will result in erosion of the Appellant's property, the property line of which is located 5 feet downhill from the tank site. The Appellant's house is on an adjacent parcel about 245 feet away from the proposed tank. To prevent runoff and provide an additional buffer, the County's CDP approval requires the NMWD to provide a landscaping fund of \$5,000 to the Appellant that the Appellant can use as they see fit to provide additional screening. The project also includes an erosion control plan consistent with the standards required by Marin County Department of Public Works, which applies California Regional Water Quality Control Board and Marin County Stormwater Pollution Prevention Program requirements. The plan includes utilizing best management practices for the management of site spoils, including the use of sediment basins, temporary vegetation, and silt traps. Additionally, the Applicant is also required to establish new vegetation on disturbed areas to minimize erosion, including the creation of a vegetated earthen berm along the west and northwest sides of the tank to help reduce the visual appearance of the tank for neighboring private properties while providing a stable slope above the maintenance access pad around the tank. The planting plan

includes establishing the berm with a mix of trees and shrubs native to Marin County. -The Applicant estimates that grading and excavation will take approximately two weeks and would occur during summer and fall of 2020, avoiding construction during the rainy season as required by IP Section 22.57.0861(1)(c). The project site currently drains via sheet flow to the surrounding hillsides, mainly draining to Tomlinson Creek to the north and ultimately to Tomales Bay. The project has been designed to collect surface water into the storm drain system to ensure it is appropriately handled. The required drainage and erosion control plan should serve to improve conditions at the site related to potential erosion, and should also serve to protect water quality from runoff leaving the site.

The County-approved project will adequately mitigate any runoff and erosion impacts consistent with LCP requirements. Native vegetation plantings will help to stabilize slopes, and an Erosion and Sediment Control Plan with appropriate best management practices will be implemented to address drainage and avoid any increase in erosion to adjacent properties. Thus, the County-approved project does not raise substantial issue of LCP conformance with respect to grading and excavation.

### 3. Height Restrictions

#### *Applicable Policies*

The Marin LCP includes policies that dictate maximum allowable heights for each zoning designation as follows:

#### ***LUP Visual Resources Policy 3:***

*a. The height, scale, and design of new structures shall be compatible with the character of the surrounding natural or built environment.*

#### ***IP Section 22.57.0861(2):***

*b. There shall be no construction permitted on top or within three hundred feet horizontally, or within one hundred feet vertically of visually prominent ridgelines, whichever is more restrictive, if other suitable locations are available on the site. If structures must be placed within this restricted area because of site size or similar constraints, they shall be on locations that are least visible from nearby highways and developed areas.*

...

*e. No part of a building shall exceed twenty-five feet in height above natural grade. . . Where a ridge lot is too flat to allow placement of the house down from the ridge, a height limit of one story or a maximum of eighteen feet to the top of the roof shall be imposed. These requirements may be waived by the planning director upon presentation of evidence that a deviation from these standards will not violate the intent of Sections 22.47.020 and 22.47.030.*

#### ***Analysis***

The Appellant contends that the project fails to comply with the LCP Section 22.57.0861(2)(e) under the C-RSP zoning district. The Appellant states that the height of the proposed addition violates provisions of the LCP because the proposed project is on a ridge lot, and therefore the

appropriate height limit is 18 feet. LCP regulations for the subject parcel's zoning district indicate that no part of a building shall exceed twenty-five feet above natural grade and that no accessory building shall exceed fifteen feet above natural grade.

As the LCP does not provide a definition for what constitutes a "ridge lot", the discretion of identifying when such a lot is present is incumbent upon the decision-making body. The Planning Commission looked to the Marin County General Plan in making this determination,<sup>1</sup> however such General Plan designations do not apply to the coastal zone, and the Planning Commission determination was subsequently overruled by the Board of Supervisors when it approved the subject CDP. In any case, while the project site is located near the top of a topographic knoll at Inverness Ridge, but the tank site is not visible from public highways or other developed areas. The existing public view of the site from Shoreline Highway on the east side of Tomales Bay looking west only presents densely wooded hills, with few residences even visible. Additionally, Point Reyes National Seashore is on the opposite side of the knoll, and the tank would not be visible from the National Park or the Inverness Ridge Trail. The parcel is heavily vegetated, and the proposed water tower would be below the treeline. Ultimately, the County Board determined that this was *not* a ridge lot, and that the appropriate maximum height is the 25-foot maximum identified for buildings in this zone district. The Commission concurs, including as the clear LCP policy intent regarding ridge lots is to protect public ridgeline views against inappropriate incursions into them, and the County-approved project does just that, including that the new tank will not be visible from public views. The County-approved project allows the water tank at a height of 20 feet 8 inches above existing natural grade, which is below the applicable 25-foot maximum height limit regulations of the C-RSP zoning district.

