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Appeal Filed:	11/22/2024
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Staff Report:	7/26/2024
Hearing Date:	8/7/2024

STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

Appeal Number: A-2-MAR-23-0050

Applicant: Bolinas Community Land Trust

Appellant: Bolinas for Compassionate Land Use

Local Government: Marin County

Local Decision: Marin County Coastal Development Permit (CDP) Number P4152 approved by the Deputy Zoning Administrator on October 19, 2023

Project Location: Tacherra Ranch, at 130 and 160 Mesa Road in the unincorporated Bolinas community in west Marin

Project Description: Installation of 27 recreational vehicle (RV) pads and RVs, utility connections, driveway access, and an on-site septic system, all in order to provide temporary emergency affordable housing for about 60 people, and removal of the unpermitted and substandard housing and related facilities that previously housed those 60 people.

Staff Recommendation: No Substantial Issue

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

Tacherra Ranch is a working family farm that has historically provided locally produced meat, vegetables, and eggs to the Bolinas community for over 100 years. The ranch totals 66 acres, with a 20-acre portion owned by the Applicant (Bolin Community Land Trust, or BCLT),¹ and a 46-acre portion owned by others.² Approximately 60 residents were inhabiting substandard trailers and other structures on the 46-acre property, which Marin County red tagged in 2022 for being both unpermitted and a public health and safety hazard.³ To provide safe housing for such displaced residents, BCLT obtained a County emergency CDP (and County funding) in early 2023 to develop a temporary 27-unit recreational vehicle (RV) facility on the 20-acre site (with 27 RV pads, 27 RVs, utility connections, a septic system, and related development) with driveway access across the 46-acre site, and the roughly 60 displaced residents moved in to those temporary RVs in October of 2023. Because emergency CDPs only provide temporary authorization, the County then approved a regular CDP for that project, as well as for removal of the still extant unpermitted substandard housing and related development on the 46-acre site. In approving that regular CDP, the County identified the project as an 'RV campground' despite the above-described temporary housing nature of the project, and that CDP approval is the subject of this appeal.⁴

The Appellant contends that the project is not a campground, but rather a mobile home park, and thus not allowed on this site by the LCP (or by the Williamson Act contract for the site). The Appellant further contends that the project would be developed on wetland and environmentally sensitive habitat area (ESHA), which is not allowed by the LCP. Staff has evaluated the County's record and the Appellant's contentions and recommends that the Commission find **no substantial issue** in this case.

While it is true that the project does not appear to be a campground, it is also true that it provides primarily for farm worker and related housing, albeit temporarily. The

¹ BCLT is a non-profit 501(c)(3) dedicated to developing affordable housing in Bolinas.

² BCLT indicates that they signed a Purchase and Sale Agreement this past April for the remaining 46 acres, which is contingent on this project.

³ The County's inspection found that these trailers/structures were housing predominantly Bolinas-area Latinx farm workers in deplorable conditions without access to safe drinking water or safe sewage disposal.

⁴ Although not part of the County-approved project, BCLT indicates that they subsequently plan to build permanent affordable housing on the 46-acre property, relocate these same residents to that permanent housing, and then remove the temporary RV development, and return this area to some type of agricultural use (farming, ranching, ag-related structures) to support the permanent housing on the rest of the site. Such development would require a separate County CDP.

Applicant's intentions are for it to be used as a 'bridge' to development of permanent affordable housing for these residents on the adjacent site, at which time this temporary development can be removed. In that sense, the project furthers LCP farm worker and related affordable housing objectives applicable to a ranch property like this. The County may have called it a campground for various technical reasons of its own, but that is less germane than the LCP outcome for the project. While confusing, this does not rise to the level of a substantial issue.

In terms of wetland/ESHA allegations, a number of such areas were delineated in the biological report for the proposed project, but the project is located out of any such areas. While true that the project would be located as close as about 50 feet from identified wetlands on its south-eastern side, and as close as about 10 feet from identified wetlands on its western side, it is clear that the wetlands in question appear to lack hydrology, and it does not appear that the temporary emergency affordable RV housing should significantly impact any such areas. In addition, the project includes removal of the red-tagged substandard housing and septic/sewage apparatus, which should lead to a net environmental benefit, including as recognized by the project biological assessment. And the County's approval includes appropriate BMPS to protect wetlands in any case. In this context, and although not technically LCP consistent on these points, the County approval does not raise a substantial issue.

