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Appeal Filed: 6/30/2010
Action Deadline: None
Staff: Rainey Graeven - SC
Staff Report: 8/25/2017
Hearing Date: 9/14/2017

STAFF REPORT: DE NOVO HEARING

Application Number: A-3-SCO-12-046

Applicant: R. J. Fambrini and Company, Inc.

Project Location: Adjacent to Liddell Creek downcoast of Bonny Doon Road and approximately 0.2 miles inland from Highway 1 on the Cotoni-Coast Dairies National Monument in the unincorporated north coast area of Santa Cruz County (APN 058-122-13)

Project Description: Replacement agricultural well

Staff Recommendation: Denial

SUMMARY OF STAFF RECOMMENDATION

Santa Cruz County approved a coastal development permit (CDP) authorizing the replacement of an agricultural well within a riparian woodland/environmentally sensitive habitat area (ESHA) located approximately 63 feet from the bank of Liddell Creek near Bonny Doon Road on the Cotoni-Coast Dairies National Monument in the unincorporated and rural North Coast area of Santa Cruz County. On April 16, 2015, the Commission found that the County's action approving the well project raised a substantial issue of conformance with the Santa Cruz County certified LCP, and took jurisdiction over the CDP. Specifically, the Commission found substantial issue with respect to the protection of ESHA and stream resources/habitats.

The proposed well is located in a sensitive riparian habitat area associated with Liddell Creek that constitutes ESHA under the Coastal Act. The proposed project is inconsistent with the Coastal Act because only resource-dependent uses are allowed in ESHA, and an agricultural well

is not a resource-dependent use. In addition, there remain outstanding questions related to the well's impact on riparian woodland, groundwater resources, in-stream flows, and sensitive species in and around the creek itself, including with respect to listed Coho salmon and steelhead species. The well undoubtedly pulls water from the Creek, but the relative degree of impact on Creek resources is uncertain. Ultimately, the Commission need not resolve these uncertainties because the well is fundamentally prohibited in ESHA, which requires its denial.

Even if the well were allowable in that ESHA area, and even if impacts could be found to be insignificant with respect to related coastal resources, the project is located on land owned by the United States Bureau of Land Management (BLM), and managed by BLM as a resource area as part of the Cotoni-Coast Dairies National Monument, where the well is specifically prohibited by the Commission's prior CDP (which subdivided a larger parcel that resulted in the parcel upon which the subject well site is located) and related deed restrictions on the land that allowed for the land transfer to BLM. In addition, the Applicant does not have any type of lease or property interest even allowing the well and related infrastructure on BLM land, and it is unclear whether or even how a well of this sort could be permitted under the federal rules that apply to such National Monuments (if the CDP/deed restriction issues could somehow be resolved, which is unlikely), and BLM has thus far not identified a path forward for the required federal authorization that would be necessary to allow a well on BLM property in any case.

Finally, there may be alternative well sites available to the Applicant that are not located in ESHA, would not result in creek-related impacts, and would not be located on BLM land. However, because the Applicant only attempted to drill at a single alternate site (which did not produce water) alternative well site options (that are not clearly inconsistent with Coastal Act policies) have not been thoroughly explored.

For all of these reasons, the proposed project does not meet the Coastal Act standard for the protection of ESHA (i.e., that only resource-dependent uses are allowed in ESHA), and raises ESHA and other questions regarding the project's consistency with Coastal Act sections related to the protection of in-stream creek flows, biological productivity, groundwater resources, and a range of policies protecting the Liddell Creek and its associated habitats, and therefore must be denied.

For these reasons, staff recommends that the Commission deny a CDP for the proposed project.

The motion is found on page 3 below.

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EXHIBITS

Exhibit 1 – Location Maps

Exhibit 2 – Site Photos

Exhibit 3 – Deed Restriction (for the Parcel Containing the Well)

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Exhibit 5 – Agricultural Well Categorical Exclusion Provisions

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Exhibit 9 – Cotoni-Coast Dairies National Monument Land Division CDP Conditions (CDP 3-11-035)

I. MOTION AND RESOLUTION

Staff recommends that the Commission, after public hearing, **deny** a coastal development permit for the proposed development. To implement this recommendation, staff recommends a **NO** vote on the following motion. Failure of this motion will result in denial of the CDP and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission approve Coastal Development Permit Number A-3-SCO-12-046 for the development proposed by the applicant, and I recommend a no vote.*

***Resolution to Deny CDP:** The Commission hereby denies Coastal Development Permit Number A-3-SCO-12-046 on the grounds that the development will not be in conformity with the Coastal Act. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures and/or alternatives that would substantially lessen the significant adverse effects of the development on the environment.*

II. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. PROJECT DESCRIPTION/BACKGROUND

The proposed project would authorize a replacement agricultural well originally installed under an Emergency CDP (ECDP) issued by Santa Cruz County in 2012.¹ The proposed well is located on the southeast portion of APN 058-122-13 (which is now owned by the United States Bureau of Land Management (BLM) as part of the Coast Dairies & Land Company (Coast Dairies) land transfer, CDP No. 3-11-035). The well is used by the Fambrini Farm to irrigate land on adjacent agricultural parcels (APNs 059-011-10, 11 and 13 and 059-012-02, all owned by the Trust for Public Land) totaling some 27 acres of agricultural production.² The proposed well (which has been in operation since 2012) is the third known agricultural well that has existed at this general location, and it replaced a well that had been installed in 1977 but was low-functioning due to its age and clogging caused by sand.³ The proposed well is vertically oriented, approximately 123 feet deep, and was drilled using the mud rotary drilling method.⁴ The proposed well is located adjacent to the location of the 1977 well and is positioned approximately 40 feet southeast (downcoast) of Bonny Doon Road and about 0.2 miles inland of Bonny Doon Road's intersection with Highway 1. It is approximately 63 feet north of the northern Liddell Creek bank in an area that is surrounded by dense woodland characterized by riparian willow scrub and oaks with dense underbrush. The well is connected to a previously existing pipe (which is also connected to the well that was drilled in 1977); the pipe and conveyance channel transports water to a man-made "pond" (which is located on the lower agricultural fields) that stores the water for irrigation use at the above described farming operation.

The 1977 well, the proposed well, and the conveyance pipes are located on BLM land upcoast of Liddell Creek in the areas between Bonny Doon Road and Liddell Creek (see **Exhibit 1**). The Applicant does not have any property rights to the well site (i.e., the Applicant does not own or lease the land on which the well resides) or to any of the land on which related development is located on either side of Liddell Creek. The well and related infrastructure (i.e., the conveyance pipes) are located on BLM property. The Applicant's leased agricultural land totaling

¹ The well was installed and has been in place since 2012. That said, it is herein evaluated as a new proposed well because, upon expiration of the ECDP and the Commission's prior finding of substantial issue with respect to the County-issued CDP for the well, authorization no longer exists for the well; on de novo review here the Commission considers the project as if it heard the matter in the first instance.

² The crops primarily consist of brussel sprouts, which are irrigated through a traditional sprinkler system, and various organic greens that are irrigated through drip irrigation. The Applicant, R.J. Fambrini and Company, Inc., has been the lessee of this farming site for many decades.

³ It is estimated that the well that preceded the 1977 well was installed sometime in the 1940s or 1950s. However, there is no record of the exact date that that well was drilled because it was done prior to passage of the Coastal Act (and thus a CDP was not required), and neither the County nor the Applicant have records pertaining to the drilling of that well. Its estimated installation date stems from the average lifespan of agricultural wells and the known lifespan of the 1977 well.

⁴ The mud rotary drilling method consists of the rapid rotation of a drill bit mounted on the end of the drill rod. The drill bit breaks the material at the bottom of the hole into small pieces, which are then removed by pumping drilling fluid (typically water) down through the drill rods and drill bits.

approximately 27 acres are all located south of Liddell Creek. The well is currently situated on public/federal land managed by BLM.⁵ R.J. Fambrini and Company, Inc. did not have a lease or any formal property right to the well site before the land was transferred to BLM (i.e., from Coast Dairies), and has not acquired a lease or any formal property rights to the land on which the well resides since the land was transferred to BLM. The well is located offsite⁶ of the leased, farmed properties at 7200-7226 Highway 1 in the unincorporated north coast of Santa Cruz County (APN 058-12-046).

See **Exhibit 1** for project location maps. See **Exhibit 2** for photos of the project site (the well) and the agricultural fields the well serves.

B. PERMITTING/APPEAL HISTORY

The 1977 well was identified as being a “replacement well” for agricultural use in both the Coastal Commission CDP (CDP No. A-77-75) and County Well Permit 1955. That well gradually deteriorated due to casing collapse, which caused sand to enter the well water, resulting in recurring blockages of the water supply, which in turn required increasingly frequent maintenance of the well to allow for continued irrigation.

