



**MARIN COUNTY  
COMMUNITY DEVELOPMENT AGENCY**

ALEX HINDS, DIRECTOR

**M E M O R A N D U M**

**Marin County Community Development Agency -- Planning Division**

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**TO:** Marin County Planning Commission

**FROM:** Johanna M. Patri, AICP, Senior Planner

**RE:** Item No. 8  
Moritz Master Plan Waiver Request, Coastal Permit (04-26), Design Review (04-56), and  
Use Permit (04-26) Applications  
5675 Horseshoe Hill Road, Bolinas  
Assessor's Parcel 188-090-13

**DATE:** January 24, 2005

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**SUMMARY RECOMMENDATION**

Staff recommends that the Planning Commission review the administrative record, conduct a continued public hearing, and adopt the attached revised resolution conditionally approving the Moritz Coastal Permit, Design Review and Use Permit applications subject to recommended conditions of approval. Recommended conditions of approval would allow:

- Construction of a 2,996 square foot single-family residence with approximately 1,230 square feet of porch area;
- Construction of a 979 square foot detached garage and storage structure;
- Construction of an approximately 660-foot long driveway, extending from an existing driveway to provide access to the proposed building site;
- Construction of improvements to the existing driveway such as turnouts for emergency vehicles;
- Legalization and conversion to agricultural worker housing of an existing "as-built" 1,500 square foot single-family residence located off the existing driveway;
- Conversion of the existing, 1,200 square foot primary single-family residence to a guest house by removing the kitchen, including cooking facilities and cabinets, and demolition of said structure after the life-time estate granted to the previous owner ceases;
- Demolition of two existing guest houses; and
- The continuation of the existing cattle operation on the 84.33-acre property and on the "Lands of the Bolinas Community Public Utility District".

In addition, recommended special conditions of approval would require:

- The owners to grant to the County an Agricultural Conservation and Production Easement and Declaration of Restrictions to ensure permanent protection and preservation of potential agricultural lands and the natural resources associated with the oak woodlands (*refer to Attachment 9*);
- The owners to record a Deed Restriction against the title of the property to ensure that the agricultural worker housing unit is maintained in perpetuity as a living unit for agricultural workers in Marin County (*refer to Attachment 8*);
- Delineation of a 100-foot wide Stream Conservation Area (SCA) to protect the natural resource and riparian habitat values associated with Pine Gulch Creek that runs through the “Lands of the Bolinas Community Public Utility District”, which is part of the cattle operation (*refer to Attachment 10*);
- Non-renewal of the existing Williamson Act contract (Land Conservation Contract No. 15313) with the County by serving written Notice of Non-renewal in accordance with State Government Code, Section 51245; and
- The owners to file a Homeowner’s Tax Exemption form with the County Assessor’s office that declares the residence as the principal residence of the owners with the Homeowner’s Tax Exemption to remain in effect until the end of the 10-year contractual period of Land Conservation Contract No. 15313.  
(*Please refer to Special Conditions 22 -26.*)

## **SUMMARY FINDINGS**

As recommended for approval, staff finds that:

- The proposed project, as recommended for approval, is: (1) incidental and compatible with the preservation of agricultural lands and natural resources associated with the property; and (2) consistent with all pertinent County policies and ordinances, including the C-APZ governing zoning district regulations;
- While the proposed project meets Countywide Plan policies and zoning requirements for agricultural preservation, the existing Williamson Act contract (Land Conservation Contract No. 15313) should not be renewed for the purpose of providing tax benefits for agricultural production because of the limited agricultural production of the proposed project;
- Recordation of the Agricultural Conservation and Production Easement and Declaration of Restrictions meets the intent of the Williamson Act for the purposes of preserving agricultural and natural resource lands; and
- Through the remaining period of the Williamson Act contract, only agricultural/open space lands will be assessed under the tax benefits granted by the contract.

## **PROJECT DESCRIPTION**

The applicant, Fernau and Hartman, Architects, on behalf of the property owners, Michael Moritz and Harriet Heyman, is proposing to construct a new 2,996 square foot single-family residence with an approximately 1,230 square feet of porch area and a 979 square foot detached garage and storage structure on an oak woodland knoll upslope and south of the existing development on the 84.33-acre subject property. A new approximately 660-foot long driveway, extending from an existing driveway, will provide access to the proposed building site, located approximately 800 feet west of the front (eastern) property line and the existing entrance off Horseshoe Hill Road. The project includes construction of improvements to the existing driveway such as turnouts for emergency vehicles.

The proposed residence, sited approximately 300 feet from the existing historic residence, would have a maximum height of 25 feet above natural grade. The proposed garage, sited 50 feet east of the proposed residence, would have a maximum height of 22.16 feet above natural grade through section and 25 feet at the downslope elevation. Exterior finishes consist of wood cedar siding stained soft, neutral greens, ochre, and amber colors, and an oxidized copper metal roof.