As a result, staff recommends that the Commission find that **no substantial issue** exists with respect to the appeal, and that the Commission decline to take jurisdiction over the CDP application for this project. The single motion and resolution to do so is found on **page 5** below.

TABLE OF CONTENTS

1. MOTION AND RESOLUTION..... 5

2. FINDINGS AND DECLARATIONS..... 5

 A. Project Location and Description 5

 B. Marin County CDP Approval 6

 C. Appeal Procedures 6

 D. Summary of Appeal Contentions 8

 E. Standard of Review 9

 F. Substantial Issue Determination 9

3. APPENDICES..... 18

 A. Substantive File Documents 18

 B. Staff Contacts with Agencies and Groups 18

EXHIBITS

Exhibit 1 – Location Map

Exhibit 2 – Site Photos

Exhibit 3 – County-Approved Project Plans

Exhibit 4 – Marin County Final Local CDP Action Notice

Exhibit 5 – Appeal of County CDP Action

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 CDP decision would stand and would thus be final and effective. To implement this recommendation, staff recommends a **yes** vote on the following motion which, if passed, will result in a finding of no substantial issue and adoption of the following resolution and findings, and the local action will become final and effective. Failure of this motion will result in a substantial issue finding and a future de novo hearing on the CDP application. 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-23-0050 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 for No Substantial Issue: *The Commission hereby finds that Appeal Number A-2-MAR-23-0050 presents no 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

Tacherra Ranch is a working family farm that has historically provided locally produced meat, vegetables, and eggs to the Bolinas community for over 100 years. The ranch totals 66 acres, with a 20-acre portion owned by the Applicant (Bolinás Community Land Trust, or BCLT) (at 130 Mesa Road),⁵ and a 46-acre portion owned by others (at 160 Mesa Road).⁶ Approximately 60 residents were inhabiting substandard trailers and other structures on the 46-acre property when Marin County red tagged such structures and use in 2022 for being both unpermitted and a public health and safety hazard.⁷ To provide safe housing for such displaced residents, BCLT obtained a County emergency CDP (and County funding of over \$600,000) in early 2023 to develop a temporary 27-

⁵ BCLT is a non-profit 501(c)(3) dedicated to developing affordable housing in Bolinas.

⁶ BCLT indicates that on April 1, 2024, they signed the Purchase and Sale Agreement (PSA) for the remaining 46 acres with a court-appointed Receiver in charge of administering the Tacherra Ranch, which will result in them owning the Ranch in its entirety. Once all pre-development work is complete (entitlements, architectural, and engineering work) for the to be proposed permanent housing development, the site is prepared for construction, and essential support services to current RV residents are in place, the transaction will be complete.

⁷ The County's inspection found that these trailers/structures were housing predominantly Bolinas-area Latinx farm workers in deplorable conditions without access to safe drinking water or safe sewage disposal.

unit recreational vehicle (RV) facility on the 20-acre site (with 27 RV pads, 27 RVs, utility connections, a septic system, and related development) with driveway access across the 46-acre site, and the roughly 60 residents moved in to those temporary RVs in October of 2023. Because emergency CDPs only provide temporary authorization, the proposed project here is to recognize the temporarily installed emergency affordable housing, and to allow removal of the unpermitted substandard housing on the 46-acre site.⁸

See project location and site photos in **Exhibits 1 and 2**, and see project plans in **Exhibit 3**.