In March of 2012, Landino Drilling Company (acting as the representative for the Applicant) applied to the Santa Cruz County Environmental Health Services Agency to drill a new well to replace the failing 1977 well. Per previously adopted agricultural Categorical Exclusion Order (as referenced in LCP Implementation Plan (IP) Section 13.20.073 (see **Exhibit 5**)), certain agricultural development, including the installation of wells for irrigation purposes, are excluded from CDP requirements, provided that such facilities are located over 100 feet from any streams or other coastal bodies of water. The Applicant originally selected a location over 100 feet from Liddell Creek to drill for a new well, and the County issued Well Permits 12-083 and 12-084 (for drilling of a new well and the destruction of the failing 1977 well,⁷ respectively). Because the proposed well location was located over 100 feet from Liddell Creek and met the terms of the County’s agricultural Categorical Exclusion, no CDP was required.

However, the well drilled under Well Permit 12-083 did not reach a water source and was therefore abandoned pursuant to County Well Permit 12-344. Therefore, in July of 2012, to prevent further damage to crops, Landino Drilling Company proposed drilling a replacement well adjacent to the 1977 failing well where a known water supply was available. However, in

⁵ Prior to BLM ownership and management, Coast Dairies & Land Company owned both the BLM land and the agricultural parcels leased by R.J. Fambrini Inc. In April of 2014, Coast Dairies granted a portion of the land to BLM, including the land where the well and related development site are situated, making it public land managed by BLM. Coast Dairies granted several agricultural properties, including the land farmed by the Applicant, to the Trust for Public Land (TPL). The Applicant has leased the agricultural parcels from TPL since the transfer from Coast Dairies to TPL. The Applicant did not have a lease from Coast Dairies and does not currently have a lease from BLM for the well and associated conveyance pipes.

⁶ The well is located between approximately 100 feet and 150 feet from the nearest point of the farm, with Liddell Creek running between the well and the farm.

⁷ County Well Permit 12-084 was not acted upon (i.e., the well was not decommissioned and is periodically used as a supplemental water source as needed).

order to drill a replacement well adjacent to the 1977 well, which was located approximately 63 feet from northern creek bank of Liddell Creek, the Categorical Exclusion did not apply, and a CDP was required.

The Applicant therefore applied to the County for an Emergency CDP (ECDP), which the County issued on July 19, 2012. The ECDP allowed for the drilling of a replacement well adjacent to the 1977 failed well, on the basis that the County determined that the time and expense required for new well exploration in areas more than 100 feet from Liddell Creek (which would have been excluded from CDP requirements) would result in severe economic hardship to the Applicant via lost crops due to lack of irrigation.

On October 19, 2012 the Santa Cruz County Zoning Administrator approved the follow-up CDP (County CDP 121185) to recognize the well drilled pursuant to the County's July 2012 ECDP. On November 11, 2012 the County's approval was appealed to the Coastal Commission. On April 16, 2015, the Commission found that the County's action approving the well raised a substantial issue of conformance with the Santa Cruz County certified LCP, and took jurisdiction over the CDP. Specifically, the Commission found substantial issue with respect to the protection of ESHA and stream resources/habitats.

See **Exhibit 4** for the site's permitting history including: Coastal Commission CDP A-77-75; County Well Permits 19553, 12-083, 12-084, and 12-344; and the County's 2012 ECDP.

C. STANDARD OF REVIEW

The project was initially appealed in November of 2012, during which time Coast Dairies owned the subject parcel where the well is located. Because the project was located on privately owned land at the time of the Commission's Substantial Issue determination, the Santa Cruz County LCP was the standard of review for that action. However, on April 14, 2014, Coast Dairies transferred the subject property to BLM pursuant to the requirements of CDP No. 3-11-035, thus resulting in shifting the parcel from private property to federally owned land. When the Commission reviews private projects on federal land, the standard of review is the Coastal Act. Thus, the standard of review for this CDP determination is the Coastal Act.

D. ESHA, BIOLOGICAL PRODUCTIVITY & WATER SUPPLY

1. Applicable Policies

The Coastal Act is highly protective of environmental sensitive habitat areas (ESHAs), biological productivity, and water supply. With respect to the protection of ESHA, the Coastal Act limits development in and around ESHA, and safeguards against the significant disruption of habitat values. In addition, the Coastal Act requires that only resource-dependent uses be allowed within ESHA. With respect to the protection of biological productivity, the Coastal Act seeks to protect the biological productivity of coastal waters including creeks through: 1) maintaining the natural buffer areas that protect riparian habitats; 2) preventing the depletion of groundwater supplies; and 3) preventing any significant alteration of surface water flows. Applicable Coastal Act policies include:

