

**CALIFORNIA COASTAL COMMISSION**

NORTH CENTRAL COAST DISTRICT  
455 MARKET STREET, SUITE 228  
SAN FRANCISCO, CA 94105  
PHONE: (415) 904-5260  
FAX: (415) 904-5400  
WEB: WWW.COASTAL.CA.GOV



# F18a

Appeal Filed: 7/23/2021  
Action Deadline: None  
Staff: Sara Pfeifer - SF  
Staff Report: 9/24/2021  
Hearing Date: 10/15/2021

## STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

**Appeal Number:** A-2-MAR-21-0053

**Applicant:** North Marin Water District

**Appellant:** Save our Seashores

**Local Government:** Marin County

**Local Decision:** Marin County Coastal Development Permit Number P3010 approved unanimously by the Marin County Board of Supervisors on July 13, 2021

**Project Location:** Along Lagunitas Creek where it flows through the Gallagher cattle ranch located at 14500 Point Reyes Petaluma Road in western Marin County in unincorporated Point Reyes Station

**Project Description:** Construction of a new municipal water well adjacent to Lagunitas Creek, decommissioning an existing and no longer in use municipal water well located within Lagunitas Creek, and additional related development

**Staff Recommendation:** No Substantial Issue

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### IMPORTANT HEARING PROCEDURAL NOTE

Please note that this is a substantial issue hearing only, and testimony will be taken *only* on the question of whether the appeal raises a substantial issue. Such testimony is generally limited to three minutes total per side (although the Commission's Chair has the discretion to modify these time limits), so please plan your testimony accordingly. Only the Applicant, Appellant, persons who opposed the application before the local government, the local government, and their proxies/representatives are allowed to testify during this substantial issue phase of the hearing. Other interested parties may

submit comments in writing. If the Commission finds that the appeal raises a substantial issue, then the Commission takes jurisdiction over the underlying coastal development permit (CDP) application and will then review that application at a future Commission meeting, at which time all persons are invited to testify. If the Commission finds that the appeal does *not* raise a substantial issue, then the local government CDP decision stands, and is thus final and effective.

## SUMMARY OF STAFF RECOMMENDATION

Marin County approved a coastal development permit (CDP) authorizing the construction of a municipal water well, a 500-foot pipeline to connect the proposed well to an existing pipeline that transports water to Applicant's (North Marin Water District, or NMWD) water treatment plant, and decommissioning an out of service existing well. The project is necessary to supplement existing municipal water supply needs that support the small community of Point Reyes Station and would not be designed to promote any additional or new development. The Appellant contends that the County-approved project raises LCP conformance issues related to habitat, sensitive species, and water resources protection. Specifically, the Appellant contends that the approved development is inconsistent with the Marin County LCP, alleging that the proposed development would lead to loss of sensitive wildlife nursery habitat; would not minimize impacts to stream functions and sensitive fisheries habitat; would substantially alter riparian habitat; would lead to cumulative impacts that have not been addressed; and would not adequately mitigate for impacts nor enhance stream resources. Staff has evaluated these contentions and does not believe that the appeal raises a substantial LCP conformance issue.

The LCP limits stream diversions to necessary water supply projects, but only where flows sufficient for stream/fisheries health can be maintained, and where other related coastal resources are adequately protected. In this case, the County's record shows that the water supply project is needed to address an acute water supply shortage in the Point Reyes Station community, and that it has been conditioned to ensure that impacts will be avoided or mitigated, including related to riparian habitat and species protections in Lagunitas Creek.<sup>1</sup> Potential instream flow fisheries issues are addressed through required compliance with State Water Resources Control Board (SWRCB) instream flow requirements that include minimum flow requirements to protect sensitive fish species; all work in and around the Creek will be temporary and subject to California Department of Fish and Wildlife (CDFW) standards; and groundwater aquifers are not anticipated to be impacted as a result of the project. The County's approval includes appropriate requirements to protect coastal resources, including the requirement for SWRCB and CDFW signoff prior to commencing construction.