The applicant also is proposing to legalize and convert to agricultural worker housing an existing "as-built" 1,500 square foot single-family residence located off the existing driveway east of the historic development on the subject property. In addition, the applicant is proposing to convert the existing, 1,200 square foot primary single-family residence to a guest house by removing the kitchen, including cooking facilities and cabinets, and to demolish said structure after the life-time estate granted to the previous owner ceases (*refer to Attachment 25, January 6, 2005 letter*). The applicant is proposing to demolish two existing guest houses: (a) a 400 square foot structure southwest of the agricultural worker housing unit; and (b) a 420 square foot structure east of the proposed guest house. (*The resultant existing and proposed total floor area of development is shown in Attachment 11.*)

The proposed new residence will be served by construction of an on-site mound sewage disposal system located down slope and east of the proposed residential site and two 10,500-gallon water storage tanks north of the new residential site. The existing development will be served by construction of a new on-site sewage disposal system located at the lower portion of the property. All development and some of the agricultural uses will be served by an on-site existing well. The remaining agricultural uses will be served by an off-site spring on adjacent property owned by the Bolinas Community Public Utility District (BCPUD), which is encumbered by an easement for livestock grazing and water rights that benefits the agricultural operator on the Moritz property (recorded document Book 3668 OR Page 317). The Moritz proposal precludes the withdrawal or use of water from Pine Gulch Creek other than for emergency purposes.

The property owners propose to continue the existing cattle grazing operation on the Moritz and the BCPUD parcels. The cattle grazing operation is owned and managed by the current ranch manager who also occupies the proposed agricultural worker residence. The owners have submitted a draft easement proposing to convey to the County an Agricultural Conservation and Production Easement and Declaration of Restrictions over an identified "Agriculture Production Zone" to: (a) provide permanent preservation of potential agricultural lands; and (b) restrict and maintain in perpetuity the agricultural worker housing unit at a below market rental rate as determined and administered by the Marin County Community Development Agency for use by farm workers engaged in agricultural production on the project site or elsewhere in Marin County. (*Please note that the content of the Easement proposed by the applicant is somewhat different than the draft Easement prepared by the County and recommended by staff and referred to in the Summary Recommendation.*)

The property is currently subject to the provisions of Land Conservation Contract No. 15313 (Williamson Act) entered into with the County on May 14, 1971.

## **BACKGROUND**

At the August 23, 2004, Planning Commission public hearing, the Commission considered the Moritz Master Plan Waiver request and Coastal Permit, Design Review, and Use Permit applications proposing various development and uses on the 84.33-acre property as summarized in the Project Description section above.

After considering staff's recommendation, the administrative record, public testimony, and the merits of the project, the Planning Commission continued their deliberations and the public hearing and directed staff to provide clarification and additional information regarding various issues as discussed in the Summary and Analysis of Planning Commission Issues section below.

At the November 15, 2004, at the request of the applicant, the Planning Commission further continued the matter to the public hearing of December 13, 2004, in order to: (1) allow the applicant additional time to research and respond to the Planning staff's recommendation to the Planning Commission as outlined in the staff report of November 15, 2004; and (2) allow County staff time to confer with the State Department of Conservation, Division of Land Resource Protection (DOC) staff to obtain clarification regarding the intent and provisions of Assembly Bill 1492 (AB 1492) and its application to the Moritz project.

Planning staff modified its recommendation of conditional approval from the August 23, 2004 staff report to the November 15, 2004 staff report, based on Planning staff's initial understanding of the relationship between the Moritz project and the provisions of AB 1492.

The basic thrust of staff's November 2004 recommendation was to require that the new residential development be reduced in size to no more than 2,500 square feet in floor area, including the garage, but excluding porches since the County does not typically include exterior porches in residential floor area calculations. The 2,500 square foot figure is identified in AB 1492 as one of the criteria for determining a material breach of contract. Staff continued to recommend the recordation of the agricultural conservation and production easement as a means of ensuring the long-term use of the property for agricultural production, consistent with both the Williamson Act and the County's general plan and C-APZ zoning, and require the recordation of a deed restriction ensuring the preservation of the second dwelling unit as an agricultural worker housing unit.

On December 2, 2004, County staff met with the DOC staff to discuss the Williamson Act, AB 1492, and the Moritz project. As a follow-up to the meeting, County staff requested from the DOC staff a written summary of the discussion and the issues of concern as to the application of the Williamson Act and AB 1492 to the Moritz project (*refer to Attachment 26*). Receipt of this correspondence was expected by the middle of December. Therefore, at the request of the applicant, the Planning Commission further continued the public hearing of the Moritz applications to the public hearing of January 24, 2005, to allow time for staff to receive the DOC staff's written correspondence and provide further analysis before bringing the matter back to the Planning Commission.

#### **SUMMARY OF MEETING WITH STATE DEPARTMENT OF CONSERVATION (DOC)**

Prior to the December 2, 2004 meeting, Planning staff forwarded to the DOC copies of the November 15, 2004 staff report, the recommended resolution, and the draft agricultural conservation and production easement prepared by the County for the Moritz project and requested the DOC staff's input on the relationship between the project and AB 1492.

During the discussion of Marin County's administration of the Williamson Act and options for the County to consider with regard to the Moritz project and new residential construction on agricultural lands under a Williamson Act contract, the DOC staff made the following general comments.