Section 30240. *Environmentally sensitive habitat areas; adjacent developments (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Section 30231 *Biological productivity; water quality. The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

2. Allowable Uses in ESHA/Impacts to the Riparian Woodland ESHA

The Coastal Act standard for the protection of ESHA is explicit; only resource-dependent uses (e.g., habitat restoration, research, trails to access the resource, etc.) are allowable in ESHA. Thus, any non-resource-dependent uses (e.g., an agricultural well) are not allowable in ESHA. In this case, the well is located within riparian woodland habitat, which qualifies as ESHA here based on a site-specific determination. Specifically, the Commission's senior staff ecologist, Dr. Jonna Engel noted that "the habitat that the well was built in is riparian habitat that qualifies as ESHA and building the well in this location caused permanent impacts to this habitat" (see **Exhibit 6**). The riparian woodland includes an overstory consisting of red alder (*Alnus rubra*), arroyo willow (*Salix lasiolepis*), and red elderberry (*Sambucus racemosa*), and an understory consisting of California blackberry (*Rubus ursinus*), California figwort (*Scrophularia californica*), stinging nettle (*Urtica dioica*), poison hemlock (*Conium maculatum*), and bull thistle (*Cirsium vulgare*) (see **Exhibit 7**).⁸ Dr. Engel also noted that the overstory and the understory plants that are present at the site are characteristic of riparian habitat, and are common along creeks and streams in the central coast (see **Exhibit 6**).

Even if the well was a resource-dependent use, which it is not, it cannot meet other Section 30240 tests either. With respect to the well's consistency with the second prong of Coastal Act Section 30240(a) (i.e., that ESHA shall be protected against any significant disruption of habitat values), it remains unclear if the well's construction and continued use has significantly disrupted habitat values of the riparian woodland. While the well's installation resulted in the permanent loss of 25 square feet of ESHA, the overstory and understory around the well (that had been cleared to install the well) appeared to have successfully grown back by staff's site visit in 2015 (see **Exhibit 2**). The regrowth of the riparian woodland surrounding the well site suggests that the riparian woodland may not have suffered any *significant* disruption of habitat values, but ultimately it is difficult to make this determination given there is no baseline/historic information related to the well site from which to compare. In addition, the site visit was three

⁸ Two of the understory species are non-native species (poison hemlock and bull thistle).

years later and, based on Dr. Engel's determination that 25 square feet of ESHA was lost permanently, and there would have been a time of lost ESHA productivity and values as the surrounding area recovered over time after well installation; thus, the well development arguably resulted in such disruption at this site. In any case, because the well was installed in riparian ESHA and the Coastal Act strictly prohibits non-resource-dependent uses within ESHA, the application for the subject well must be denied on this basis alone, and the Commission need not resolve that issue here.

3. Impacts to In-Stream Flows, Biological Productivity, & Groundwater Water Supply

The Coastal Act protects biological productivity as necessary to maintain optimum populations of marine species. In addition, the Coastal Act seeks to prevent the depletion of groundwater supplies and limits significant alterations of both surface waters and natural streams. In addition to the permanent impacts to 25 square feet of riparian woodland ESHA resulting from the construction of the well, there are also unresolved questions related to the well's impact on the creek's streamflow and potential adverse impacts on the creek's sensitive species (which also constitute potential ESHA impacts),⁹ and potential adverse impacts to groundwater supplies. However, ultimately, these unresolved issues are moot because denial of a CDP here is warranted by the fact that the well constitutes a non-resource-dependent use within ESHA. In any case, the issue is explored briefly below.

In terms of the well's impacts on stream flows, biological productivity and groundwater resources, despite multiple requests, the Applicant has not provided the information necessary to adequately evaluate these issues. Streamflow and groundwater are pivotal to the health of aquatic and riparian habitats associated with Liddell Creek, and Liddell Creek is one of the primary sources of water for much of urbanized Santa Cruz County (via the Santa Cruz Water Department). The Applicant has provided an assessment of the impact of the well using a hydrologic model. The output of the model relies on a series of assumptions about the aquifer's characteristics that appear to conflict with actual existing conditions. The Applicant's hydrology report was reviewed by several Commission staff with expertise in hydrology, who ultimately determined that the report was inconclusive because its groundwater models assume that an aquifer is homogenous and infinite, when in fact the substrate is layered vertically with highly porous gravel on top and clay underneath, and its width is restricted to the relatively narrow Liddell Creek corridor. In addition, drawdown (i.e., the lowering of the groundwater table during pumping) was measured to be significant at 13.7 feet of the total gravel aquifer depth of 33 feet (approximately 40%), whereas the model assumes that drawdown is small (e.g., a few percent) compared to the aquifer's thickness.