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<sup>1</sup> Importantly, the new well is not actually located within Lagunitas Creek itself, rather it is located about 65 feet away from it, so it should have limited direct effect on the Creek. However, it is designed to pull water from the subsurface creek flows, and this would indirectly pull water from the Creek. The project also includes removal and proper decommissioning of a no longer in service well that is actually located *in* the Creek, which should help to better protect Creek resources.

Accordingly, staff recommends that the Commission determine that the appeal contentions do not raise a substantial LCP conformance issue, and that the Commission decline to take jurisdiction over the CDP application for the proposed project. The single motion to do so is found on page 5 below.

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**EXHIBITS**

- Exhibit 1 – Project Location Map
- Exhibit 2 – Project Site Photos
- Exhibit 3 – County-Approved Project Plans
- Exhibit 4 – Marin County Final Local CDP Action Notice
- Exhibit 5 – Appeal of Marin County CDP Action
- Exhibit 6 – Detailed Site Map

## 1. 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 would not take jurisdiction over the underlying CDP application for the proposed project, and would not conduct further hearings on this matter, and that the local government decision to approve the local CDP stands and is thus final and effective. To implement this recommendation, staff recommends a **yes** vote on the following motion which, if passed, will result in a Commission finding of no substantial issue. Failure of this motion will result in a finding of substantial issue and the Commission will instead take jurisdiction over the subject CDP application for future hearing and action. 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-21-0053 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act, and I recommend a yes vote.*

***Resolution to Find No Substantial Issue:*** *The Commission hereby finds that Appeal Number A-2-MAR-21-0053 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 Marin County Local Coastal Program and/or the public access and recreation policies of the Coastal Act.*

## 2. FINDINGS AND DECLARATIONS

### **A. Project Location and Description**

The proposed project is located on a 330-acre property used for cattle ranching, known as the Gallagher Family Ranch, located at 14500 Point Reyes Petaluma Road in unincorporated western Marin County, approximately 1.5 miles northeast of the unincorporated community of Point Reyes Station. The ranch is used for cattle grazing and agricultural uses, contains two existing municipal water wells,<sup>2</sup> and is adjacent to Lagunitas Creek, which flows into Tomales Bay approximately 2 miles downstream from the project site. The site is designated C-APZ-60 (Coastal, Agricultural Production Zone) in the LCP, and is surrounded by agricultural and agricultural-residential uses, including grazing and active farming. See **Exhibit 1** for a location map, and see **Exhibit 2** for photographs of the site and surrounding area.

The County-approved project would allow for North Marin Water District (NMWD) to construct a new municipal water well (Gallagher Well No. 2) with a 300 gallon-per-

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<sup>2</sup> North Marin Water District already owns two municipal water wells on the Gallagher property, including Gallagher Well No. 1, constructed in 1992, and the abandoned Downey well, proposed to be decommissioned as part of this project.

minute (gpm) pumping capacity,<sup>3</sup> at a depth of 59 feet below grade and located within about 100 feet of Lagunitas Creek, approximately 500 feet north of existing Gallagher Well No. 1. Specifically, the well site would be located on the south bank of the Creek, near the east end of the private Gallagher Ranch bridge. In addition, the project includes the decommissioning of the existing Downey Well, located approximately a half mile southwest of the proposed well site. Decommissioning the inoperative well would include extraction of approximately 3 feet of upper well casing material located within the creek bed surface and capping of the well. Other ancillary project elements include connecting the proposed well (No. 2) to the NMWD system with a 6-inch, 500-foot pipe. See **Exhibit 3** for the County-approved project plans.

### **B. Marin County CDP Approval**

On March 25, 2021, the Marin County Deputy Zoning Administrator approved CDP P3010 authorizing the above-described development at the subject site. This approval was subsequently appealed (by the current Appellant before the Coastal Commission) to the County's Planning Commission. On May 24, 2021, the Marin County Planning Commission denied the appeal and approved the development by a 4-1 vote. The Planning Commission's decision was subsequently appealed (again by the current Appellant) to the County Board of Supervisors, and the Board subsequently unanimously upheld CDP approval on July 13, 2021. The County's notice of the Board of Supervisor's final CDP action was received in the Coastal Commission's North Central Coast District Office on July 22, 2021 (see **Exhibit 4**), and the Coastal Commission's ten-working-day appeal period for this action began on July 23, 2021 and concluded at 5pm on August 5, 2021. One valid appeal (discussed below and shown in **Exhibit 5**) was received during the appeal period.