- AB 1492, which, in general, defines a material breach of the Williamson Act, applies only to non-agricultural structures with an aggregate floor exceeding 2,500 square feet that are built and permitted as of January 2004. The State legislation does not address specifically whether exterior building spaces, such as porches, should be included in the floor area calculations.
- The DOC recommends that the County consider adopting agricultural production criteria to qualify for a Williamson Act contract. The timeline for developing and adopting such criteria would extend well beyond the remaining processing of the Moritz permit request, and thus should be pursued as a future program.

- The DOC staff stated that the value of residential development in relationship to the value of agricultural production is a factor to consider in determining compliance with the Williamson Act, although it is not a matter of law.
- The DOC staff expects the County to determine whether proposed new residences are proposed as primary or secondary residences. New single-family residences should be considered as the primary residence for tax purposes.
- The DOC recognizes that Marin County has a consistent history of protecting agricultural land.
- AB 1492 came about because the State was finding that counties were allowing subdivision of Williamson Act lands for future residential development, such as gated communities and other non-agricultural development, with no agricultural production, while maintaining the tax breaks provided under the Williamson Act.
- If the County finds that a residence is related to the underlying agricultural use, the County has the authority to approve the project.
- Under the Williamson Act contract, the tax benefits will be protected, as agricultural production lands will not be re-assessed upon sale. Only the residential value is re-assessed.
- The County may require non-renewal of a Williamson Act contract.
- Marin County is the designated entity that enforces Williamson Act contracts. The Williamson Act and AB 1492 provide latitude to local agencies to establish their own provisions for implementing the State legislation.
- Even if non-renewal is initiated, the property remains under the Williamson Act provisions until the end of the 10-year contractual period and improvements may be considered a breach during that period.

**SUMMARY OF COMMENTS OF DEPARTMENT OF CONSERVATION (DOC) CONTAINED IN DECEMBER 17, 2004, LETTER AND RELATIONSHIP TO THE MORITZ PROJECT (*Refer to Attachment 26*)**

A. Non-renewal of the Williamson Act Contract

1. The State Attorney General has opined that non-renewal is the preferred contraction termination method: “If a landowner desires to change the use of his land under contract to uses other than agricultural production and compatible uses, the proper procedure is to give notices of non-renewal pursuant to Section 51245 *of the State Government Code*.

The proposed Agricultural Conservation and Production Easement and Declaration of Restrictions meets the intent of the Williamson Act for the purposes of preserving agricultural and natural resource lands. However, the County’s contractual restrictions remain in effect until the non-renewal process is complete.

2. The DOC encourages local governments to review lands subject to Williamson Act contracts and determines whether the compatibility of any particular activity is a violation of the contract, local uniform rules, or the Act. Either the landowner or the local jurisdiction can initiate the non-renewal process.

B. Recession/Re-entry

1. Within the Williamson Act, State Government Code, Section 51254 provides a means whereby the County and landowner can agree to enter into a new contract more accurate, appropriate and descriptive to the actual use of the land.
2. The compatibility of any particular use must be measured against any land use restrictions in the contract, the local uniform rules and State Government Code, Section 51238.1 (c).

C. Primary Residence Requirement

1. While the Williamson Act does not prohibit the construction of a homesite on contracted land, residential development requests must be reviewed in light of the contract, local rules and AB 1492 requirements pursuant to State Government Code, Section 51250. (*Refer to Attachment 15, page 2 of Assembly Bill No. 1492.*) to ensure they do not engender a breach or trigger a material breach (over 2,500 square feet of development).
2. If the proposed development constitutes a secondary residence for the landowner, the proposal must give rise to a question concerning the relationship of the residence to the use of the land for the principal contracted purposes.

D. Incorporation of Agricultural Income Requirements

1. There should be a determination of a realistic per acre agricultural value to ensure that a viable agricultural operation is not merely feasible but will likely continue to produce one or more agricultural commodity (ies) for commercial purposes.
2. New residential development on contracted land must relate to, and under the specific provisions of this type of contract, must be incidental to the agricultural production.

E. Decision Making and Enforcement Authority

1. It is the responsibility of the County to evaluate at the proper time whether any particular activity on any specific parcel constitutes a violation or threatened violation of the act. The test to be applied is whether the construction of a single-family residence or any other subdivision improvements is incidental to the project of agricultural commodities for commercial purposes on a particular parcel.
2. Local governments have the primary decision-making and enforcement authority for the provisions of the Williamson Act, including the provisions of AB 1492. It is the responsibility of the Board of Supervisors to determine that the residential use is demonstrably incidental to the primary purpose of the use of the land for agricultural purposes.
3. When circumstances require it, the DOC retains the responsibility to make an independent determination that a breach of contract exists and to recommend independent enforcement actions.

## SUMMARY AND ANALYSIS OF PLANNING COMMISSION ISSUES

### *Issues*

The following are the major issues identified by the Planning Commission at the August 23, 2004, public hearing followed by staff analysis and recommendations:

1. Provisions of the governing Land Conservation Contract No. 15313, the Williamson Act, and the recently adopted State legislative action, Assembly Bill 1492, as it relates to the proposed project;
2. Review of a final draft of the recommended Agricultural Conservation and Production Easement and Declaration of Restrictions;
3. The condition of the oak trees at the site of the new residence with provisions for oak tree protection and replacement at the project site and within the oak woodlands due to potential sudden oak death syndrome;
4. The establishment of a stream conservation area and protection of the natural resources associated with Pine Gulch Creek on “Lands of the Bolinas Public Utility District”; and
5. The permanent preservation of the proposed agricultural worker-housing unit.