It is also worth noting that the Applicant's hydrological model output (i.e., the percentage of the extracted water derived from stream depletion) changed significantly simply by changing a single input, namely the well's distance to the creek. In the first iteration of the model, the well was assumed to be 170.8 feet from the creek. Using this input distance, the report found that only

⁹ Although only guidance in this application, the LCP provides specific direction for Liddell Creek. Liddell Creek is in an LCP-designated Water Supply Watershed and is also an LCP-designated Critical Water Supply Stream that the LCP calls out as "currently utilized at full capacity." These designations then lead to a series of LCP requirements, including that it is the LCP's stated policy to "oppose or prohibit as legal authority allows, new or expanded water diversion from Critical Water Supply Streams," and to "seek to restore in-stream flows where full allocation may harm the full range of beneficial uses."

roughly 0.48% of the well water being pumped is from the creek over the course of a continuous 12-hour period, gradually increasing to almost 2% from the creek at the 12th hour of continuous pumping. The rest of the water, presumably, is derived from the assumed infinite and homogeneous aquifer. The Applicant's hydrologist then adjusted the model such that the well was assumed to be 140 feet from the creek. Changing the well's input distance from 170.8 feet to 140 feet shifted the model's output, finding that on average 1.5% of the well water was derived from the creek during a 12-hour period, with nearly 5% derived from the creek at the 12th hour of continuous pumping. The Applicant's hydrologist then again modified the model including changing the well's assumed distance to the creek to 75 feet, which of the three distances modeled most closely resembles the actual well's distance from the Creek (given that the well is approximately 63 feet from the Creek), but is still more conservative than actual conditions. This iteration found that an average of 12% of the pumping was derived from stream depletion during a 12-hour period, increasing to 25% at the 12th hour (see **Exhibit 8**). In sum, even with the questionable characteristics used to model the hydrologic response to pumping the well (i.e., an homogenous aquifer and unjustified well distances used in the models), ultimately the model demonstrates that the closer the well is located to the creek, and the longer the well is pumped, the more likely it is that creek flow would be depleted by pumping, with 25% of well water coming out of the creek at the 12th hour. The close proximity of the well to the creek is a core issue for this application in terms of the proposed project's inconsistency with ESHA and water supply/quality provisions of the Coastal Act. In addition, there has been no limit specified by the Applicant as to the expected duration or rate of pumping as part of the project proposal, whereas both parameters are needed to determine the extent of creek flow depletion and subsequent effect on riparian and aquatic habitat; both in reality, and as predicted by a modelling approach.

In an effort to try and resolve the questions regarding whether the pumping is damaging creek resources and ESHA, the Commission requested that the Applicant complete a pump test, which would help to more precisely identify how much the stream is being depleted during 24 hours of continuous pumping. However, the Applicant indicated that the cost of such a test was overly burdensome and has therefore not completed a pump test. Although it would have helped to better answer outstanding questions, the Commission acknowledges that it is unclear if the test would generate final conclusions on whether or not the well was adversely impacting the creek, sensitive creek species (including steelhead and Coho salmon), and groundwater resources. In other words, even if the pump test identified how much water is extracted in 24 hours of continuous pumping and how much the creek level dropped during this period, it would take further analysis to gauge potential impacts to sensitive species, including steelhead and Coho salmon.¹⁰ Finally, there is no baseline or historic data related to stream flows of Liddell Creek or

¹⁰ In addition, there are additional stressors/barriers to these species along Liddell Creek that would need to be factored in. Also, it may be difficult to distinguish adverse impacts from the well as compared to other stressors/barriers, including as a well has existed at this site for approximately fifty years. In other words, it would be very difficult to be able to conclusively demonstrate the well's impacts alone on the creek and its population of Coho salmon and steelhead, particularly given that there are other environmental factors and physical barriers that directly and indirectly impact creek flows and fish populations. For example, Fisheries biologists from the California Department of Fish and Wildlife (CDFW) (see Appendix A) report that Liddell Creek is not currently considered a Coho salmon watershed, and that the creek is marginal for steelhead. CDFW also noted that the creek is excessively shady, sandy, and has low base flows. Finally, there are significant barriers to fish passage where the creek intersects Highway 1. The Highway 1 crossing is considered a "Temporal and Total Barrier" to fish passage because fish passage is only marginally passable during limited hydrologic conditions, including because the tunnel that goes under Highway 1 outlets several feet above the beach level, which means that fish would have to make a significant

the groundwater aquifer to use as a reference or to compare to the results of a pump test. Thus, for all of the above reasons, it is unclear the degree to which the well has had, and continues to have, a significant adverse impact upon these creek resources. At the same time, it appears relatively certain that the well is removing water that would otherwise be in the creek and available for these natural resource uses and values, including based on the hydrological modelling done by the Applicant, and it seems likely that the well has some effect on such resources, including listed species habitats and ESHA. Again, however, the well is not allowed in ESHA and it must be denied on this basis alone, and the Commission need not resolve that issue here.