B. Marin County CDP Approval

In response to a request from the property Receiver, Marin County inspected the Tacherra Ranch property on July 26, 2022, and documented unpermitted trailers, mobile homes, and detached accessory structures that were being used for residences without an approved means of sewage disposal or access to domestic drinking water. Instead, domestic water was being provided through garden hoses while bathroom facilities were being provided via porta potties disbursed throughout the property. In addition, County staff noted four separate areas on the property where sewage had pooled on the ground. The County red-tagged the site for being both unpermitted and a public health and safety hazard. Subsequently, on May 9, 2023, the County issued an Emergency CDP to establish the above-described temporary RV trailers and related facilities for these affected residents. Because emergency CDPs only authorize development temporarily, the Applicant submitted a regular CDP application for the project on June 7, 2023, which was approved by the Marin County Deputy Zoning Administrator on October 19, 2023 (County CDP P4152). The County's notice of this final County CDP decision⁹ was received in the Coastal Commission's North Central Coast District Office on November 6, 2023 (see **Exhibit 4**), and the Coastal Commission's ten-working day appeal period for this action began on November 7, 2023, and concluded at on November 21, 2023. The Commission received one valid appeal (discussed below and shown in **Exhibit 5**) 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

⁸ Although not part of the County-approved project, BCLT indicates that they subsequently plan to build permanent affordable housing on the 46-acre property, relocate these same residents to that permanent housing, and then remove the temporary RV development. Such development would require a separate County CDP.

⁹ Because Marin County charges a fee for CDP appeals locally, the Deputy Aoning Administrator's decision is correctly identified as a final County CDP decision, and potential appellants were not required to appeal locally to achieve standing to appeal that decision to the Commission.

the seaward face of any coastal bluff; (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 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 because it is located between the sea and the first public road paralleling the sea, and the proposed use is not the LCP-designated principal permitted use for the zone.

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, in which case there is no deadline for Commission action. The Applicant has waived the 49-day hearing requirement in this case.

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 considers a number of factors in making that determination.¹⁰ 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. If the Commission does

¹⁰ The term substantial issue is not defined in the Coastal Act. The Commission's regulations 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.

take testimony at this first phase, it is generally (and at the discretion of the Commission Chair) limited to three minutes total per side, and only the Applicant, Appellant, persons who opposed the application before the local government, the local 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, Bolinas for Compassionate Land Use, contends that the project is not a campground as the County has stated, and that the approved use (whether a mobile home park or a campground) is not associated with agriculture and thus not allowed on land designated for agriculture, and not allowed under the Williamson Act agricultural contract applicable to the site. In support of this contention, the Appellant notes that Section 22.32.060 of the Marin County Municipal Code,¹¹ only allows camping for a maximum of 30 days per calendar year per person, and that the RVs at this site would be used as temporary housing for longer period than that. The Appellant also asserts that the Applicant was granted water use permits based on the project providing housing, not a campground, and that the water purveyor (Bolin Community Public Utility District (BCPUD)) only allowed such water use if the Applicant acquires the adjacent property at 160 Mesa Road, which has not happened yet. In addition, the Appellant asserts that BCPUD only allows for this type of water use allocation for affordable housing projects if it finds that affordable housing is the sole purpose of the project and water service connections are owned by the same customer, and a campground is not affordable housing. Further, the Appellant asserts that the County's designation of the project as a campground is inconsistent with both the LCP¹² and a common-sense definition of a campground. Because the project includes RVs as

¹¹ This provision is in the County code, but it is not part of the certified LCP, and thus not applicable in an appeal context.

¹² The LCP defines a campground as "land that is used or intended for use by camping parties, which may include individual campsites, but where utility hookups for recreational vehicles are typically not provided at campsites" (LCP Section 22.130.030.C).

temporary housing, not tents or campers, as well as a new on-site wastewater system, the Appellant suggests that the project is more aptly designated as a “mobile home park”.¹³ Put another way, the Appellant essentially argues that the project is actually a mobile home park and not a campground project as the County has presented it, where a mobile home park is not allowed at this location by the LCP or the Williamson Act.¹⁴

In addition, the Appellant claims that the project will be installed on, over, and around wetlands and ESHA, which is not allowed by the LCP, and suggests that a more complete biological assessment is required.

Finally, the Appellant also contends that the project is not exempt under CEQA, and thus requires a Negative Declaration or Environmental Impact Report.¹⁵

The full appeal contentions can be seen in **Exhibit 5**.

E. Standard of Review

The standard of review for considering these appeal contentions is the certified Marin County LCP (which is made up 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).

