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Staff:	S.Pfeifer - SF
Staff Report:	1/19/2018
Hearing Date:	2/8/2018

APPEAL STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

Appeal Number: A-2-MAR-17-0074

Applicant: Stinson Beach County Water District

Appellant: Barbara Leonard Robben

Local Decision: Approved with conditions by the Marin County Deputy Zoning Administrator (CDP Application Number P1651)

Project Location: 120 Laurel Avenue, Stinson Beach, Marin County (APN 195-260-048)

Project Description: Installation of a new water supply well to serve the unincorporated community of Stinson Beach in Marin County

Staff Recommendation: No Substantial Issue

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 3 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 it will take public testimony. (California Code of Regulations, Title 14, Sections 13115 and 13117).

SUMMARY OF STAFF RECOMMENDATION

Marin County approved a coastal development permit (CDP) to allow for the installation of a new water supply well on the Stinson Beach County Water District's (SBCWD) property at 120 Laurel Avenue in Stinson Beach, Marin County. The well is intended to supply water to serve water users in the unincorporated community of Stinson Beach.

The Appellant contends the County-approved well does not meet the LCP provisions regarding siting new wells, including because the well is not buffered per the LCP's requirements. Specifically, the Appellant alleges that because the area within 100 feet of the well extends onto her property for a distance of 66 feet, that this will place "an encumbrance on the uses" allowed on her land.

After reviewing the local record, Commission staff recommends that the Commission find that the County's CDP action does not raise a substantial issue with respect to the County-approved well's conformance with the Marin County LCP. Specifically, the LCP requires wells to be located at least 100 feet from property lines, or a finding shall be made that no development constraints are placed on neighboring properties if they are closer than 100 feet. In this case, the County-approved well is located approximately 34 feet from the Applicant's property line. In making its LCP consistency findings on this point, the County generally found that this well would not impact potential development on the Appellant's property, but the findings on this point were more implicit than explicit with respect to uses other than wells and septic development. However, further discussions with the County and review of the record provided indicate that locating the well at the proposed location would not further constrain the Appellant's development potential beyond the already-existing natural site constraints. And the County has written a letter to the Appellant for the record that states as much. The 66-foot area to which the Appellant refers is steeply sloped and heavily vegetated and as a result independently limits what could appropriately be developed there. Staff believes that the intent of the LCP policies in this regard is adequately respected by the County's action, and that the development can be found compatible with the LCP policies regarding the siting and design of wells.

As a result, staff recommends that the Commission determine that the appeal contentions do not raise a substantial issue with respect to the grounds on which the appeal has been filed, and that the Commission decline to take jurisdiction over the CDP for this project. The single motion necessary to implement this recommendation is found on page 4 below.

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APPENDICES

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EXHIBITS

[Exhibit 1 – Project Location Map](#)

[Exhibit 2 – County-Approved Project Plans](#)

[Exhibit 3 – County’s Final Local CDP Action Notice](#)

[Exhibit 4 – Appeal of Marin County’s CDP Approval](#)

[Exhibit 5 – Marin County’s Final Approving Resolution \(17-124\)](#)

[Exhibit 6 – Marin County Letter of January 5, 2018](#)

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. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. 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-17-0074 raises **no substantial issue** with respect to the grounds on which the appeal has been filed under Section 30603, and I recommend a **yes** vote.*

***Resolution:** The Commission finds that Appeal Number A-2-MAR-17-0074 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 authorizes the installation of a new water well on the Stinson Beach County Water District's (SBCWD) property at 120 Laurel Avenue in Stinson Beach in Marin County. The well would be installed at the site of an already-present test well at the SBCWD's Laurel Avenue Water Treatment Plant (APN 195-260-048) (**Exhibit 1**). The Laurel Avenue Water Treatment Plant is surrounded by residential development to the south, west, and north, and by open space to the east. See **Exhibit 1** for project location information.

As depicted in the County-approved project plans (**Exhibit 2**), the well would be installed in the location of the currently-installed test well and would have the following setbacks from adjacent property lines: more than 100 feet from the northern adjacent residential property, 99 feet from the western adjacent residential property, approximately 100 feet from the southern adjacent residential parcel, and 34 feet from the eastern parcel that is primarily open space. The parcel to the east is the Appellant's land, a 9-acre parcel mostly containing open space and one residence, which is situated in the northern portion of the parcel, approximately 400 feet to the north of the well location. The new water well would provide the Stinson Beach County Water District with additional operational flexibility and reliability during peak demand periods or drought and dry seasons for service to its unincorporated Stinson Beach water users. The proposed well is not intended to, nor will it in fact, increase overall capacity to support new development in the area.