In addition to the uncertainty related to the impacts of the well's pumping on stream flows, biological productivity, and groundwater supply, there is also limited information related to the amount of water that is being pumped from the well and used for irrigation. The information known about the well and pumping is generally limited given that there is no meter on the proposed well that tracks pumping data, and there is no recorded data related to the number or duration of pumping events since the well was installed in 2012.

In terms of known information, the proposed well has actively pumped water since the County approved its construction under the County-issued ECDP in July of 2012. The Applicant has also estimated that the amount of water extracted by the subject well and the 1977 well¹¹ has gradually decreased over the years due to a steadily decreasing water supply; however, the Applicant has not provided any records of historic or present-day water use, and thus there is no evidence to support this claim that well extractions have decreased over the years. That being said, historically the Fambrini Farm had access to several other water sources, but over time these potential water sources have dwindled.¹²

In sum, there is uncertainty related to the amount of water being pumped from the well and how the pumping has affected the creek and its associated ecosystem since 2012. At the same time, it appears relatively certain that the well is removing water that would otherwise be in the creek

jump in order to travel from the ocean upstream or from the upstream areas to the ocean. CDFW further noted that the creek's outflow path along the beach serves as an additional hurdle/barrier for fish. Finally, there are three additional upstream perched culverts requiring similar "jumps" for fish, which provide additional barriers to fish passage.

¹¹ Although the Applicant obtained a permit from the County to decommission the 1977 well, the Applicant did not decommission that well and has since indicated that the 1977 well is used periodically when water needs exceed the amount that can be extracted from the proposed well alone. Although the 1977 well is low-functioning due to its age and the fact that it is clogged with sand, it does provide some supplemental water as needed. There is also no meter on the 1977 well.

¹² In terms of alternate water sources, Yellow Bank Creek (which is located approximately 1.5 miles north of Liddell Creek) historically provided additional water to the Fambrini Farm until its use for irrigation purposes was terminated when the Coast Dairies & Land Company purchased the land that Yellow Bank Creek is located on in 2014. Additionally, the Applicant has the right to purchase water from the City of Santa Cruz's raw water line, which is served by two two-inch water lines located near Laguna Road. However, the Applicant has asserted that this water is undesirable due to its high cost and unpredictable availability given that this water may be rationed during drought years. Thus, during drought years, it is not clear whether the Applicant could obtain enough water from the City's raw water supply to maintain crops, and even if the Applicant were able to obtain water, there is no guarantee that the water would continue to be available for the duration of the growing season.

and available for these natural resource uses and values and it seems likely that the well has some effect on such resources, including listed species habitats and ESHA. However, ultimately, these questions need not be resolved by the Commission here because denial of a CDP here is warranted by the fact that the well constitutes a non-resource-dependent use within ESHA.

E. OTHER ISSUES

Although the Coastal Act requires denial of the proposed well because it is a non-resource-dependent use in ESHA (as discussed above), at this point the denial does not result in a taking of the Applicant's property¹³ for the purposes of the State and Federal constitutions. In addition to property ownership issues, because the Applicant has only drilled for a potential well at a single alternate location, it is reasonable to assume that an alternate (and approvable) well location may exist on agricultural property leased by the Applicant. Furthermore, if such a well were located over 100 feet from Liddell Creek, it would not require a CDP provided it met the terms of the Commission-certified Agricultural Categorical Exclusion Order.¹⁴ In addition, the Applicant indicates that it is using the existing 1977 well at the current time, but has not provided any data on how much water is being pumped from that well, stating only that the 1977 well is insufficient to address agricultural irrigation needs on the leased property nearby. Finally, it is not clear to what extent City water could be purchased by the Applicant and under what terms for agricultural irrigation, even if that meant the Applicant needed to make other arrangements during drought years. In other words, the Applicant has not exhausted other water supply possibilities that are not clearly inconsistent with Coastal Act ESHA policies (as here, the proposed well site is clearly inconsistent with Coastal Act ESHA policies), including the potential for a water supply portfolio that used a variety of potential sources.