F. Substantial Issue Determination

1. Allowed Uses

Applicable LCP Provisions

The LCP identifies the range of allowed uses for any particular site, and here the Appellant alleges that the approved project is not an allowed use under the LCP, which designates the subject site as Coastal Agricultural (C-AG2) in the LUP, and zones it Coastal, Agricultural, Residential, Planned (C-ARP-10) in the IP. Applicable provisions include:

C-AG-1 Agricultural Lands and Resources. *Protect agricultural land, continued agricultural uses, family farming, and the agricultural economy by maintaining parcels large enough to sustain agricultural production, preventing conversion to non-agricultural uses, providing for diversity in agricultural development, facilitating multi-generational operation and succession, prohibiting uses that are incompatible with long-term agricultural production or the rural character of the*

¹³ The LCP defines a mobile home park as “any site that is planned and improved to accommodate two or more mobile homes used for residential purposes, or on which two or more mobile home lots are rented, leased, or held out for rent or lease, or were formerly held out for rent or lease and later converted to a subdivision, cooperative, condominium, or other form of resident ownership, to accommodate mobile homes used for residential purposes” (LCP Section 22.130.030.M).

¹⁴ With respect to the Williamson Act, the Appellant further asserts that almost none of the potential tenants (i.e., current residents of Tacherra Ranch) are agricultural workers employed by the landowner, and that therefore the project cannot be considered agricultural housing.

¹⁵ The grounds for appeal are limited to allegations of Coastal Act public access and LCP inconsistencies, so contentions regarding CEQA are not properly before the Commission, and are not further evaluated herein.

County's Coastal Zone, and other innovative means. Preserve important soils, agricultural water sources, and forage to allow continued agricultural production on agricultural lands.

C-AG-3 Coastal Agricultural Residential Planned Zone (C-ARP). *Apply the Coastal Agricultural Residential Planned Zone (C-ARP) designation to lands adjacent to residential areas in the Coastal Zone that have potential for agricultural production but do not otherwise qualify for protection under Policy C-AG-2. The intent of the C-ARP Zone is to provide flexibility in lot size and building locations in order to:*

- 1. Promote the concentration of residential and accessory uses to maintain the maximum amount of land available for agricultural use, and*
- 2. Maintain the visual, natural resource and wildlife habitat values of subject properties and surrounding areas. The C-ARP district requires proposed development to be clustered to avoid or minimize impacts to environmental and other coastal resources, such as natural topography, native vegetation and public views of the coast.*

Residential use shall be the principal permitted use in all parcels with the land use designation of C-AG3. Agriculture shall be the principal permitted use in all parcels with the C-AG1 and C-AG2 land use designations.

C-AG-4 C-R-A (Coastal, Residential, Agricultural) District. *Apply the C-R-A zoning district to provide areas for residential use within the context of small-scale agricultural and agriculturally-related uses, subject to specific development standards.*

C-AG-5 Agricultural Dwelling Units (Farmhouses, Intergenerational Housing, and Agricultural Worker Housing). *... B. Agricultural worker housing providing accommodations consisting of no more than 36 beds in group living quarters per legal lot or 12 units or spaces per legal lot for agricultural workers and their households shall not be included in the calculation of density in the following zoning districts: C-ARP, C-APZ, C-RA, and C-OA. Additional agricultural worker housing above such 36 beds or 12 units shall be subject to the density requirements applicable to the zoning district. An application for agricultural worker housing above such 36 beds or 12 units shall include a worker housing needs assessment and plan, including evaluation of other available worker housing in the area. The amount of approved worker housing shall be commensurate with the demonstrated need. Approval of agricultural worker housing shall require recording a restrictive covenant running with the land for the benefit of the County ensuring that the agricultural worker housing will continuously be maintained as such, or, if no longer needed, for non-dwelling agricultural production related uses.*

C-AG-6 Non-Agricultural Development of Agricultural Lands. *Non-agricultural development is defined to include division of agricultural lands and*

any development not classified as Agriculture. Require that non-agricultural development, shall only be allowed upon demonstration that long-term agricultural productivity would be maintained and enhanced as a result of such development, on the subject parcel and any new parcel created, and that agricultural productivity on adjacent parcels would be maintained. In considering divisions of agricultural lands in the Coastal Zone, the County may approve fewer parcels than the maximum number of parcels allowed by the Development Code, based on site characteristics such as topography, soil, water availability, environmental constraints and the capacity to sustain viable agricultural operations.