### *Analysis*

1. **The Commission requested clarification of the provisions of the Williamson Act, the governing Land Conservation Contract No. 15313, and the recently adopted State legislative action, Assembly Bill 1492 as it relates to the proposed project.**

#### **The Williamson Act and Marin County Board of Supervisors Resolution No. 71-38**

In short, the purpose of the Williamson Act, (enacted in 1965), is to provide local jurisdictions with an instrument for preserving agricultural lands (and lands with potential for agricultural production) and, as regulated through local policies and standards, protecting potential agricultural production properties from conversion to non-agricultural uses such as commercial office and shopping centers and residential subdivisions. The Williamson Act does not mandate that property under contract be farmed or put into agricultural production.

In 1970, the Williamson Act was amended to require local governments to establish agricultural preserve boundaries within which local governments and property owners may enter into Williamson Act contracts. California Government Code Sections 51200 – 51286 and 66474 provide the authority for Marin County to enter into Williamson Act contracts with agricultural landowners and outline the provisions for assessing agricultural land, creating agricultural preserves, renewal of contracts, removal of land under contract, compatible uses, and administering and enforcement of contracts.

In February 1971, the Board of Supervisors passed Resolution No. 71-38, which established the policies, rules, and eligibility governing the administration of Williamson Act contracts, referred to as Land Conservation Contracts or Land Conservation Agreements. (*Refer to Attachment 12.*) Resolution No. 71-38 provides that the land subject to the agreement cannot be used for any purpose other than the production of agricultural commodities and that all structures must be directly related to, and compatible with, the allowed uses. Resolution No. 71-38 allows only one principal residence per contract, but additional dwellings may be permitted for family members or agricultural workers, in compliance with the governing zoning and the provisions of Marin County Code, Title 22. Section III (7) of Resolution No. 71-38 specifically allows one-family dwellings “provided that on land within

Agricultural Preserves and under contract pursuant to Sections 51240, et seq. of the Government Code, permitted uses include dwellings incidental to the agricultural use of the land for the resident of the owner or lessees of the land and the family of the owner or lessee, or for their employees engaged in the agricultural use of the land.”

### **Land Conservation Contract No. 15313 - Assessor's Parcel 188-090-13 (formerly –11)**

The Moritz property is situated within an agricultural preserve area as noted on Figure A-5 of the 1994 CWP Agriculture Element. (*Refer to Attachment 13.*) In May 1971, the previous owners (Vierra) entered into Land Conservation Contract (LCC) No. 15313 with the County. (*Refer to Attachment 14.*) As generally described above, the purpose of the Contract is to limit land use to agricultural purposes. Section 2 of the Contract states that "no structures shall be erected upon said land except such structures as may be directly related to, and compatible with, allowed uses hereunder".

### **Legislative Action AB 1492 (refer to Attachment 15)**

In October 2003, the State passed Assembly Bill No. 1492 (AB 1492) amending sections of the Government Code relating to the Williamson Act, with the intent to address the most egregious violations of Williamson Act contracts consisting of the development of incompatible uses on restricted lands that are not related to the underlying agricultural or open space use and value of the land. Examples of incompatible uses include subdivisions, strip malls, commercial warehouses and driving ranges.

AB 1492, Chapter 694 of the State Government Code, added Government Code Section 51250(b), which defines a material breach on land subject to a Williamson Act contract. (*Refer to Attachment 15, Section 1, page 2.*) Government Code Section 51250 (b) states that: “A breach is material if, on a parcel under contract, both of the following conditions are met: (1) the A commercial, industrial or residential building *is constructed* that is not allowed by this chapter or the contract, local uniform rules or ordinances consistent with the provisions of this chapter, and that is not related to an agricultural use or compatible use; and (2) the total area of all of the building or buildings likely causing the breach exceeds 2,500 square feet.” Section 51250 (s) states that Section 51250 does not apply to: (A) “a building constructed prior to January 1, 2004, or permitted by a city or county prior to January 1, 2004; (B) a building that was not a material breach at the time of construction but became a material breach because of a change in law or ordinance.” (*Refer to Attachment 15, Section 1, page 6.*)

A primary root of the problem that AB 1492 attempts to address appears to be planted in the subdivision of lands subject to Williamson Act contracts. Creation of multiple smaller parcels from larger parcels may be the first step in the eventual sale to individual property owners for residential or other non-agricultural development, and the sale of integral parcels can impair the ability of a rancher or farmer to continue to graze or farm on remaining agricultural parcels, or create conflicts with new nonagricultural uses that may ensue. While the Williamson Act does not prohibit subdivision of lands under contract, it does prohibit the conversion of contracted lands to uses other than agriculture and uses deemed incompatible with agriculture.