It is also worth noting that the Applicant has not made a diligent effort to pursue alternate well locations past the one alternate location tested, despite repeated requests to pursue other LCP-consistent well locations. The Applicant could have more actively pursued well exploration when the 1977 well began to deteriorate instead of waiting until the 1977 well's functioning deteriorated to the point that Santa Cruz County authorized an ECDP for a well immediately adjacent to the 1977 well and only 63 feet from Liddell Creek, citing that the 1977 well's low

¹³ As explained above, the Applicant has no identifiable property interest in the subject well site, and thus denial of use of the well site does not result in a "taking" of any identifiable investment-backed, legally-recognized property interest that the Applicant has in the well site, because the Applicant does not have a property interest. The Applicant does not own or lease the land on which the well resides or have any rights to any land located north of Liddell Creek. Rather, the Applicant's leased agricultural parcels are all located south of Liddell Creek. Denial of the permit here does not foreclose the opportunity and potential for the Applicant to find an alternate water source for its leased agricultural operations (as discussed subsequently in this section of the report), and there is no reason to assume that an adequate water supply categorically cannot be found elsewhere on the Applicant's leased holdings, so denial here also does not deprive the Applicant of economic beneficial use of that property either for purposes of takings considerations. It appears that "authority" for the Applicant to use the agricultural well at issue derives from BLM's passive acquiescence to the Applicant seeking a CDP based on a history of prior use allowed by Coast Dairies & Land Company when Coast Dairies still owned the property.

¹⁴ Codified as a reference in IP Section 13.20.073, where agricultural wells are exempt from CDP requirements provided that they are located over 100 feet from streams or other coastal bodies of water, not between the sea and the first public through road paralleling the sea, and located on a parcel over 10 acres in size, and otherwise consistent with all terms and conditions of the underlying Categorical Exclusion Order (see **Exhibit 5**).

level of functioning would result in severe economic hardship including through lost crops (see **page 20 of Exhibit 4**). The Applicant could have also pursued alternative well locations since the appeal was originally filed in 2012, as well as when the Commission found substantial issue and took jurisdiction over the CDP in 2015. Although the Applicant has indicated that (and the Commission's staff hydrologists have confirmed) the hydrology of the north coast of Santa Cruz County is highly variable, the Applicant has only drilled for water on a single alternative site (which, like the subject well and the 1977 well, is located on federal land and is likely in ESHA). The Applicant has not drilled for a well on the property it leases, where a well would be consistent with existing deed restrictions and the CDP that authorized the Cotoni-Coast Dairies land division as is discussed in more detail below.

Furthermore, denial of the proposed well would not be overly burdensome in an economic sense for the Applicant and does not preclude the Applicant from finding a water source for agricultural use including because: 1) R.J. Fambrini Inc. leases additional agricultural land approximately five miles north adjacent to the City of Santa Cruz; 2) the bulk of the 2017 growing season is completed, which means that the Applicant has the remainder of the year and the early part of next year for well exploration; and 3) the Applicant may continue to use the 1977 well to pump water, which may be adequate to irrigate a few of the 27 acres at the site (particularly the three lower acres that irrigate through drip irrigation) until the Applicant has secured an alternative well site that is consistent with associated permits and deed restrictions for the land and is not located in ESHA. Finally, as has been communicated to the Applicant, there are low-interest federal loans and private loans that are available to the Applicant for the purpose of well exploration (and other agricultural-related needs).

Beyond potential alternative well sites on the Applicant's property, it does not appear that an approvable well site exists in the vicinity of the existing wells or anywhere north of Liddell Creek due to existing CDP conditions and deed restrictions, and it is likely that all of the land between Liddell Creek and Bonny Doon Road is likely ESHA. First, CDP 3-11-035, which the Commission approved in 2012 and which authorized the land division that led to the land being acquired by BLM (and ultimately designated by the President of the United States as the Cotoni-Coast Dairies National Monument on January 12, 2017) includes Special Condition 3a, which restricts the property that the wells are located on to public recreational access, open space, and grazing uses. Specifically, Special Condition 3a requires that this site in question "be protected, used, and managed only for open space, grazing, and public recreational access uses and development in a manner consistent with the protection and preservation of coastal resources. Reclamation and restoration activities that support and facilitate such open space, grazing, and public recreational uses and development are allowed" (see **Exhibit 9**). It does not appear that an agricultural well could be found consistent with Special Condition 3a because that CDP does not provide for agricultural-related development in this area; further, it is not clear that such a well would be consistent with the protection and preservation of coastal resources. The deed restrictions similarly limit agricultural uses and operations to the agricultural parcels (which includes the land leased by R.J. Fambrini Inc.), and limits the federally-owned land managed by BLM (i.e., the land on which the well resides) to be "protected, used, and managed for open space, grazing, and public recreational access uses and development in a manner consistent with the protection and preservation of coastal resources." The deed restriction further limits the property that contains the wells by allowing "reclamation and restoration activities that support and facilitate open space, grazing, and public recreational uses." (See **Exhibit 3**). Per CDP 3-11-

