



MEMORANDUM

TO: Jeremy Tejirian, DZA Hearing Officer
FROM: Neal Osborne, Planner
RE: Estero Mutual Water Company Coastal Permit, Use Permit, and Design Review (PID 2010-0276)
September 29, 2011 DZA Continued Item 3
DATE: September 22, 2011

On September 15, 2011, the applicant submitted revised plans (see Attachments 3, 3, and 4) showing the new water tank and associated grading work will be more than 100 feet from the reservoir and drainage ditch top-of-bank. The proposal would result in 238 cubic yards of excavation to set the water tank into the hill. Silt fencing and fiber rolls are proposed downslope of the work areas to contain soil within the work area. The maximum height of the tank would be 29 feet above finished grade and would be approximately 10 feet taller than the previous proposal due to less depth of excavation and less surface area of proposed excavation to be entirely on the subject property. Staff reviewed the height and recommends an exception to the 25-foot height standard as allowed for water storage tanks pursuant to Marin County Interim Code Section 22.70.040 because there would be no adverse impacts to public views, the 1,256 square foot base of the tank would cover less than 15% of the 5-acre lot, and base of the tank would be less than 1,600 square feet.

The Consulting Geotechnical Engineer, Dennis H. Furby, PE submitted a revised geotechnical engineering letter report regarding the new tank location that concludes the new location is suitable (Attachment 5). The applicant also submitted a Title Report to verify access rights (Attachment 6) and a letter from Margaret Graham and Walter Earle of Mostly Natives Nursery regarding the landscaping plan (Attachment 7). Due to substantial tank corrosion and the possibility of imminent existing tank failure, the applicant submitted a Building Permit application with a signed letter of risk to the Building and Safety Division on September 15, 2011.

Pursuant to your directions during the August 25th hearing, findings have been modified to clearly verify that the project would not adversely affect wetlands and would be consistent with Countywide Plan policies and Local Coastal Program standards for a 100-foot wetlands buffer. Recommended conditions of approval have also been modified and are shown in track changes in the revised resolution (Attachment 1). A copy of the revised resolution is also provided without track changes.

Recommendation

Staff recommends that the Deputy Zoning Administrator review the administrative record, conduct a continued public hearing regarding the revised proposal, and approve the Estero Mutual Water Company Coastal Permit, Use Permit, and Design Review based on the findings and subject to the conditions contained in the attached revised resolution.

- Attachments:
1. Revised resolution approving the Estero Mutual Water Company Coastal Permit, Use Permit, and Design Review
 2. Revised Plans -- Site Plan with Notes, Details, and Cover Sheet
 3. Revised Plans -- Partial Site Plan with Grading, Drainage, and Erosion Control Plan
 4. Revised Plans – Elevations
 5. Jan Lee letter, 9/15/11
 6. Dennis Furby, PE, Consulting Geotechnical Engineer letter report, 8/27/11
 7. Preliminary Title Report, 9/2/11
 8. Margaret Graham and Walter Earle, Mostly Natives Nursery letter, 8/27/11
 9. DZA Minutes, 8/25/11
 10. Rachel Warner, CDA Interim Environmental Coordinator memorandum, 8/24/11

Copies:

Joyce Evans, DZA Secretary
Michel Jeremias, DPW Land Use and Water Resources
Jan Lee, Estero Mutual Water Company
John Brezina, Estero Mutual Water Company

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MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

RESOLUTION _____

**A RESOLUTION APPROVING
THE ESTERO MUTUAL WATER COMPANY COASTAL PERMIT,
USE PERMIT, AND DESIGN REVIEW
PROJECT ID: 2010-0276**