Under AB 1492, local governments have the primary responsibility for enforcement of the statute. The local government determines whether a material breach of a valid contract exists and notifies the landowner and the State Department of Conservation (DOC) of its determination. The DOC may also inform the local government of a material breach. If a material breach is found, the landowner has the following options: (1) the landowner may eliminate the conditions that resulted in the breach; or (2) request a public hearing to present evidence disputing the local government’s determination. After the public hearing process if the local government’s determination is upheld, the landowner will be ordered to eliminate the conditions that resulted in the material breach within 60 days or be



assessed a monetary penalty for that portion of the contract made incompatible by the material breach.

### **Conclusion and Recommendation**

#### ***Recommended Non-Renewal of the Williamson Act Contract (Land Conservation Contract No. 15313)***

As a condition of approval, Planning staff recommends non-renewal of the existing Williamson Act contract (Land Conservation Contract No. 15313) with the County before issuance of a Building Permit for the new residential development.

Assessment for property tax purposes of the Moritz property by the Marin County Assessor's Office is three tiered: (1) all improvements are assessed at market value; (2) all building sites (sites with improvements) are assessed under Proposition 13 and are not part of the agricultural/open space assessed lands; and (3) all agricultural/open space lands are assessed under the tax benefits allowed by the Williamson Act contract.

While Planning staff concludes that the project can be sustained insofar as the County's C-APZ zoning is concerned, the current recommendation includes a requirement to non-renew the Williamson Act contract for the property primarily because the limited agricultural production that the property supports is not sufficient to justify the ongoing tax benefits provided under the contract.

#### ***Recommended Approval of One Primary Single-family Residence and Declaration of the New Residence as the Owners' Principal Residence***

The Moritz property is zoned C-APZ-60 (Coastal, Agricultural Production Zone with a maximum density of one primary dwelling unit per 60 acres) for the purpose of preserving the potential agricultural lands for agricultural production as the primary use. This zoning allows one principal single-family dwelling unit as a principal use and additional agricultural worker housing as a conditional use with development accessory, incidental to, or in support of agricultural land uses. Under the C-APZ-60 zoning, the Moritz property does not have the potential for further subdivision.

Planning staff continues to recommend approval of one primary single-family residence and a detached accessory structure appurtenant to the primary residence as allowed under the C-APZ zoning because the extent and the resultant overall footprint (approximately 3,504 square feet) of this development would not impact any potential available agricultural production lands. However, in light of the Department of Conservation's concerns regarding secondary residences on lands governed by Williamson Act contracts, staff recommends as a condition of approval, that the owners file a Homeowner's Tax Exemption with the County Assessor's office that declares the residence as the principal residence of the owners. The requirement for the Homeowner's Tax Exemption would remain in effect until the end of the 10-year contractual period of Land Conservation Contract No. 15313.

With respect to the proposal as an incidental and compatible use related to the primary agricultural use of the land, Planning staff finds that construction of the new residence can be justified within the context of the C-APZ zoning because of the property owners' willingness to: (1) invest in agricultural improvements on the property, including a new barn and fencing; (2) financially support the limited amount of agricultural production on the property; (3) enter into an agricultural conservation and production easement with the County; and (4) create a deed restricted agricultural worker housing unit on the property.

Because of the limited agricultural production capacity of the land, staff finds it extremely difficult, if not impossible, to maintain some reasonable level of parity between the value of a new residence and

the expected economic return of the grazing operation, given the relatively small number of cattle the property will support. (The project was reviewed by the Marin County Agricultural Advisory Committee, which found that the 20-25 head of cattle was a realistic capacity for the property.) This type of imbalance between the economic value of the residential improvements and agricultural production can be found in many agricultural properties in Marin County where agricultural operations are economically marginal and where most of the value of an agricultural operation is in the land.

- 2. Before making a final decision on the proposed project, the Commission requested review of all provisions and restrictions of the recommended final draft of the Agricultural Conservation and Production Easement and Declaration of Restrictions as prepared by County staff before it was sent to the Board of Supervisors for adoption.**

County staff has prepared a draft of the Deed of Agricultural Conservation and Production Easement and Declaration of Restrictions (Easement). (*Refer to Attachment 9.*)

In general, the draft Easement fosters agricultural production and causes the property to remain in agricultural use by requiring the owner(s) of the easement-encumbered property to continue an agricultural operation and requires the land to be maintained in productive agricultural use either by the property owners or an agricultural operator.

The draft Easement includes provisions for the protection and stewardship of the agricultural and natural resources of the property in perpetuity. It contains provisions for: (a) the creation of baseline data to determine the current condition and agricultural and natural resource values of the property that need to be protected; (b) the right of the County (or designee of the County) to monitor the property for the uses and practices of the owners to determine whether they are consistent with the terms of the Easement and includes payment provisions by the owners for the monitoring activities; (c) the permanent restriction of the agricultural worker housing unit on the property as housing for agricultural workers in Marin County who are actively engaged in agricultural production; (d) prohibits uses detrimental to the stream conservation area and water quality of Pine Gulch Creek; (e) requires submittal of a final Agricultural Production and Stewardship Plan for review and approval by the County; (f) requires the replacement over time of Coast live oak trees removed due to Sudden Oak Death within the oak woodland zone; and (g) allows replacement of improvements and facilities and additional improvements and facilities reasonably necessary to the agricultural production and stewardship of the property, subject to County approvals and permits. In addition, it includes provisions for permitted uses and prohibited uses.