For these reasons, the approved project does not raise a substantial issue of LCP conformance with respect to height restrictions.

#### **4. Substantial Issue Determination Conclusion**

When considering an appealed project, the Commission must first determine whether the project raises a substantial issue of LCP conformity, such that the Commission should assert jurisdiction over a *de novo* CDP for such development. The Commission has the discretion to find that the project does not raise a substantial issue of LCP conformance. As explained above, the Commission is guided in its "substantial" issue determination by the following five factors: the degree of factual and legal support for the local government's decision; the extent and scope of the development as acted upon by the local government; the significance of the coastal resources affected by the decision; the precedential value of the local government's decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance. In this case, these five factors, considered together, support a conclusion that this project does not raise a substantial issue of LCP conformance.

First, the County's administrative record for this matter, including the record of the County Board of Supervisors hearing on the proposed project, demonstrates that the County had factual and legal support for its decision to approve the proposed project. In relation to the height restriction contentions, the County Board appropriately determined the applicable maximum

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<sup>1</sup> Where the General Plan uses specific maps to identify such lots.

height standard, and appropriately determined that the project meets the designated height limit for the Coastal Residential Single-Family Planned District. Additionally, the County Board appropriately determined that the development meets the scale and design standards of the LCP. Both of these determinations are supported by the fact that the design, materials, and color of the development are visually compatible with the surrounding landscape, and that the County-approved project does not obstruct public views from any public viewing areas or viewsheds, including designated scenic roads and visual resource areas. Lastly, the County-approved project has been sited and designed to avoid runoff or erosion impacts to adjacent properties. Thus, the County provided adequate factual and legal support for its decision that the approved development would be consistent with the certified LCP.

Second, the extent and scope of the development is limited to the replacement of an existing water storage tank and a previously destroyed water tank with a single, improved water tank which fits the scope and size of surrounding development. The project will remain visually compatible with adjacent residences while ensuring adequate water storage for the Paradise Ranch Estates neighborhood and expanding water storage capacity for fire protection.

Third, the significance of the coastal resources affected by the project is less than significant as the impacts to visual resources are minimal and limited to private views, which are not protected by the LCP. In addition, the County-approved project is sited, designed and conditioned to limit these potential private view impacts as much as possible.

Fourth, the County's decision does not set any new precedent for LCP interpretations as the project is similar to the surrounding developments, and is otherwise consistent with applicable LCP policies. Because the project is consistent with the LCP, a finding of no substantial issue will not create an adverse precedent for future interpretation of the LCP.

Lastly, the appeal raises solely local issues regarding private community character and visual compatibility, grading and excavation and height limitations of a distinct location within a specific neighborhood in Marin County, with no bearing on regional or statewide public resource issues.

For the reasons stated above, the Commission finds that Appeal Number A-2-MAR-19-0007 does not present a substantial issue with respect to the grounds on which the appeal was filed under Section 30603 of the Coastal Act, and that the project as proposed is consistent with the certified LCP. Thus, the Commission here declines to take jurisdiction over the CDP application for this project.

**APPENDIX A: SUBSTANTIVE FILE DOCUMENTS<sup>2</sup>**

- Adopted Resolution – Marin County Deputy Zoning Administrator, September 13, 2018 Hearing
- Adopted Resolution – Marin County Planning Commission, October 22, 2018 Hearing
- Adopted Resolution – Marin County Board of Supervisors, December 18, 2018 Hearing

**APPENDIX B: STAFF CONTACT WITH AGENCIES AND GROUPS**

- North Marin County Water District
- Marin County Community Development Agency
- Owl Mountain LLC (Zacks, Freedman & Patterson, PC)

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<sup>2</sup> These documents are available for review in the Commission's North Central Coast District office in San Francisco.