

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 02/06/12      TIME: 8:30 A.M.      DEPT: B      CASE NO: CV1004803

PRESIDING: HON. ROY O. CHERNUS

REPORTER:

CLERK: DUONG THAI

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PLAINTIFF:      JON EDWARDS

vs.

DEFENDANT:      EDWARD C. INGRAM

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NATURE OF PROCEEDINGS: MOTION TO COMPEL – FURTHER RESPONSES AND PRODUCTION OF ADDITIONAL DOCUMENTS [PLTF] JON EDWARDS

RULING

**Plaintiff's Motion to Compel Further Responses and Production of Additional Documents is granted as prayed. The Court will not consider Defendant's opposition filed only three court days before the hearing rather than the required nine. (Cal. Rule of Court 3.1300(d).)**

*In the event that no party requests oral argument in accordance with Marin County Superior Court Local Rules, Rule 1.6 B., the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 1.7.*

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 02/06/12      TIME: 8:30 A.M.      DEPT: E      CASE NO: CV1101793

PRESIDING: HON. FAYE D'OPAL

REPORTER:

CLERK: P. OKUBO

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PETITIONER:      PATRICIA A. TOMPKINS

vs.

RESPONDENT:      MARIN COUNTY  
COMMUNITY DEVELOPMENT AGENCY

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NATURE OF PROCEEDINGS: HEARING – WRIT OF MANDATE

RULING

**Petitioner’s application for a peremptory writ of mandate (Code Civ. Proc. § 1094.5) from the decision of the Administrative Law Judge finding Petitioner had violated several sections of the Marin County Code, and imposing costs and civil penalties totaling \$32,779.07, is Denied.**

**The court finds substantial and largely uncontradicted evidence in the administrative record (Code Civ. Proc. § 1094.5(c)), to support the ALJ’s findings that Petitioner violated the Marin County Code by constructing, altering, and/or repairing structures on her property without the proper permits or design review, as follows:**

**Petitioner constructed and/or altered her storage shed, which was well in excess of the exempted size of 300 sq. ft., by enclosing it and installing doors without first obtaining a building permit, in violation of Marin County Code §§ 19.04.010, 19.04.060.**

**Petitioner’s front and side perimeter fences were constructed within the applicable setbacks and were taller than allowed without a permit; were made of solid wood and ranged from 6 ft. and taller; and were without the portion above 4 ft. “at least fifty percent open and unobstructed by structural elements.” These structures violated Marin County Code § 22.20.050; and**

**The wooden retaining walls were over 8 ft. tall and were built in San Geronimo Creek without a Design Review in violation of § 22.20.090(D)(6); they were constructed less than 20 feet from the top of the creek bank in violation of Marin County Code § 24.04.560; and**

**Petitioner did not obtain a creek permit from the Department of Public Works in violation of Marin County Code §§ 11.08.050, 11.08.060, and 11.08.070.**

**It should be noted that the current version of Marin County Code § 22.20.090 – Setback Requirements and Exemptions, requires design review for nonconforming retaining walls in subdivision (C)(6), not subdivision (D)(6), as found by the ALJ. No party cites this discrepancy. The language relied on by the ALJ is contained in subdivision (C)(6), and it appears the ALJ made a typographical error. As such the court finds substantial evidence that Petitioner violated Marin County Code § 22.20.090(C)(6).**

**The petition is denied for the separate reason that Petitioner’s briefs are deficient to support her burden to show lack of substantial evidence (see generally *Young v. Gannon* (2002) 97 Cal.App.4th 209, 225), in that Petitioner has offered no case law to support any of her defenses, and Petitioner has not cited to any place in the transcript or in the administrative record to show lack of substantial evidence to support the ALJ’s findings.**

**Moreover, Petitioner has not presented facts and legal authority to support her defenses: i.e., that any of her structures qualified as prior nonconforming uses; that Respondent Marin County Community Development Agency should be estopped from enforcing the several code provisions; or that compliance with the Marin County Code interfered with an established right to take emergency measures to protect her property from flooding.**

**Petitioner also argues she prevented her from complying because there was a two-year moratorium on issuing building permit. The record does not support this claim. Petitioner enclosed the storage structure and constructed the retaining walls by early 2007, without first applying for or obtaining permits, which was one year before the moratorium took effect. Also, Petitioner did not file supporting documents or surveys needed to support adequate permit applications in 2010, after the expiration of the moratorium. (RT 57-58, 60-63, 65-66)**

**Judgment will be entered for Respondent.**