### **C. Appeal Procedures**

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. 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. This County CDP decision is appealable to the Commission because the project site is

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<sup>3</sup> Gallagher Well No. 1 was designed for a 300 gpm capacity, but currently only delivers approximately 150 gpm. The capacity for the proposed Gallagher Well No. 2 would be 300 gpm, however it is anticipated to have an operational flow capacity of approximately 150 gpm. NMWD proposes to utilize a maximum of 300 gpm *combined* while both wells are operational.

located within 100 feet of a stream (Lagunitas Creek), and because the project is not designated as the principally permitted use under the LCP.<sup>4</sup>

For appeals of a CDP approval, grounds for appeal are limited to allegations that the approved development does not conform to the LCP and/or to Coastal Act public access provisions. For appeals of a CDP denial, where allowed (i.e., only allowed in extremely limited circumstances – see description of appealable actions, above), the grounds for appeal are limited to allegations that the development conforms to the LCP and to Coastal Act public access provisions.

The Commission's consideration of appeals is a two-step process. The first step is determining whether the appeal raises a substantial issue that the Commission, in the exercise of its discretion, finds to be significant enough to warrant the Commission taking jurisdiction over the CDP application. This step is often referred to as the "substantial issue" phase of an appeal. The Commission is required to begin its hearing on an appeal and address at least the substantial issue question within 49 working days of the filing of the appeal unless the applicant has waived that requirement (which the Applicant in this case has), in which case there is no deadline for Commission action.

The Coastal Act and the Commission's implementing regulations are structured such that a substantial issue is presumed when the Commission acts on this question unless the Commission finds that an appeal does *not* raise a substantial issue, and the Commission generally considers a number of factors in making that determination.<sup>5</sup> At this stage, the Commission may only consider contentions raised by the appeal. At the substantial issue hearing, staff will make a recommendation for the Commission to find either substantial issue or no substantial issue. If staff makes the former recommendation, the Commission will not take testimony at the hearing on the substantial issue recommendation unless at least three Commissioners request it, and, if no such full hearing is requested, a substantial issue is automatically found. In both cases, when the Commission does take testimony, it is generally (and at the discretion of the Commission Chair) limited to three minutes total per side, and only the Applicant, persons who opposed the application before the local government, the local

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<sup>4</sup> Public water facilities are conditionally permitted in the C-APZ-60 zoning designation.

<sup>5</sup> The term substantial issue is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (California Code of Regulations, Title 14, Section 13115(b)). Section 13115(c) of the Commission regulations provides, along with past Commission practice, that the Commission may consider the following five factors when determining if a local action raises a substantial issue: (1) the degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and the Coastal Act's public access provisions; (2) the extent and scope of the development; (3) the significance of the coastal resources affected by the decision; (4) the precedential value of the local government's decision for future interpretation of its LCP; and (5) whether the appeal raises only local issues, or those of regional or statewide significance. The Commission may, but need not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well.

government, and their proxies/representatives are allowed to testify, while others may submit comments in writing.

If, following testimony and a public hearing, the Commission determines that the appeal does not raise a substantial issue, then the first step is the only step, and the local government's CDP decision stands. However, if the Commission finds a substantial issue, the Commission takes jurisdiction over the underlying CDP application for the proposed project, and the appeal heads to the second phase of the hearing on the appeal.

In the second phase of the appeal, if applicable, the Commission must determine whether the proposed development is consistent with the applicable LCP (and in certain circumstances the Coastal Act's public access and recreation provisions). This step is often referred to as the "de novo" review phase of an appeal, and it entails reviewing the proposed project in total. There is no legal deadline for the Commission to act on the de novo phase of an appeal. Staff will make a CDP decision recommendation to the Commission, and the Commission will conduct a public hearing to decide whether to approve, approve with conditions, or deny the subject CDP. Any person may testify during the de novo phase of an appeal hearing (if applicable).