The final land use site plan to accompany the final Easement would require three zones: a Development Zone limiting development to two areas; an Agricultural Production Zone requiring certain portions of the property to be permanently dedicated for agricultural production and uses based on the characteristics of the property; and a Preservation Zone requiring certain portions of the property to be maintained in a natural state for conservation and wildlife habitat purposes. This zone generally includes the oak woodlands and steeply sloped areas of the property. Proposed development is not located on soils classified by the Natural Resources Conservation Service as prime farmland or farmland of statewide importance.

The Easement does not provide for any compensation to the owners for granting the easement to the County, including land use restrictions and limitations for non-agricultural residential development. The Easement does not require the owners to remain in a Land Conservation Contract under the Williamson Act. Planning staff recommends as a condition of approval that because of the: (a) minimal amount of agricultural production; and (b) residential built-out of the property with the construction of the new single-family residential development, that the owners begin proceedings to non-renew the existing Williamson Act Contract with the County before issuance of a building permit for the new residence. It does not include provisions for a Stream Conservation Area on the "Lands of

the Bolinas Community Public Utility District” as the Grantors do not own or control these lands. However, this protection is included in the recommended conditions of project approval contained in the recommended Resolution. (*Refer to the discussion in Item 4 below.*)

### **Conclusion and Recommendation**

The recommended draft Deed of Agricultural Conservation and Production Easement and Declaration of Restrictions (Easement) will provide an effective tool to preserve and protect the agricultural and natural resource values of the Moritz property. It provides a commitment by both the landowners and the County to help preserve the land and the agricultural economy it supports and prevent land uses that would impair the potential agricultural use of the land. The recommended draft Easement has been created for this project based on an Agricultural Conservation Easement Template provided by the MALT.

Before completing the draft of the Deed of Agricultural Conservation and Production Easement and Declaration of Restrictions, Planning staff distributed the draft easement to, and solicited comments from, all members of the Marin Agricultural Advisory Committee (MAAC) and discussed the terms of the easement in detail with some of the members. Comments and suggestions from the MAAC members who responded have been incorporated into the draft Easement. The draft easement has been preliminarily reviewed by County Counsel. The final Easement would be subject to approval of the Community Development Agency staff and County Counsel and acceptance by the Board of Supervisors.

Planning staff recommends that should the Planning Commission approve the project, the Commission should, as part of that action, approve the draft Agricultural Conservation and Production Easement and Declaration of Restrictions subject to final approval by County staff and acceptance by the Board of Supervisors.

### **3. The Commission requested information regarding the condition and protection of the oak trees surrounding the site of the new residence with provisions for oak tree replacement at the project site and within the oak woodlands in the event of sudden oak death syndrome.**

The applicant has submitted an Arborist Report, prepared by Tree Shapers, LLC that provides an analysis of trees and Tree Site Plan at the proposed residential building site. (*Refer to Attachment 16.*) The report provides observations on the conditions of the trees within the woodlands, with multiple layers of screening trees, and offers recommendations for their removal or maintenance. In summary, the report states that:

- No Sudden Oak Death (S.O.D.) was observed on any of the trees;
- The oldest of the California bay trees have well-developed internal decay;
- The site is forested with many native trees; and management of the trees by a certified arborist can greatly extend the lifespan of the existing trees;
- The proposed pier and grade beam construction will allow the floating of the building well above the root zones and allow the proposed residence to “nestle in” amongst the trees;
- Hand digging at the root zones and small root pruning is essential;
- No mechanical bruising or scarring of the tree trunks or compaction of the roots should be allowed and tree protection zones should be established during construction activities.

Based on the condition of the tree, the report recommends the removal of the following trees as shown on the Tree Site Plan (*refer to Attachment 16*).

<u>Location</u>	<u>Size (DBH)</u>	<u>Tree (Condition)</u>
A-5	9-inch	Coast live oak (decayed center)
A-6	15-inch	Coast live oak (dead and rotting)
A-16	15-inch	Coast live oak (killed by <i>Hypoxylon</i> )
A-48	18-inch	Coast live oak (badly cracked)
A-50	12-inch	Coast live oak (cracked and rotten)
A-51	20/15-inches	Coast live oak (fallen)
B-22	30-inch	Coast live oak (dying)

In addition, the following trees will be required to be removed due to construction activities as shown on the Tree Site Plan:

<u>Location</u>	<u>Size (DBH)</u>	<u>Tree (Condition)</u>
Driveway	36-inch	California bay
Hammerhead	18-inch	California bay
Hammerhead	12-Inch	Coast live oak
Hammerhead	12-inch	Coast live oak
Hammerhead	9-inch	Coast live oak

**Conclusion and Recommendation**

The Arborist Report and the Tree Site Plan indicate that a total of 12 trees will be removed. Of these 12 trees, seven trees are recommended for removal by the consulting arborist due to their condition and five trees are required for removal due to conflicts with proposed construction. Conditions of approval recommend the replacement of the 12 native trees to be removed with native trees at a 2:1 ratio. (*Refer to Condition 7.*) These trees should be located within the development site on the property in accordance with a landscape plan created in consultation with the project arborist and submitted to Planning staff for review and approval. This replacement ratio would meet the standard set out in program EQ 3.14(a) of the Countywide Plan.