ASSESSOR'S PARCEL 100-100-58

100 OCEAN VIEW DRIVE, DILLON BEACH

SECTION 1: FINDINGS

- I. WHEREAS, the project is a proposal submitted by Jan Lee, on behalf of the Estero Mutual Water Company, to install a 246,000-gallon, 42-foot diameter, 29-foot tall steel water tank on a 15.02-acre lot to replace a leaking 226,000-gallon steel tank in use for the Oceana Marin subdivision domestic water supply. The new tank would be located adjacent to the existing tank on a new concrete pad constructed on a level area at the same elevation as the existing pad that would be created by excavating 238 cubic yards of soil. The project site is surrounded by wire fences and contains a pump house, pressure tank, and reservoir. The subject property is within the C-APZ-60 zoning district and is located at 100 Ocean View Drive, Dillon Beach, further identified as Assessor's Parcel 100-100-58.
- II. WHEREAS, the Marin County Deputy Zoning Administrator held a duly noticed public hearing on August 25, 2011 and a continued public hearing on September 29, 2011, to consider the merits of the project, and hear testimony in favor of, and in opposition to, the project.
- III. WHEREAS, the Marin County Deputy Zoning Administrator finds that the proposed project is Categorically Exempt from the requirements of the California Environmental Quality Act (CEQA), per Section 15302, Class 2(c) of the CEQA Guidelines because it is the replacement of a water tank for the Estero Mutual Water Company adjacent to an existing leaking tank that would not result in adverse grading, vegetation removal, or other potentially significant impacts on the environment.
- IV. WHEREAS, the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the Marin Countywide Plan because:
 - A. The proposed project would result in the replacement of a leaking water tank for use of the Oceana Marin subdivision in an agricultural area consistent with the uses allowed under the governing C-AG1, Coastal Agriculture Countywide Plan land use designation.
 - B. The proposed project would comply with governing development standards related to grading, flood control, drainage and utility improvements as verified by the Department of Public Works.

- C. The proposed project would not cause significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation, or their services.
 - D. The proposed project would minimize soil disturbance and maximize protection of natural vegetation, wetlands, and drainage courses.
- V. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the mandatory findings for Coastal Permit approval pursuant to the requirements and objectives of the Local Coastal Program, Unit I (§22.56.130I of the Marin County Code) as described below

A. Water Supply:

The Community Development Agency, Environmental Health Services Division staff determined that the public water system of the Estero Mutual Water Company is currently regulated by the California Office of Drinking Water. The tank replacement is needed to not only reduce water loss from leaks, but associated inlet and outlet design improvements will also improve disinfectant contact times to better meet design standards under the Surface Water Treatment Rule.

B. Septic System Standards:

The project does not include a septic system.

C. Grading and Excavation:

The project site has a moderate 14% slope and grading is proposed for 238 cubic yards of excavation that would be balanced on site over a total area of 8,090 square feet. The excavation would occur for installation of a concrete pad and water tank foundation. All grading and excavation work would be subject to the review and approval of the Department of Public Works, Land Development Division, to ensure consistency with Marin County requirements.

D. Archaeological Resources:

Review of the Marin County Archaeological Sites Inventory indicates that the subject property is not located in an area of archaeological sensitivity. However, the small grading could disturb unknown cultural resources. A project condition of approval requires that in the event cultural resources are discovered during construction, all work shall stop immediately and the services of a qualified consulting archaeologist shall be engaged to assess the value of the resource and to develop appropriate protection measures.

E. Coastal Access:

The project is located more than 3/4-mile inland of the Pacific Ocean at an elevation of approximately 348 feet and would not impede coastal access.

F. Housing:

The proposed project would not result in the removal of any residential units and would not affect the availability of affordable housing within the Dillon Beach community.

G. Stream and Wetland Resource Protection:

The project site is not located near a creek or in an area subject to the streamside conservation policies of the Local Coastal Program. The project site is located in an area that has wetlands identified as a Freshwater Pond in the National Wetlands Inventory, but the wetlands are not identified on the appeals area map. The wetlands and the colonization of wetlands plants along the banks of the pond were established when the reservoir storage was constructed in the early 1970s for the above ground open water storage component of this Estero Mutual Water Company facility for the Oceana Marin Subdivision. The proposal would locate the new tank and all associated grading more than 100 feet from the top-of-bank of the reservoir and the overflow drainage ditch in compliance with the 100-foot wetlands buffer. Silt fences and fiber rolls are proposed to contain materials within the work area to protect the wetlands. Landscaping with native plants collected from the site earlier this year will be planted in the disturbed soil and fill areas to restore the coastal prairie habitat with no adverse effects to the wetlands.

H. Dune Protection:

The project site is not located in a dune protection area as identified by the Natural Resources Map for Unit II of the Local Coastal Program.

I. Wildlife Habitat:

The Natural Resources Map for Unit II of the Local Coastal Program indicates that the subject property is not located in an area of sensitive wildlife resources. Also, review of the California Natural Diversity Data Base, prepared by the State Department of Fish and Game, indicates that the subject property is not located in an area of sensitive resources.