#### **D. Summary of Appeal Contentions**

The Appellant contends that the County-approved project raises LCP conformance issues related to habitat, sensitive species, and water resources protection. Specifically, the Appellant contends that the approved development is inconsistent with the Marin County LCP,<sup>6</sup> alleging that the proposed development would lead to loss of sensitive wildlife nursery habitat; would not minimize impacts to stream functions and sensitive fisheries habitat; would substantially alter riparian habitat; would lead to cumulative impacts that have not been addressed; and would not adequately mitigate for impacts nor enhance stream resources. See full appeal contentions in **Exhibit 5**.

#### **E. Standard of Review**

The standard of review for considering these appeal contentions is the certified Marin County LCP (comprised of a certified Land Use Plan (LUP) and a certified Implementation Plan (IP)) and the public access policies of the Coastal Act (which include Coastal Act Sections 30210 through 30224). This CDP application was approved by Marin County pursuant to LCP policies in the effect at that time. Subsequently, on July 13, 2021, the County's updated LCP took effect. Accordingly, in assessing whether the appeal raises a substantial issue as to whether the County's approval is consistent with the LCP and public access policies of the Coastal Act and, in particular, whether there is factual and legal support for the County's decision, the

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<sup>6</sup> The Appellant does not actually cite to any LCP provisions, rather the Appellant refers only to other non-LCP County plans, none of which can be used as the standard of review for CDP application decisions. That said, and consistent with the Commission's standard and long practice, the Commission here considers the Appellant's contentions broadly to determine if they raise a substantial issue as to consistency with policies of the LCP.



Commission considers the LCP policies in effect when the County approved the project.

## **F. Substantial Issue Determination**

### **1. Stream/Creek Protection**

#### ***Applicable LCP Provisions***

The LCP includes provisions related to streams and riparian habitat that are relevant to this project given its proximity to Lagunitas Creek. LCP Natural Resource policies generally mimic Coastal Act 30236 regarding water supply projects, and specifically refer to Coastal Act Sections 30230 and 30231, which discuss the protection of marine resources and water quality. The LCP states:

***Natural Resource Policy 3: (a) Stream alterations. Stream impoundments, diversions, channelizations, or other substantial alterations shall be limited to the following purposes: (1) Necessary water supply projects, including those for domestic or agricultural purposes; ... Before any such activities are permitted, minimum flows necessary to maintain fish habitat and water quality, and to protect downstream resources (e.g. riparian vegetation, groundwater recharge areas, receiving waters, spawning habitats, etc.) and downstream users shall be determined by the Department of Fish and Game and the Division of Water Rights of the State Water Resources Control Board. New impoundments which, individually or cumulatively, would decrease streamflows below the minimum shall not be permitted.***

***(b) Conditions. The alteration of streams allowed for the purposes listed in (a) above shall be held to a minimum to protect streamwater quality and the volume and rate of stream flow. All such developments shall incorporate the best mitigation measures feasible, including erosion and runoff control measures, and revegetation of disturbed areas with native species. Disturbance of riparian vegetation shall be held to a minimum.***

***(c) Stream Buffers. Buffers to protect streams from the impacts of adjacent uses shall be established for each stream in Unit II. The stream buffer shall include the area covered by riparian vegetation on both sides of the stream and the area 50 feet landward from the edge of the riparian vegetation. In no case shall the stream buffer be less than 100 feet in width, on either side of the stream, as measured from the top of the stream banks.***

***(d) Development in Stream Buffers. No construction, alteration of land forms or vegetation removal shall be permitted within such riparian protection area. Additionally, such project applications shall identify a stream buffer area which shall extend a minimum of 50 feet from the outer edge of riparian vegetation, but in no case less than 100 feet from the banks of a stream. Development shall not be located within this stream buffer area. ... The design process shall also address the impacts of erosion and runoff, and provide for restoration of***

*disturbed areas by replacement landscaping with plant species naturally found on-the site. ...*