In addition, the provisions of the Easement require that the preparation of the baseline data include an overall assessment by a consulting arborist of the tree conditions within the oak woodlands with recommendations for tree replacement due to potential S.O.D. to be reviewed and approved by the Community Development Agency staff. The draft Deed of Agricultural Conservation and Production Easement and Declaration of Restrictions requires the replacement over time of Coast live oak trees, due to S.O.D. within Zone 2 (the oak woodland zone).

**4. The Commission requested clarification regarding the establishment of a Stream Conservation Area (SCA) and protection of the natural resources associated with Pine Gulch Creek on “Lands of the Bolinas Public Utility District”.**

The property is sited immediately adjacent to and southeast of lands owned by the Bolinas Community Public Utility District (BCPUD) (“Lands of the Bolinas Community Public Utility District”, identified as Assessor’s Parcel 188-090-14). The owners retain grazing rights over this parcel for so long as it remains in BCPUD ownership. Pine Gulch Creek runs through the BCPUD parcel. Pine Gulch Creek, a perennial stream mapped as a blue line creek on the USGS Bolinas Quad map, is identified by the County as supporting anadromous fish and is subject to the Local Coastal Program, Unit I, (LCP) stream protection policies. A portion of the Moritz property abuts Pine Gulch

Creek, but that portion of the property is extremely steep, with the creek (at the bottom of the slope) creating a ravine, which constitutes the Moritz property boundary line. As a result, use of the Moritz property adjacent to Pine Gulch Creek is not practical.

Planning staff reviewed the Marin Agricultural Land Trust (MALT) Creak Conservation Area (CCA) provisions, which were presented at the August 2004 public hearing. These provisions, established in 2002, require delineation of CCAs on lands governed by MALT easements and are different from the County's Stream Conservation Area (SCA) provisions. MALT's provisions require creekside buffer zones along all natural watercourses and include the watercourse, banks, and areas on both sides extending from the top of banks outward not less than 30 feet on slopes less than 30 percent, and up to 50 feet on slopes greater than 30 percent where feasible. MALT permits agricultural uses within the CCA, subject to specific restrictions, including the potential for transport of sediment to the creek, and other measures intended to ensure the protection of the creek and riparian vegetation. Through a MALT easement, the landowner is compensated for agreeing to this increased constraint in the use of the property.

LCP Stream Protection Policy 3 requires the establishment of a riparian protection area and a stream buffer area for all streams within Unit I. The LCP policy states that: (a) the riparian protection area shall include all existing riparian vegetation on both sides of the stream; and (b) the stream buffer area shall extend a minimum of 50 feet from the outer edge of the riparian vegetation, but in no case shall be less than 100 feet from the top of the banks of the creek. Because the buffer area, as it would apply to Pine Gulch Creek, is substantially on "Lands of the Bolinas Community Public Utility District" and not on the Moritz property, and because it is not feasible for agricultural uses on the Moritz property to access that portion of the SCA that abuts the Moritz property, the recommended draft Deed of Agricultural Conservation and Production Easement and Declaration of Restrictions does not include a specific provision for the SCA. (*Refer to Attachment 10.*) In addition, while the County has required a riparian protection and stream buffer area for development of new structures and other physical improvements subject to the County's coastal permit authority, a buffer has not been required merely for the grazing of livestock on agricultural lands. The Countywide Plan Stream Conservation Area policies also exempt grazing and other agricultural uses from the SCA buffer requirement, although this policy is currently being reconsidered through the pending update to the Countywide Plan.

At the request of the Bolinas Community Public Utility District (BCPUD), (*refer to Attachment 23, BCPUD letter dated November 23, 2004*), conditions of approval require provisions for a 100-foot wide Stream Conservation Area on the "Lands of the Bolinas Community Public Utility District" and requires the applicant to work with the BCPUD to construct cattle grazing protection fencing along a buffer zone of Pine Gulch Creek (*refer to Condition 24*).

### **Conclusion and Recommendation**

Although in staff's opinion, the requirement for a stream buffer for this project is not practical in terms of the property owners' lack of ownership and/or control of the creek and land adjacent thereto, and arguably would not be consistent with the manner in which the County has regulated continued grazing operations in the past, staff nevertheless recommends that the property owners work with BCPUD and other public agencies or organizations with appropriate technical expertise to develop and implement a creek stewardship plan that would include riparian protection measures such as fencing, controlled access for livestock grazing, wildlife access, preservation of riparian vegetation, and erosion control and creek bank stability. This recommendation has been included as a condition of approval with the intent that the property owners will voluntarily implement a stewardship plan that reflects Malt's efforts to include CCAs into some of their easements and that furthers the riparian and stream protection policies and provisions of the County.

**5. The Commission requested clarification regarding permanent dedication of the proposed agricultural worker-housing unit.**

In accordance with the recommended conditions of approval (Condition 23 (c)), Planning staff has prepared the draft Moritz Agricultural Worker Housing Deed Restriction (*refer to Attachment 8*) to be recorded against the title of the property to ensure that the approved agricultural worker-housing unit is maintained in perpetuity as a living unit for agricultural workers in Marin County.