C-AG-9 Agricultural Dwelling Unit Impacts and Agricultural Use. *Ensure that lands designated for agricultural use are not de facto converted to residential use, thereby losing the long-term productivity of such lands, by the following means:*

A. Agricultural dwelling units, other than principally permitted agricultural dwelling units, shall be reviewed to ensure they do not diminish current or future agricultural production on the property or convert it to primarily residential use.

B. Any proposed agricultural dwelling unit and related development subject to a Coastal Permit shall comply with LCP policies including ensuring that the mass and scale of new or expanded structures respect environmental site constraints and the character of the surrounding area. Such development must be compatible with ridge protection policies and avoid tree-cutting and grading wherever possible. All such development shall be clustered with existing structures and development on the farm, pursuant to C-AG-7, and shall be sited and designed to protect significant public views.

When considering proposed agricultural dwelling units, other than principally permitted agricultural dwelling units, the reviewing authority shall exercise its discretion in light of some or all of the following criteria for the purpose of ensuring that the land does not de facto convert to residential use:

- 1. The applicant's history of production agriculture.*
- 2. How long term agricultural use of the property will be preserved - for example, whether there is an existing or proposed dedication or sale of permanent agricultural easements or other similar protective agricultural restrictions such as Williamson Act contract or farmland security zone.*
- 3. Whether long term capital investment in agriculture and related infrastructure, such as fencing, processing facilities, market mechanisms, agricultural worker housing or agricultural leasing opportunities have been established or are proposed to be established.*
- 4. Whether sound land stewardship practices, such as organic certification, riparian habitat restoration, water recharge projects, fish-*

friendly farming practices, or erosion control measures, have been or will be implemented.

5. Whether the proposed development will facilitate the ongoing viability of agriculture such as through the intergenerational transfer or lease of existing agricultural operations.

C. In no event shall agricultural dwellings subject to these provisions exceed 7,000 square feet in size. Where a farmhouse and one or two intergenerational residence units are allowed in the C-APZ zone, the aggregate development of all homes on the subject farm tract shall not exceed 7,000 square feet.

D. However, agricultural worker housing, up to 540 square feet of garage space for each farmhouse, agricultural accessory structures, and up to 500 square feet of office space in the farmhouse used in connection with the agricultural operation on the property shall be excluded from the 7,000 square foot limitation.

E. The square footage limitations noted in the above criteria represent maximum agricultural dwelling unit sizes and do not establish a mandatory entitlement or guaranteed right to development; rather, site constraints and resource protection standards may require reduced size limits in any particular case.

F. Agricultural homestays, bed & breakfasts, home occupations, care facilities, group homes and similar uses allowed in the C-APZ zone may only occur within otherwise allowable agricultural dwelling units and not within additional separate structures.

C-CD-3 Protection of Open Lands, Existing Communities, and Recreational Opportunities. *Work with individual landowners; local, state, and federal agencies; and non-governmental organizations to preserve rural character, agriculture, and open lands, and protect existing communities and recreational opportunities in the Coastal Zone.*

C-CD-19 Agricultural Land Use Categories. *Establish agriculture land use categories to preserve and protect a variety of agricultural uses, and to enable potential for agricultural production and diversification. Historically, 60 acres has been the minimum parcel size for most agricultural lands in the county. Various policies regarding agricultural productivity, water availability, effects on water quality, and other factors govern the division of such lands, along with the intensities described below. The effect is that land divisions of agricultural lands are rare. The zoning designations listed are examples of consistent zoning and are not the only possible consistent zoning designations. The following Agricultural land use categories are established: ...*

Agriculture 2 (C-AG2). The principal permitted use of these lands shall be agriculture. This land use category is established for agricultural uses on

lands adjacent to residential areas, and at the edges of Agricultural Production Zones in the Coastal Zone that have potential for agricultural production and can provide flexibility in lot size and building locations subject to the standards of the LCP in order to:

- 1. Promote the concentration of residential and accessory uses to maintain the maximum amount of land available for agricultural use, and*
- 2. Maintain the visual, natural resource and wildlife habitat values of subject properties and surrounding areas. The C-ARP district requires the grouping of proposed development.*

Consistent Zoning: C-ARP-10 to C-ARP-30 ...