J. Protection of Native Plant Communities:

The Natural Resources Map for Unit II of the Local Coastal Program indicates that the subject property is located in an area containing rare plants associated with coastal prairie. A review of the California Natural Diversity Data Base, prepared by the State Department of Fish and Game, indicates that the subject property is located in the habitat area for 30 special-status species. Botanical surveys were completed in October 2010, April 2011, and May 2011 by Joan Schwan, M.S. Vegetation Ecologist with Prunuske Chatham, Inc. and Doreen Smith of the California Native Plant Society (CNPS). The dominant species at the project site is native perennial tufted hair grass (*Deschampsia cespitosa* var. *holciformis*) and iris (*Iris douglasiana* and *Iris macrosiphon*). The spring surveys found one plant species on the CNPS watch list (List 4.2) – the harlequin lotus (*Lotus formosissimus*). One individual was located in the northwestern portion of the project site, several within 15 feet, and thousands were observed nearby. The applicant has stated a willingness to hire a local native plant nursery to collect perennial plants and native seeds from the project site for propagation at the nursery and use in site restoration after construction. This will be required as a condition of project approval. The affected harlequin lotus plant would be included in this effort and transplanted at the site after construction of the new tank and removal of the old tank. With the implementation of these project components and conditions of approval, the project would not have an adverse impact on the habitat of native plant communities.

K. Shoreline Protection:

The subject property is not adjacent to the shoreline, and the proposed project would not result in adverse affects to the shoreline. The project would not require additional shoreline protection.

L. Geologic Hazards:

The project site is not located within the Earthquake Study Zone along the San Andreas Fault Zone but would be subjected to strong ground shaking during a proximate seismic event. The applicant submitted a geotechnical evaluation prepared by Dennis h. Furby, PE that determined the project to be feasible and safe if constructed with properly engineered structural components.

M. Public Works Projects:

The proposed project would replace a leaking 226,000 water tank with a new 246,000-gallon water tank for the Estero Mutual Water Company domestic water supply for the Oceana Marin subdivision and would utilize existing access roads and existing water distribution infrastructure.

N. Land Division Standards:

No land division is proposed as part of this project.

O. Visual Resources:

The project would be located in the northwest portion of the property 43feet southwest of the existing water tank to be removed. The new water tank would be comparable in size to the existing tank, on a new pad at an elevation of 348 feet compared to the existing pad elevation of 342 feet. The proposed height of 29 feet above finished grade would not result in substantial new visual effects from public vantage points. The height greater than the 25-foot height standard can be allowed pursuant to Marin County Interim Code Section 22.70.040, height exception for water supply tanks because the 1,256 square foot base of the water tank would cover less than 15% of the 5-acre lot (98,100 square feet) and would be less than 1,600 square feet as specified in the exception standards. . The visual effects of the proposed tank would not be adverse as viewed from public vantage points along Dillon Beach Road and would be comparable to the visual effects of the existing tank. The exterior color of the tank would be a subdued light gray/blue that would blend into the surroundings.

P. Recreation/Visitor Facilities:

The project site is governed by C-APZ-60 (Coastal, Agricultural Production Zone) zoning regulations that allows for water utility facilities with a Use Permit. The project would have no affect on recreation or visitor facilities.

Q. Historic Resource Preservation:

The existing water tank was constructed for the Oceana Marin subdivision in the 1960s and is not historically significant.

VI. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project, as modified herein, is consistent with the mandatory findings to approve a Use Permit (Section 22.88.020.3 I of the Marin County Code), as specified below:

A. The establishment, maintenance or conducting of the use for which a use permit is sought will not, under the particular case, be detrimental to the health, safety, morals, comfort, convenience, or welfare of persons residing or working in the neighborhood of such use and will not, under the circumstances of the particular case, be detrimental to the public welfare or injurious to property or improvement in the neighborhood.

The water tank is for a public utility company, the Estero Mutual Water Company, which provides domestic water supply for the Oceana Marin subdivision. A public utility water tank use is listed as conditionally permitted pursuant to Marin County Code Sections 22.88.010.2 I and 22.57.033(17) I in the C-APZ-60 zoning district.

The project would be compatible with other surrounding land uses, would minimize visual impacts, and is necessary for the public health, safety, and welfare.

The project would not result in potentially adverse impacts regarding additional land disturbance, additional impermeable surface area, visual impacts, traffic, or noise.

The grant of the proposed Use Permit for the replacement water tank would conserve water and improve overall efficiency of the provision of clean domestic water to the Oceana Marin subdivision. The water tank would not be detrimental to the public health, safety, convenience, or welfare of the County, or injurious to the property or improvements in the neighborhood.

VII. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the mandatory findings for Design Review approval (Section 22.82.040I) of the Marin County Code) as described below

The project is consistent with the required findings cited above because the water tank would result in a structure with height and bulk proportionately appropriate to the site and would provide adequate setbacks from property lines and other buildings on surrounding properties. Construction of a water tank for the Estero Mutual Water Company service to the Oceana Marin subdivision would conform to conditionally permitted uses in the zoning district that governs the subject property and would be situated solely on the subject property. The proposed water tank would minimize drainage alterations, grading and excavation, and other potentially adverse physical effects on the natural environment. Finally, the design of the proposed water tank would be compatible with the surroundings, would respect the surrounding natural environment, and would not adversely affect views from other properties in the vicinity.