*Coastal Act policies 30230 and 30231 provide for the protection of marine resources and water quality. ... The LCP recommends that the impacts from diversion projects, especially on the two major tributaries to Tomales Bay, Walker and Lagunitas Creeks, be fully studied through the EIR process before they are permitted to proceed and that in all cases, mitigation and enhancement measures be required to ensure that coastal resources influenced by freshwater inflows are not significantly damaged.*

### **Analysis**

As described earlier, the Appellant generally contends that the approved development would adversely impacts Lagunitas Creek and its related resources, including fisheries resources (see full appeal contentions in **Exhibit 5**). The LCP limits stream diversions to necessary water supply projects, but only where flows sufficient for stream/fisheries health can be maintained, and where other related coastal resources are adequately protected. In terms of the first question, the County's record shows that the water supply project is needed to address an acute water supply shortage in the Point Reyes Station community. Specifically, the County's findings explain that the Point Reyes Community water source is currently subject to saltwater intrusion in the two NMWD Coast Guard wells located further downstream, in the upper tidal reach of Lagunitas Creek toward Tomales Bay.

With respect to potential resource impacts, the new well is proposed to be sited approximately 65 feet from the bank of Lagunitas Creek and between 20 to 65 feet from the nearest riparian vegetation (see **Exhibit 6**). Although these buffer distances are less than generally required by the LCP's creek buffer provisions (i.e., LCP Natural Resources Policy 3 generally requires at least a 50-foot buffer from riparian vegetation and at least a 100-foot buffer from the stream bank itself), LCP Natural Resource Policy 3 also specifically allows alterations directly in streams for necessary water supply projects. As a result, and as is common in LCPs when there are both general and specific prescriptions, the more specific provisions of Policy 3 apply to this project, which means that subsection (a) of Policy allows this necessary water supply project as long as the conditions of subsection (b) are satisfied, i.e., the stream alterations allowed for the project are "held to a minimum to protect streamwater quality and the volume and rate of stream flow," that the project "incorporate the best mitigation measures feasible, including erosion and runoff control measures, and revegetation of disturbed areas with native species," and disturbance of riparian vegetation is held to a minimum.<sup>7</sup>

The County's findings demonstrate that the project complies with subpart (b) of LCP Natural Resource Policy 3. Specifically, as to the potential for the well to draw down the Creek in a way that affects its health, including native fish species, such as Coho

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<sup>7</sup> The 50- and 100-foot buffers would apply to non-water supply projects.

Salmon and Steelhead Trout,<sup>8</sup> NMWD monitors flow levels daily to maintain consistency with State Water Resources Control Board (SWRCB) requirements for Lagunitas Creek (which, for the protection of sensitive salmonid species, only allows a maximum diversion rate from Lagunitas Creek of 0.67 cubic feet per second from May 1 to November 1) including through a water license and two water rights permits. In other words, the Applicant is not allowed to take water from Lagunitas Creek at levels that would harm resident salmon species.<sup>9</sup> The County also imposed a condition on the project requiring approval by SWRCB and the California Department Fish and Wildlife (CDFW) to further ensure compliance with Natural Resources Policy 3 (which explicitly identifies both these agencies as the proper entities to ensure that “minimum flows necessary to maintain fish habitat and water quality, and to protect downstream resources (e.g. riparian vegetation, groundwater recharge areas, receiving waters, spawning habitats, etc.) and downstream users” are maintained). Therefore, as conditioned by the County, the project is expected to maintain stream levels and flow sufficient to protect aquatic resources in Lagunitas Creek, including Coho Salmon and Steelhead Trout.