C-HS-1 Protection of Existing Affordable Housing. *Continue to protect and provide affordable housing opportunities for very low, low, and moderate income households. Prohibit demolition of existing deed restricted very low, low, and moderate income housing except when:*

- 1. Demolition is necessary for health and safety reasons; or*
- 2. Costs of rehabilitation would be prohibitively expensive and impact affordability of homes for very low, low and moderate income households; and*
- 3. Units to be demolished are replaced on a one-for-one basis with units of comparable rental value on site or within the immediate Coastal Zone area.*

Analysis

In summary, the LCP requires the preservation of agricultural land, including by preventing the conversion of agricultural land, clustering development to maintain space for agricultural production, allowing for accessory uses (provided that these uses preserve or enhance agricultural use), and preventing environmental degradation. With regards to housing, the LCP provides for the protection and promotion of affordable housing, including only allowing the demolition of affordable housing in specific circumstances.

At a fundamental level, the Appellant contends that the project is not a campground as the County has contended, but rather a mobile home park, and thus not allowed on this site by the LCP (or by the Williamson Act agricultural contract for the site). While it is true that the project does not appear to be a campground, it is also not obviously a mobile home park, and is much more aptly considered to be primarily a form of temporary emergency farm worker and affordable housing, including because most of such residents are farm workers, according to the Applicant. In fact, the Applicant's intentions are for it to be used as a 'bridge' to development of permanent farm worker/affordable housing for these residents on the adjacent site, when the temporary RV development can then be removed. In that sense, the project furthers LCP farm worker and related affordable housing objectives applicable to a ranch property like this and represents a temporal conversion of working agricultural land for these types of

agricultural related housing/affordable housing purposes. Additionally, the Coastal Act allows for local governments and the Commission, in appeal cases, to analyze and consider coastal resource issues with regards to environmental justice. As this project addresses a public health hazard and provides much needed affordable housing for a marginalized community of Latinx farm workers and related persons, it also promotes equity and environmental justice. The temporary RV site was denuded and degraded, and use of it temporarily in this way, while not impacting grazing on the rest of the property, where the expectation is that it will be removed in the relatively short term, continues to protect agricultural operations. Put another way, the County may have called it a “campground” for various technical reasons of its own, but that is less germane than the LCP outcome for the project. While confusing, this does not rise to the level of a substantial issue.

2. Habitat Resources

Applicable LCP Provisions

The LCP includes provisions protecting wetlands and ESHA, including:

C-BIO-2 ESHA Protection.

1. Protect ESHAs against disruption of habitat values, and only allow uses within those areas that are dependent on those resources or otherwise specifically provided in C-BIO-14 (Wetlands), C-BIO-15 (Diking, Filling, Draining and Dredging) or C-BIO-23 (Coastal Streams and Riparian Vegetation). Disruption of habitat values includes when the physical habitat is significantly altered or when species diversity or the abundance or viability of species populations is reduced. The type of proposed development, the particulars of its design, and its location in relation to the habitat area, will affect the determination of disruption.

2. Accessways and trails that are fundamentally associated with the interpretation of the resource are resource dependent uses that shall be sited and designed to protect ESHAs against significant disruption of habitat values in accordance with Policy C-BIO-2.1. Where it is not feasible to avoid ESHA, the design and development of accessways and trails shall minimize intrusions to the smallest feasible area and least impacting routes. As necessary to protect ESHAs, trails shall incorporate measures to control the timing, intensity or location of access (e.g., seasonal closures, placement of boardwalks, limited fencing, etc.).

3. Avoid fence types, roads, and structures that significantly inhibit wildlife movement, especially access to water.

4. Development proposals within or adjacent to ESHA will be reviewed subject to a biological site assessment prepared by a qualified biologist hired by the County and paid for by the applicant. The purpose of the biological site assessment is to confirm the extent of the ESHA, document any site constraints and the presence of other sensitive biological resources, recommend buffers, development timing, mitigation measures including precise required setbacks, provide a site

restoration program where necessary, and provide other information, analysis and modifications appropriate to protect the resource.