SECTION 2: ACTION

NOW, THEREFORE, LET IT BE RESOLVED, that the Deputy Zoning Administrator approves the Estero Mutual Water Company Coastal Permit, Use Permit, and Design Review (Project ID: 2010-0276), for the construction of a 246,000-gallon water tank to replace an existing 226,000-gallon water tank at 100 Ocean View Drive, Dillon Beach, pursuant to Marin County Code Sections 22.56.130 Interim, 22.88.010.2 Interim, and 22.82.040 Interim.

SECTION 3: CONDITIONS OF PROJECT APPROVAL

1. The approved project shall substantially conform to plans on file in the Marin County Community Development Agency, Planning Division, identified as Exhibit A, "Notes, Details and Cover Sheet Lands of Estero Mutual Water Company, Water Tank Site, APN 100-100-58, Dillon Beach, California," consisting of three sheets prepared by Steven J. LaFranchi & Associates, Inc. Civil Engineers ~ Land Surveyors ~ Land Planners date stamped received September 15, 2011.

The approved exterior light gray/blue color shall substantially conform to the with color sample which is identified as "Exhibit B," on file with the Marin County Community Development Agency.

All flashing, metal work, and trim shall be treated or painted an appropriately subdued, non-reflective color.

2. BEFORE ISSUANCE OF A BUILDING PERMIT AND COMMENCEMENT OF SITE DISTURBANCE, the applicant shall submit a detailed Landscaping Plan to the CDA Planning Division for review and approval consistent with the recommendations in the Botanical Surveys prepared by Joan Schwan of Prunuske Chatham, Inc.
3. BEFORE ISSUANCE OF A BUILDING PERMIT AND COMMENCEMENT OF SITE DISTURBANCE, the applicant shall submit a detailed plan to the CDA Planning Division for review and approval that indicates additional silt fences around the perimeter of the area of site disturbance and the areas of construction equipment staging and access. After approval of the fence plan, the applicant shall install the fence pursuant to the plan and submit photographs to the CDA Planning Division to verify installation.
4. BEFORE ISSUANCE OF A BUILDING PERMIT AND COMMENCEMENT OF SITE DISTURBANCE, the applicant shall submit a copy of an issued Permit to Construct from the California Department of Public Health, Public Water Supply Division or other state permitting agency as appropriate to the CDA Planning Division.
5. BEFORE ISSUANCE OF A BUILDING PERMIT AND COMMENCEMENT OF CONSTRUCTION, the applicant shall protect the access driveway and construction staging areas from erosion with placement of gravel or other materials based on standard Best Management Practices and submit photographs to the CDA Planning Division to verify installation.
6. BEFORE CLOSE-IN INSPECTION, the applicant shall submit a certification letter from a licensed land surveyor that verifies the maximum height does not exceed 29 feet above finished grade (378 feet asl).
7. BEFORE FINAL INSPECTION, the applicant shall install all landscaping in accordance with the approved landscape plan. The applicant shall call for a Community Development Agency staff inspection of the landscaping at least five working days before the anticipated completion of the project. Failure to pass inspection will result in withholding of the Final Inspection and imposition of hourly fees for subsequent reinspections.
8. Within 60 days of the new water tank receiving final inspection approval and becoming operational, the existing water tank and concrete pad shall be removed from the site and recycled at an approved recycling facility. The applicant shall provide written verification to the CDA Planning

Division from the appropriate state agency that their final inspection approval has been obtained for construction and use of the new tank. The applicant shall submit verification that the old tank has been recycled.