As to other project components, the project includes decommissioning NMWD’s existing Downey well that is located within the Creek but that is no longer in service. Removal of the upper 2- to 4-foot portion of the existing well requires that an excavator, working from the top of the bank on the existing well access road, pull the existing wellhead from the ground, and cap the wellhead. In order to do so the stream would be temporarily diverted for two days by installing sandbags directly around the existing wellhead. According to the County’s record, no riparian vegetation would be disturbed as part of these operations, but disturbance of the creek could result in incidental, temporary siltation downstream. These potential impacts would be mitigated by incorporating best management practices (including that heavy equipment and staging would occur from the already-developed Downey Road, incorporating traffic and dust control measures, and minimizing sedimentation as much as possible by using silt fencing, fiber roll barriers, swales, and sediment basins and traps). The County also required the Applicant to obtain a CDFW Streambed Alteration Agreement so that CDFW could provide any additional needed safeguards.<sup>10</sup>

In sum, the County appropriately recognized this as a necessary water supply project, and ensured through CDP terms and conditions that its installation and use (as well as former well decommissioning) would not significantly adversely affect Lagunitas Creek resources, by minimizing stream alterations that could affect aquatic species and imposing best mitigation measures feasible to minimize impacts to riparian habitat.

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<sup>8</sup> Lagunitas Creek at this location is known to provide habitat for Coho Salmon and Steelhead Trout.

<sup>9</sup> As a practical matter, NMWD also has an agreement with the Marin Municipal Water District to release water from upstream Kent Lake into Lagunitas Creek as needed to maintain adequate instream flows for fisheries.

<sup>10</sup> CDFW’s Streambed Alteration Agreement is a permit for the installation, repair, and maintenance of water diversions or any modification of a streambed, and outlines the measures required to protect species and habitat from impacts of such activities.

Therefore, the Appellant's contentions do not raise a substantial LCP conformance issue with regard to LCP stream/creek protection provisions.

## **2. Groundwater and Aquifer Protections**

### ***Applicable LCP Provisions***

The LCP provides specific development standards for the construction of new municipal water wells, including as related to the impacts of withdrawal on water resources:

***Public Services Policy 2(e)(3):*** *New community or mutual water wells or other sources serving 5 or more parcels shall demonstrate by professional engineering studies, including as necessary, long-term monitoring programs, that such groundwater or stream withdrawals will not adversely affect coastal resources, including groundwater basins, aquifers, and streams. Such engineering studies shall provide the basis for establishing safe sustained yields from these sources.*

### ***Analysis***

The Appellant asserts that NMWD does not address the cumulative impact of both Gallagher Wells operating together simultaneously. The County addressed the potential cumulative effects of operating a new well in its permit decision and based its findings regarding cumulative impacts on a 2020 Sutro Science aquifer survey.<sup>11</sup> The survey found that the project would not decrease stream flows, either individually or cumulatively, at a pumping rate of 300 gpm total for the simultaneous operation of Gallagher Wells No. 1 and 2. In addition, consistent with LCP Public Services Policy 2 requirements, the Applicant's IS/MND, relied upon by the County, describes that the survey determined that the project's groundwater withdrawal would not substantially reduce stream flow or lower the water surface to a level that would adversely impact stream habitat. Specifically, survey results represented the worst-case scenario rather than typical conditions, and these results demonstrated a low likelihood of impacts to surface water levels even under stressed conditions. In addition, the County-approved project includes contingencies for maintaining surface stream water flows at the minimum levels as required by the SWRCB. These contingencies, reflected in conditions of the County-approved permit, include releases of water from Kent Lake, about 8 miles upstream. The County findings explain that the project would offset pumping from NMWD's Coast Guard Wells only when they are unavailable due to saltwater intrusion, and the amount of water pumped from all NMWD wells would remain within the limits set by SWRCB permits, as described in Condition 3 of the County CDP. Thus, the Appellant's contentions do not raise a substantial LCP conformance issue with regard to LCP groundwater and aquifer provisions associated with water wells, or related impacts to sensitive habitat, as the County's decision addresses and includes measures to avoid the potential cumulative effects of constructing and operating the proposed well.

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<sup>11</sup> Sutro Science, Groundwater and Streamflow Response Analysis at NMWD Gallagher Well Site, Lagunitas Creek, Marin County, California. December 21, 2020.