035 and the associated deed restrictions, an agricultural well (or any agricultural use) is prohibited on the upland parcel (i.e., the parcel that contains the proposed well and the 1977 well).¹⁵ In addition, the land in question is now managed by BLM as part of Cotoni-Coast Dairies National Monument, and it is unclear whether or even how a well of this sort could be permitted under the federal rules that apply to such National Monuments and, in any case, BLM has thus far not identified a path forward for the required federal authorization that would be necessary to allow a well on BLM property.¹⁶

Thus, for all the above reasons, the likelihood that a well could be permitted in the vicinity of the subject well and 1977 well (i.e., on federal land managed by BLM that the Applicant does not possess property rights to) or that the Applicant could pursue a well at this location is unlikely. Nevertheless, the Applicant could pursue a well on the land currently farmed by Fambrini Farms (i.e., the agricultural parcels currently leased from The Trust for Public Land (TPL), which is designated in CDP 3-11-035 as agricultural land) and that the Applicant possesses property rights to (through a lease agreement with TPL). Furthermore, such a well (provided it is located over 100 feet from Liddell Creek) would likely be exempt from coastal permitting requirements pursuant to the Agricultural Categorical Exclusion Order discussed above.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Public Resources Code (CEQA) Section 21080(b)(5) and Sections 15270(a) and 15042 (CEQA Guidelines) of Title 14 of the California Code of Regulations (14 CCR) state in applicable part:

***CEQA Guidelines (14 CCR) Section 15042. Authority to Disapprove Projects. [Relevant Portion.]** A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.*

***Public Resources Code (CEQA) Section 21080(b)(5). Division Application and Nonapplication. ... (b)** This division does not apply to any of the following activities: ... (5) Projects which a public agency rejects or disapproves.*

***CEQA Guidelines (14 CCR) Section 15270(a). Projects Which are Disapproved. (a)** CEQA does not apply to projects which a public agency rejects or disapproves.*

¹⁵ In addition to CDP 3-11-035 and the associated deed restrictions, it is worth noting that it is unlikely that a well is approvable in the vicinity of the existing wells (i.e., between Liddell Creek and Bonny Doon Road) because a well at this location would inevitably be located on federal land that is likely all ESHA, and thus the Commission would be responsible for issuing a coastal permit for such a well and the Coastal Act would remain the standard of review, which strictly prohibits non-resource-dependent uses in ESHA. Although a comprehensive study determining whether all of BLM land between the creek and Bonny Doon Road is considered ESHA has not been completed to date, given that there is no change in the biotic species located closer to the creek versus closer to the road, it is likely that this entire area is ESHA. If the aforementioned area is in fact located entirely in ESHA, then a well would likely not be approvable at the BLM site because it would need to be found consistent with Coastal Act Section 30240, which, as described above, only allows for resource-dependent uses within ESHA.

¹⁶ Although it does not appear that a well is approvable on the federal land where the wells are currently located, BLM has indicated that a well on its property would likely require a discretionary approval (assuming permissibility of siting a well in this location).

14 CCR Section 13096(a) requires that a specific finding be made in conjunction with CDP applications about the consistency of the application with any applicable requirements of CEQA. This report has discussed the relevant coastal resource issues with the proposed project. All above findings are incorporated herein in their entirety by reference. As detailed in the findings above, the proposed project would have significant adverse effects on the environment as that term is understood in a CEQA context.

Pursuant to CEQA Guidelines (14 CCR) Section 15042 “a public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.” Section 21080(b)(5) of the CEQA, as implemented by Section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves. The Commission finds that denial, for the reasons stated in these findings, is necessary to avoid the significant effects on coastal resources that would occur if the project was approved as proposed. Accordingly, the Commission’s denial of the project represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, do not apply.

APPENDIX A – STAFF CONTACTS WITH AGENCIES AND GROUPS

1. Bureau of Land Management
2. California Department of Fish and Wildlife
3. United States Fish and Wildlife Service
4. National Oceanic and Atmospheric Administration