9. Within 30 days after removal of the old water tank from the site, the applicant shall install all replacement vegetation to all the disturbed soil areas and schedule an inspection with the CDA Planning Division. Based upon the staff observations of the site conditions during this inspection, additional site remediation work may be required to further stabilize disturbed soil areas, improve driveway conditions, minimize erosion, and provide additional native plants.
10. Exterior lighting shall be the minimum necessary for safety purposes, shall be manually operated, low intensity, hooded, and directed downward to minimize visual effects. No exterior lighting is approved on the water tank.
11. All construction activities shall comply with the following standards:
 - a. Construction activity is only permitted between the hours of **7:00 a.m. and 6:00 p.m., Monday through Friday**, and **9:00 a.m. and 5:00 p.m. on Saturday**. No construction shall be permitted on Sundays and the following holidays (New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day). Loud noise-generating construction-related equipment (e.g., backhoes, generators, jackhammers) can be maintained, operated, or serviced at the construction site from 8:00 a.m. to 5:00 p.m. Monday through Friday only. Minor jobs (e.g., painting, hand sanding, sweeping) with minimal or no noise impacts on the surrounding properties are exempted from the limitations on construction activity. At the applicant's request, the Community Development Agency staff may administratively authorize minor modifications to these hours of construction.
 - b. It shall be the responsibility of the applicant to ensure that all construction materials and equipment are stored on-site (or secured at an approved off-site location) and that all contractor vehicles are parked in such a manner as to permit safe passage for vehicular, pedestrian, and bicycle traffic at all times.
12. The applicant/owner hereby agrees to defend, indemnify, and hold harmless the County of Marin and its agents, officers, attorneys, or employees from any claim, action, or proceeding, against the County or its agents, officers, attorneys, or employees, to attack, set aside, void, or annul the approval of the water tank replacement, for which action is brought within the applicable statute of limitations.
13. Any changes or additions to the project shall be submitted to the Community Development Agency in writing for review and approval before the contemplated modifications may be initiated. Construction involving modifications that do not substantially comply with the approval, as determined by the Community Development Agency staff, may be required to be halted until proper authorization for the modifications are obtained by the applicant.
14. Utility extensions or connections shall be underground.
15. The applicant shall be responsible for ensuring that the number of construction vehicles is limited to the minimum number necessary to complete the project.

16. If archaeological resources are discovered during site preparation or construction, all work at the site shall stop and the applicant shall contact the Marin County Environmental Coordinator. A registered archaeologist, chosen by the County and paid for by the applicant, shall assess the site and shall submit a written report to the Community Development Director advancing appropriate mitigations to protect the resources discovered. No work at the site may recommence without approval of the Community Development Director. All future development of the site must be consistent with findings and recommendations of the archaeological report as approved by the Community Development Director. If the report identifies significant resources, amendment of the permit may be required to implement mitigations to protect resources.
17. This Use Permit is subject to revocation procedures in the event any of the terms of this approval are violated or if the uses are conducted or carried out in a manner so as to adversely affect the health, welfare, or safety of persons residing or working in the neighborhood.

Department of Public Works

18. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall satisfy the following:
 - a. Provide the area (SF) of site disturbance on the site plan.
 - b. The site plan shows a 1% slope away from the proposed tank foundation, the project shall be modified so that the grading and drainage along the foundation comply with 2007 CBC 1803.3, which state drain 5% away from the structure for a minimum of 10-feet. If perimeter drains are installed provide erosion protection at the outfall of the perimeter drain dispersion.
 - c. No title report was provided, if there are any existing easement plot them on the site plan.
 - d. Note that all construction plans submitted to the county pursuant to any permit application shall consider the potential for erosion and sedimentation at the construction site and shall comply with 24.04.625 and 24.04.627.
 - e. To minimize slope bank disturbance and prevent erosion, we recommend that the proposed silt fence shown on sheet 2, be relocated away from the reservoir top of bank.

SECTION 3: VESTING, PERMIT DURATION, AND APPEAL RIGHTS

NOW, THEREFORE BE IT RESOLVED that the applicant must vest the Estero Mutual Water Company Coastal Permit, Use Permit, and Design Review (Project ID 2010-0276) approval by obtaining a Building Permit and other required construction permits from the California Department of Public Health, Public Water Supply Division. The applicant shall substantially complete all work pursuant to the conditions of approval before September 29, 2013, or all rights granted in this approval shall lapse unless the applicant applies for an extension at least 30 days before the expiration date and the Community Development Director approves it.

NOW, THEREFORE BE IT FURTHER RESOLVED that this Use Permit shall be valid in perpetuity unless the conditions of approval are violated, in which case the Use Permit may be revoked.

NOW, THEREFORE BE IT FURTHER RESOLVED that this decision is final unless appealed to the Planning Commission. A Petition for Appeal and a \$600.00 filing fee must be submitted in the Community Development Agency, Planning Division, Room 308, Marin County Civic Center, San Rafael, no later than 4:00 p.m. on October 6, 2011.

SECTION 4: DECISION

ADOPTED at a regular meeting of the Deputy Zoning Administrator of the County of Marin, State of California, on the 29th day of September, 2011.

JEREMY TEJIRIAN
DEPUTY ZONING ADMINISTRATOR

Attest:

Joyce Evans
Deputy Zoning Administrator Secretary

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