On November 16, 2017, the Marin County Deputy Zoning Administrator approved coastal development permit (CDP) P1651 for the above-described project. The County's notice of final

local action and resolution was received in the Coastal Commission's North Central Coast District office on December 1, 2017 (**Exhibit 3 and 5**). The Coastal Commission's ten-working day appeal period for this action began on December 4, 2017 and concluded at 5 p.m. on December 15, 2017. One valid appeal, from Barbara Leonard Robben, was timely received (see below and see **Exhibit 4**).

B. 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 if the allegation on appeal is that the development is not in conformity with the implementing actions of the certified LCP; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. 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. The County's approval is appealable because the approved development is not the principal permitted use as designated by the LCP.

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) of the Coastal Act requires the Commission to conduct a de novo CDP hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission conducts a de novo hearing and ultimately approves a CDP for a project, the Commission must find that the approved 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 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.

C. SUMMARY OF APPEAL CONTENTIONS

The Appellant, Barbara Leonard Robben, contends that the County-approved well is not adequately buffered from her property line, that the area within 100 feet of the well spills over onto her property (which is adjacent to the Water District's property), and that the well location

may place restrictions on the further development of her land. Please see **Exhibit 4** for the full appeal document.

D. SUBSTANTIAL ISSUE DETERMINATION

Substantial Issue Background

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.

Applicable LCP Policies

The County LCP includes a series of policies that dictate the placement and development of new wells, including requirements, standards, and conditions that must be met. Applicable policies include:

***LUP Public Services Policy 1.** Roads, flood control projects and utility service expansions shall be limited to the minimum necessary to serve development as identified by LCP land use policies. All such public works projects shall be reviewed under resource and visual policies of the LCP.*

***LCP Public Services Policy 3.** Within the service area of a community or mutual system the use of individual domestic water wells to serve new construction shall be permitted provided: a) the community or mutual system is unable or unwilling to provide service, or, b) the distribution system improvements are physically and/or economically unfeasible to construct to the site. Additionally, wells or water sources shall be at least 100 feet from property lines or, a finding shall be made that no development constraints are placed on neighboring properties.*

***IP Section 22.56.1301(A)(1)(a) Development requirements, standards and conditions.** ... wells or water sources shall be at least 100 feet from property lines or, a finding shall be made that no development constraints are placed on neighboring properties.*

Analysis

The LCP requires that utility service expansions be limited to the minimum amount necessary to serve development (LCP Public Services Policy 1) and that wells be sited adequate distances from adjacent development so as not to adversely impact those adjacent properties (LCP Public

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Services Policy 3 and IP Section 22.56.1301(A)(1)(a)). The Appellant contends the County-approved well does not meet the LCP provisions regarding siting new wells because the well location will place new development constraints on the Appellant's property. Specifically, the Appellant alleges that because the area within 100 feet of the well extends onto her property for a distance of 66 feet, that this will place "an encumbrance on the uses" allowed on her land. As indicated above, the LCP requires wells be sited at least 100 feet from adjacent property lines, or that in the alternative, a finding be made that the siting of the well closer than that distance will not place development constraints on neighboring properties.

The County found that the proposed new well would be in conformance with the Public Services Policy 1, which requires that new utility services be limited to the minimum necessary, because the proposed well is being built to serve as a replacement source during drought or dry seasons or to meet peak demand of already-existing housing stock in Stinson Beach (the Water District currently serves some 731 water user as of 2016). The proposed well would serve to meet water needs in the District when the water supply is limited both because of drought/dry season, and in peak demand, including due to tourism to the area. This new water source is not being proposed to serve expanded or new residential development in Stinson and will provide just enough increased capacity to meet peak demands during water-limited seasons, and is therefore consistent with LCP policies that guide the allowance of new utilities such as wells.

Regarding the LCP requirement that new wells be sited at least 100 feet from property lines or found to not further constrain development on neighboring properties, the County made a finding that despite the proposed well's location within 34 feet of the adjacent property line (that of the Appellant), potential development on the Appellant's property would not be further constrained by the presence of the well. The portion of the Appellant's property that the 100 foot distance from the well extends into is steeply sloped and heavily vegetated, and as a result independently limits what could appropriately be developed there consistent with the LCP. The well does not introduce a new development constraint on the Appellant's property that is not already there now. The County's findings focused on the Appellant's ability to develop well and/or septic systems within the buffer (because there are LCP policies about keeping such well and septic development 100 feet from existing wells), and the findings stated that since the Appellant's property is already served by Stinson Beach County Water District for sewer and water, there would be no need (or any ability given site constraints) to place new well or septic in that area. The Appellant also alleges that her ability to graze horses or goats within the 66-foot area on her property could be compromised. The County did not make explicit findings regarding the effects of the well on potential grazing in their action before, but in a letter (dated January 5, 2018 see **Exhibit 6**) sent to Coastal Commission staff after the appeal was filed, the County did more broadly discuss the Appellant's development potential on her parcel adjacent to the well per the County's action.