### **3. Substantial Issue Conclusion**

When considering a project on appeal, the Commission must first determine whether the project raises a substantial issue of LCP conformity, such that the Commission should assert jurisdiction over the CDP application for such development. At this stage, the Commission has the discretion to find that the project does or does not raise a substantial issue of LCP and Coastal Act (where applicable, such as in this case) conformance. The Commission has in the past and, pursuant to Section 13115(c) of its regulations, considered the following five factors in its decision of whether the issues raised in a given case are “substantial”: (1) the degree of factual and legal support for the local government’s decision; (2) the extent and scope of the development as approved or denied by the County; (3) the significance of the coastal resources affected by the decision; (4) the precedential value of the County’s decision for future interpretations of its LCP; and, (5) whether the appeal raises only local issues as opposed to those of regional or statewide significance. The Commission may, but need not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well.

In this case, these five factors, considered together, support a conclusion that the appeal does not raise a substantial issue as to the County-approved project’s consistency with the LCP. As found by the County, the project would not lead to loss of wildlife habitat, including riparian habitat, and would minimize impacts to stream functions and fish habitat, consistent with protections for such resources as required by the LCP. The project IS/MND analyzes the cumulative impact of the new well on habitat and water quality and the County conditioned the project to adequately address any potential resource impacts, including through best management practices related to siting and operation of equipment, construction staging, seasonal timing and duration of activities, erosion and siltation controls, and revegetation, consistent with LCP requirements. As approved, impacts to coastal resources will be minimized, avoided, and mitigated, and the project does not significantly threaten coastal resources.

First, there is ample legal and factual support for the County’s decision. As demonstrated in the above findings, potential impacts on habitat and water supply were clearly evaluated, and as conditioned by the County, the project is required to maintain creek flows, including as directed by SWRCB and CDFW.

Second, as to project scope, the proposed development is limited to the installation of a municipal water well that is intended to replace a well that is no longer operable and, along with other wells in the area, would provide water to a limited area (782 service connections), and is not designed to supply water for any new increase in development within the service area. Rather, the purpose of the project is to continue to serve the existing community. In addition, the County appropriately conditioned the project to minimize impacts to coastal resources, including Lagunitas Creek, aquatic species, and groundwater resources, as described above, ensuring that the impacts of the project will be held to a minimum, as required by the LCP. When combined with the first factor, this second factor weighs in favor of finding no substantial issue.

The third factor, namely the significance of coastal resources affected, also supports a finding of no substantial issue. To that point, Lagunitas Creek is a significant coastal resource of importance. However, the County conditioned the project to ensure that construction and operation of the proposed municipal well will not lead to significant adverse impacts on Lagunitas Creek nor its adjacent habitat or dependent species; on Tomales Bay downstream; or on the groundwater aquifer, and it is sited and designed to avoid, minimize, and mitigate any resulting resource impacts. No significant coastal resources are threatened by the County-approved project, supporting a finding of no substantial issue.

Fourth, the County's decision should not set an adverse precedent for future interpretations of the County's LCP. The project overall is consistent with the requirements of the LCP to protect sensitive coastal resources, including streams, wetlands, ESHA, water quality, and water supply. Importantly, the County LCP was recently updated, and that new LCP is in effect (as of August 12, 2021) and will apply to new projects moving forward. The new LCP includes additional and updated policies related to biological resources and the development of public services in the coastal zone, limiting the potential impact of future interpretations of the policies. The fourth factor also supports a finding of no substantial issue.

Finally, the project does not raise issues of regional or statewide significance, including related to water resources, as it is site specific, is proposed to fulfill a critical local water supply need, and is consistent with LCP policies that allow for the development of such public service if found consistent with other coastal resource protection provisions. As such, the fifth factor also supports a finding of no substantial issue.

In this case, these five factors, considered together, support a conclusion that the County's approval of a CDP for this project does not raise a substantial issue of LCP conformance. The proposed project would develop a new municipal water well and decommission an existing, abandoned well, and is not expected to lead to significant adverse impacts to coastal resources. For the reasons stated above, the Commission finds that Appeal Number A-2-MAR-21-0053 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.

### 3. APPENDICES

#### **A. Substantive File Documents<sup>12</sup>**

- Marin County CDP File P3010

#### **B. Staff Contacts with Agencies and Groups**

- Marin County Community Development Agency
- State Water Resources Control Board

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<sup>12</sup> These documents are available for review from the Commission's North Central Coast District office.