C-BIO-14 Wetlands. *Preserve and maintain wetlands in the Coastal Zone as productive wildlife habitats and water filtering and storage areas, and protect wetlands against significant disruption of habitat values. Prohibit grazing or other agricultural uses in a wetland, except for ongoing agricultural activities.*

C-BIO-18 Wetland Buffers. *Consistent with Policy C-BIO-3.1 (ESHA Buffers), maintain a buffer area, a minimum of 100 feet in width, in a natural condition along the periphery of all wetlands. A wider buffer may be required based on the results of a site assessment that evidences that a buffer greater than 100 feet in width is necessary to protect wetland resources from the impacts of the proposed development, including construction and post-construction impacts. No development shall be permitted within the wetland buffer, unless such development is authorized by C-BIO-2 (ESHA Protection), C-BIO-14 (Wetlands), C-BIO-15 (Diking, Filling, Draining and Dredging), or C-BIO-19 (Wetland Buffer Adjustments).*

C-BIO-19 Wetland Buffer Adjustments and Exceptions.

1. *A buffer adjustment to less than 100 feet may be considered only if it conforms with zoning and:*

- a. It is proposed on a legal lot of record located entirely within the buffer; or*
- b. It is demonstrated that permitted development cannot be feasibly accommodated entirely outside the required buffer; or*
- c. It is demonstrated that the permitted development outside the buffer would have greater impact on the wetland and the continuance of its habitat than development within the buffer; or*
- d. The wetland was constructed out of dry land for the treatment, conveyance or storage of water, its construction was authorized by a coastal permit (or pre-dated coastal permit requirements), it has no habitat value, and it does not affect natural wetlands.*

2. *A buffer adjustment may be granted only if supported by the findings of a site assessment which demonstrate that the adjusted buffer, in combination with incorporated siting, design or other mitigation measures, will prevent impacts that significantly degrade the wetland and will be compatible with the continuance of the wetland ESHA.*

3. *A Coastal Permit authorizing a buffer adjustment shall require measures that create a net environmental improvement over existing conditions, in addition to what is otherwise required by minimum applicable site development standards. Such measures shall be commensurate with the nature and scope of the project and shall be determined at the site level, supported by the findings of a site*

assessment or other technical document. Work required in accordance with this Policy shall be completed prior to occupancy. Appropriate measures may include but are not limited to:

a. Retrofitting existing improvements or implementing new measures to reduce the rate or volume of stormwater run-off and improve the quality of stormwater run-off (e.g., use of permeable “hardscape” materials and landscape or site features designed to capture, absorb and filter stormwater; etc.);

b. Elimination of on-site invasive species;

c. Increasing native vegetation cover (e.g., expand continuous vegetation cover, reduce turf areas, provide native groundcover, shrubs and trees; etc.);

d. Reduction in water consumption for irrigation (e.g., use of drought-tolerant landscaping or high efficiency irrigation systems, etc.); and

e. Other measures that reduce overall similar site-related environmental impacts.

4. The buffer shall not be adjusted to a distance of less than 50 feet in width from the edge of the wetland.

Analysis

The LCP requires proposed development to avoid all ESHA and wetlands, and requires buffers of at least 100 feet, where such buffers may be reduced under certain circumstances, but not to less than 50 feet. The Appellant alleges that the project occurs on top of wetlands and ESHA, and within required wetland/ESHA buffers, inconsistent with the LCP. However, according to the project’s biological assessment¹⁶ and the resultant mapping of such areas on the project plans (see Exhibit 3), the temporary RV development is not located in any wetland/ESHA area. It would, however, be located as close as about 50 feet from identified wetlands on its south-eastern side, and as close as about 10 feet from identified wetlands on its western side. Although not technically LCP consistent on these points, it is recognized that the wetlands in question appear to lack hydrology (see site photos on Exhibit 2), and it does not appear that the temporary emergency affordable RV housing should significantly impact any such areas. In addition, the project includes removal of the red-tagged substandard housing and septic/sewage apparatus, which should lead to a net environmental benefit, including as recognized by the project biological assessment. And, as indicated above, the intent is that the temporary RV development be removed when permanent affordable housing nearby can take its place, and thus its location is temporary. The County’s approval also permit also includes BMPs sufficient to protect the adjacent wetlands. In this context, the County approval does not raise a substantial issue.

