

BOLINAS COMMUNITY PUBLIC UTILITY DISTRICT

BCPUD

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MEMORANDUM

TO: BCPUD Board of Directors

FROM: Jennifer Blackman, General Manager *JUB*

RE: BCLT Proposals re: Water Use at 130 Mesa Road Pending Close of Escrow for the Purchase of 160 Mesa Road

DATE: October 1, 2023

Background:

At a special meeting of this Board on May 31, 2023, concerning the Bolinas Community Land Trust ("BCLT")'s emergency temporary RV trailer campground project at 130 Mesa Road, the Board approved limited water use permit applications for 130 Mesa Road and for 160 Mesa Road (aka "Tacherra Ranch") and approved the stacking of the resulting water use allocations on the meter serving 130 Mesa Road, subject to specific conditions, as follows:

- (1) The Board approved a limited water use permit for 130 Mesa Road with a maximum quarterly water use limit of 2,700 cubic feet; and
- (2) The Board approved a limited water use permit for 160 Mesa Road with a maximum quarterly water use limit of 18,233 cubic feet *contingent on* (a) the BCLT's acquisition and ownership of the property at 160 Mesa Road and (b) the issuance of a County building permit for the temporary RV trailer campground project; and
- (3) The Board approved the stacking of the water use allocations for 130 Mesa Road and 160 Mesa Road (i.e., 2,700 cubic feet + 18,233 cubic feet = 20,933 cubic feet per quarter) at 130 Mesa Road to serve the temporary RV trailer campground project, *contingent on* (a) the BCLT's acquisition and ownership of the property at 160 Mesa Road, (b) the issuance of a County building permit for the temporary RV trailer campground project and (c) confirmation from the BCPUD's legal counsel that the BCLT may request to "unstack" the water use allocations at a future date, if needed.

At the September 20, 2023 regular meeting of the Board, the BCLT advised the Board that, "due to reasons outside the control of the BCLT, despite its diligent efforts, the BCLT will be unable to meet the condition required under the BCPUD Approvals related to its acquisition and ownership of the Tacherra Ranch prior to its intended commencement of operation [of the RV trailer campground at 130 Mesa Road on] October 15, 2023." The BCLT asked the Board to temporarily modify the condition of common ownership of 130 and 160 Mesa Road and authorize an increased water use at 130 Mesa Road, effectively swapping the water use allocations approved above between the two properties, to serve the RV trailer campground. Annie O'Connor, Executive Director of the BCLT, explained that the County of Marin has required the Tacherra Ranch residents to move off the property at 160 Mesa Road prior to the rainy season (hence the October 15th date) and the BCLT is doing everything it can to be able to make the temporary RV trailer campground available to the Tacherra residents by that date. Annie further explained that there will be a protracted escrow of approximately one year pertaining to its purchase of 160 Mesa Road due to extended due diligence and potential negotiations with regulators concerning remediation of the historic dump site at the property. Following a discussion of the request, the Board concluded it did not have authority under its existing rules and regulations to modify the conditions of its

prior approvals and grant the BCLT's request to allow the increased water use at 130 Mesa Road. The Board indicated it would be willing to hold a special meeting (now scheduled for October 4, 2023) to consider a revised proposal from the BCLT relating to water use to serve the RV trailer campground if the BCLT should decide to submit one; Annie O'Connor thanked the Board and said the BCLT will plan to do so.

BCLT's Revised Proposals:

The BCLT has submitted three alternative proposals for the Board's consideration relating to water use at 130 Mesa Road to serve the RV trailer campground. The BCLT has indicated that each of the proposals are intended to apply for the time period beginning now and until either the close of escrow for its purchase of 160 Mesa Road, or until the date of a decision of the BCLT not to purchase 160 Mesa Road. The BCLT's proposals are as follows:

- a. to temporarily "stack" the water use limit applicable to its property at 31 Wharf Road (12,250 cubic feet) and a portion of the water use limit applicable to its property at 6 Wharf Road (3,000 of the 9,000 cubic foot limit) on the meter serving 130 Mesa Road (which has a water use limit of 2,700 cubic feet) for a combined water use limit of 17,950 cubic feet per quarter.
- or
- b. for a one-time emergency exception to the common ownership requirement of BCPUD Resolution 671 to allow the swap of water use limits applicable to 130 Mesa Road (2,700 cubic feet per quarter) and 160 Mesa Road (18,233 cubic feet per quarter), on the condition the swap shall automatically revert without further action of the BCPUD Board effective on the date of a decision by the BCLT not to purchase 160 Mesa Road.
- or
- c. for an amendment to BCPUD Resolution 671 to allow for the swapping or stacking of water use limits applicable to properties with affordable housing projects during an escrow period that would result in common ownership of said properties by the same entity or person.

Analysis:

BCLT Request (a): Staff confirms that the BCLT has accurately represented the quarterly water use limits applicable to its properties as 31 Wharf (12,250 cubic feet), 6 Wharf (9,000 cubic feet) and 130 Mesa Road (2,700 cubic feet). Pursuant to Resolution 671, the Board has the authority to approve the stacking of water allocations (full or partial) from other properties it owns on to the meter serving 130 Mesa Road because the property will be used for affordable housing purposes (i.e., the RV trailer campground). It is important to underscore that if the Board approves the BCLT's stacking request, the property at 31 Wharf would not be served by the BCPUD's water system during the time period the water allocation is stacked on the 130 Mesa meter (and therefore no water can be used at 31 Wharf) *and* the property at 6 Wharf similarly would have an adjusted maximum quarterly water use of 6,000 cubic feet during this time. Any violation of this water use limit would be enforced by the BCPUD via its limited water use permit enforcement procedures set forth in Resolution 655. As for the "temporary" nature of the BCLT's stacking request: per Resolution 671 the BCLT may come back to the Board and request that the water use allocations be stacked back at 31 Wharf Road and/or 6 Wharf Road, which it presumably

plans to do if it acquires 160 Mesa Road.¹ If it should turn out that the BCLT does not acquire 160 Mesa Road, it also may come back to the Board and request that the water use allocations be stacked back at 31 Wharf and/or 6 Wharf at such time as the stacked water use allocations are no longer needed to serve the RV trailer campground at 130 Mesa Road.

BCLT Request (b): this proposal is similar to the proposal made by the BCLT at the September 20, 2023 regular Board meeting, but redefined as a request for an emergency exception to the common ownership exception of Resolution 671 and further refined to include an “automatic reversion” of the swap without further action of the Board in the event the BCLT decides not to purchase 160 Mesa Road. Staff recommends the Board obtain written confirmation from the receiver/owner of 160 Mesa Road that he has agreed to the swap proposal as a condition of any approval of this request. In addition, staff recommends that the Board not agree that its approval, should approval be granted, automatically reverts without further action of the Board if the BCLT decides not to purchase 160 Mesa Road. Instead, as with request (a), above, in that case, the BCLT and receiver may come back to the Board and request that the water use allocations be stacked back at such time as the swapped water use allocation is no longer needed to serve the RV trailer campground at 130 Mesa Road, assuming it is possible to do so in accordance with Resolution 671.

BCLT Request (c): amending Resolution 671 to allow for the swapping or stacking of water use limits applicable to properties with affordable housing projects during an escrow period that would result in common ownership of said properties by the same entity or person (i.e., a general amendment of Resolution 671 rather than an emergency exception to it as set forth in (b), above), presents considerable uncertainty for the district in the event future escrows do not close. Staff recommends against amending Resolution 671 in this manner as the Board can better address such circumstances on a case-by-case basis and in conformance with all of its then-applicable rules and regulations.

¹ Staff recommends the Board not adopt the terminology of “unswapping” or “unstacking” of water use allocations as such terminology does not appear in Resolution 671. Rather, if and when a property owner seeks Board approval to alter previously approved swaps or stacks of water use allocations between properties he or she owns, the Board should deem the request as a new stack or swap request pursuant to Resolution 671 and evaluate it accordingly.