Specifically, the letter states that the County believes that any constraints on development on the Appellant's parcel are due to natural conditions, and locating the well at the proposed location would not further constrain the Appellant's development potential through reduction in lot size or restrictions due to the proposed well's proximity. In support of such a finding, the LCP does not seem to provide any on-point policy that would prohibit the Appellant from developing the portion of her property within the 100-foot well buffer, beyond those constraints that were

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already present due to steep slopes and/or presence of other natural features such as vegetation and drainages.

When considering a project that has been appealed to it, the Commission must first determine whether the appeal of the approved development raises a substantial issue of LCP conformity, such that the Commission should assert jurisdiction over a de novo CDP application for such development. As described above, the Commission has been guided in its decision of whether the issues raised in a given case are “substantial” 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 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. 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 provided sufficient factual and legal support for its decision. Specifically, the County’s approval appropriately considers the general requirements applicable to new proposed utilities such as a new water well, and the approved project’s conditions are designed to ensure consistency with these provisions. Although the County’s findings on this point were more implicit than explicit with respect to other than wells and septic development, the outcome of the County’s action would not further constrain the Appellant’s development potential beyond the already-existing natural site constraints. In addition, the County has confirmed this to be the case in relation to their action via a letter dated January 5, 2018 (**Exhibit 6**) that makes clear that at hearings regarding this development, the Deputy Zoning Administrator explored and publicly stated that the new well did not place any development constraints on the Appellant’s property, and the letter further assures that the approval of the well does not prohibit future development on the Appellant’s property, and clarified that this action did not represent a reduction of lot area or create any kind of deed restriction/easement on the Appellant’s property. The County’s letter concludes that its action placed no further development constraints on the Appellant’s parcel beyond the physical constraints (steep slopes) that already existed prior to this well decision. Thus, there is adequate factual and legal support for the County’s decision.

Second, the extent and scope of the approved development is fairly minor. The proposed well will be installed at the site of an already-existing test well. Once installed, the well will look no different than the already-existing conditions at the site. In addition, the proposed well will not allow for expanded or increased development in the Stinson Beach area because it is proposed to serve already existing connections, particularly during water limited/peak demand periods. Finally, the proposed well fits well within the surrounding Water District development.

Third, the significance of the coastal resources affected by the project is less than significant as the impacts to surrounding development will be negligible, as discussed above, since the proposed well will not impact any coastal resources. Furthermore, the approved well is designed and proposed to only draw enough water to provide reliability during water-limited or peak demand time, and the project is expected by the County to have no or negligible impacts to coastal resources.

Fourth, the approved project does not present an adverse precedent for future interpretations of the LCP, as the potential impacts asserted by the Appellant are specific and limited to her one

parcel, directly adjacent to the site of the proposed well. Additionally, the findings above provide guidance regarding development impact assessment for any similar future proposed wells.

Finally, the County's approved project raises only local issues as opposed to those of regional or statewide significance due to the scale of the project and the lack of any significant coastal resource impacts.

Conclusion

Therefore, although the County's action could have been more explicit with regard to certain required findings, the effect of the County's action is consistent with the LCP, including s explained by the County in their letter dated January 5, 2018. The Commission finds that the approved development does not result in significant coastal resource problems inconsistent with the LCP's intent in this case. That is not to say that such a conclusion would apply to any development affected by these policies that is proposed where it could potentially adversely impact development on sites adjacent to any future proposed well, or where it may impact coastal resources differently than this proposal, rather that in this case facts suggest that there aren't substantial LCP conformance issues with the County's action. Thus, the Commission here exercises its discretion to find no substantial issue with the County's action, and the Commission declines to take jurisdiction over the CDP application for this project.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- Biological Site Assessment – Laurel Avenue Water Treatment Plant
- Marin County Coastal Development Permit Application Package

APPENDIX B – STAFF CONTACT WITH AGENCIES AND GROUPS

- Stinson Beach County Water District
- Marin County Community Development Agency