3. Substantial Issue Conclusion

¹⁶ By J.K. Botany and Wetland Science, prepared February 7, 2023.

When considering a project that has been appealed to it, the Commission must first determine whether the local government's decision on the project raises a substantial issue of LCP or Coastal Act public access policy conformity, such that the Commission should assert jurisdiction over the CDP application 'de novo' (i.e., completely reviewing the project for LCP and Coastal Act consistency) 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, or Coastal Act public access, conformance. Section 13115(c) of the Commission regulations provides that the Commission may consider the following five factors when determining if a local action raises a significant issue: the degree of factual and legal support for the County's decision; the extent and scope of the development as approved or denied by the County; the significance of the coastal resources affected by the decision; the precedential value of the County'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. 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, the five factors, considered together, support a conclusion that the County's approval of a CDP for the proposed project does not raise a substantial issue of LCP conformance.

In terms of the degree of factual and legal support for the County's decision, the County reviewed the project plans, inspection reports, the site's Williamson Act Contract, documentation of previous violations, and the biological site assessment to consider and approve of the project, designating the project as a campground. However, the project does not appear to be a campground and can be more aptly described as temporary emergency farm worker and affordable housing. Despite this inconsistency, this factor does not raise a substantial issue.

With respect to extent and scope of the County-approved development and the significance of affected coastal resources, the project would temporarily occupy about 2.5 acres of a larger 20-acre site, where that 2.5 acres is heavily denuded and degraded. Grazing use would continue outside of the 2.5-acre area. While agricultural and wetland lands are protected coastal resources under the LCP, impacts to these resources do not appear significant, and are temporal. Given this, these two factors do not suggest a substantial issue.

With regard to the fourth factor (i.e., the potential to set an adverse precedent for future interpretations of the LCP), it should first be noted that any one case, like this one, is decided on its specific facts and merits and any given project decision is not entirely dispositive on how the Commission decides a subsequent item. At the same time, there is always the potential that the County (and/or potential future applicants) might see the County's action with regard to this project as precedential. However, it is important to note that this project has very specific circumstances, involving a severe threat to public health/environmental health that required immediate action as well as a vulnerable population of people residing in informal, substandard housing that could not immediately be housed elsewhere. Further, the Coastal Act explicitly identifies the need for equity and environmental justice and allows the local government and the Commission, on appeal, to consider coastal resource issues and impacts through that lens even if the LCP itself may be silent on such issues. Coastal Act Section 30604(h)

states: “When acting on a coastal development permit, the issuing agency, or the Commission on appeal, may consider environmental justice, or the equitable distribution of environmental benefits throughout the state.” The public health threat to a lower income population that is often marginalized, such as farm workers, further reinforces the special need for this project. For these unique reasons, the project was needed to serve as temporary emergency affordable housing in order to house residents while permanent affordable housing is constructed on the adjacent site. As such, this factor does not raise significant issues.

Finally, protection of agriculture, wetlands, and affordable housing are clearly statewide issues, however, these are better understood in this situation as hyper-local and very context specific issues related to the balance of all three in the unique community of Bollinas. As such, this factor supports a no substantial issue determination. Given the foregoing, and for the reasons stated above, the Commission finds that Appeal Number A-2-MAR-23-0050 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, and the Commission declines to take jurisdiction over the CDP application for this project.

3. APPENDICES

A. Substantive File Documents¹⁷

- Marin County LCP
- Marin County ECDP and CDP Files for P4152
- Tacherra Ranch Williamson Act Contract

B. Staff Contacts with Agencies and Groups

- Marin County Community Development Agency
- Bollinas Community Land Trust
- Bollinas for Compassionate Land Use

¹⁷ These documents are available for review from the Commission’s North Central Coast District office.