The draft Deed Restriction requires the owners to work with the Marin County staff to define the rental agreement of the agricultural worker housing unit at a below market rental rate for use by agricultural workers in Marin County who are actively engaged in the production of agriculture. The Deed Restriction limits the use of the residence exclusively and in perpetuity as housing for agricultural workers who are actively engaged in agricultural production either on the subject property or within the County of Marin.

**Conclusion and Recommendation**

Planning staff recommends that the Commission approve the draft Deed Restriction to ensure that the approved agricultural worker-housing unit is maintained in perpetuity as a living unit for agricultural workers in Marin County.

**CONCLUSION**

Staff finds that the proposed residential development, as recommended for approval, will not diminish or interfere with current or future agricultural use of the property and does not result in a property that is disproportionately residential in nature given the limited size of the new primary residence and recent investments in agricultural improvements and agricultural preservation.

Staff finds that the development of one primary residence and accessory structure appurtenant to the primary residence, in conjunction with a converted guesthouse and agricultural worker-housing unit, is a compatible use and is incidental to the primary use of the land for agricultural purposes. Furthermore, it is a principal use under the governing C-APZ zoning inasmuch as it is intended for use by the property owners who also directly invest in, and financially support, the agricultural use and stewardship of the property.

The conveyance of the Deed of Agricultural Conservation and Production Easement and Declaration of Restrictions to the County will assure that the viable rangelands and the limited agricultural land base, as well as the oak woodlands, will be preserved in perpetuity to the greatest extent possible. Planning staff recommends approval of the draft Deed of Agricultural Conservation and Production Easement and Declaration of Restrictions, subject to the final approval of County Counsel and acceptance by the Board of Supervisors. Recordation of the Moritz Agricultural Worker Housing Deed Restriction against the title of the property will ensure that the second residence will be maintained in perpetuity as a living unit for agricultural workers in Marin County.

In response to the issues raised in the Planning Commission's previous comments, the applicant has made a number of improvements to the revised project, including: (a) the reduction in the size of the new development; and (b) relocation of the new development to a site which will eliminate any potential significant visual impacts.

As recommended for approval, the project is consistent with all pertinent Countywide Plan, Local Coastal Program and Bolinas Community Plan policies and will implement the intent of the C-APZ zoning by preserving the agricultural lands for continued agricultural production in perpetuity, providing for agricultural worker housing, and clustering non-agricultural development, limited to one primary residence and associated garage/workshop, a modest guest house, and agricultural worker housing, on 3%

of the total property (*refer to Findings V - VIII of the recommended Resolution*). Staff concludes that all Master Plan Waiver, Coastal Permit, Design Review, and Use Permit findings can be made to approve the project as recommended for approval. (*Refer to Findings IV and Findings IX - XII of the recommended Resolution.*)

As recommended for approval, the project requires before issuance of a building permit for construction of the new primary single-family residence: (1) written Notice of Non-renewal of the current Williamson Act Contract (Land Conservation Contract No. 15313) in accordance with the provisions of the State Government Code, Section 51245; and (2) the owners to file a Homeowner's Tax Exemption form with the County Assessor's office that declares the approved residence as the principal residence of the owners with the Homeowner's Tax Exemption to remain in effect until the end of the 10-year contractual period of Land Conservation Contract No. 15313. (*Refer to Finding XIII of the recommended Resolution.*)

Attached is a recommended Resolution supporting Planning staff's revised recommendation, subsequent to the August 23, 2004 Planning Commission hearing and the issuance of the November 15, 2004 staff report and recommended Resolution.

## **RECOMMENDATION**

Staff recommends that the Marin County Planning Commission review the administrative record, conduct a continued public hearing, and adopt the attached revised Resolution conditionally approving the Moritz Master Plan Waiver request and Coastal Permit, Design Review and Use Permit applications.

## **ATTACHMENTS**

1. Proposed Resolution recommending conditional approval of the Moritz Master Plan Waiver request and Coastal Permit, Design Review and Use Permit applications
2. CEQA Notice of Exemption
3. Location Map
4. Assessor's Parcel Maps of Surrounding Neighborhood
5. USGS Bolinas Quad Map
6. August 23, 2004 Planning Commission Minutes: August 23, 2004, November 15, 2004, and December 13, 2004
7. Table of Residential Development on Neighboring Parcels Zoned C-APZ with Map
8. Draft Moritz Agricultural Worker Housing Deed Restriction
9. Draft Deed of Agricultural Conservation and Production Easement and Declaration of Restrictions (Easement).
10. Map of "Lands of BCPUD" and "Lands of Moritz" with a 100-foot Wide Stream Conservation Area for Pine Gulch Creek
11. Table of Floor Area of Existing and Proposed Development
12. Marin County Board of Supervisors Resolution No. 71-38
13. CWP Figure A-5, Agricultural Preserve Zone
14. Land Conservation Contract No. 15313, Assessor's Parcel 188-090-11 (Moritz Property)
15. Documents Relating to AB 1492
16. Arborist Report, prepared by Tree Shapers, LLC, sample photos, and Tree Site Plan
17. Site Plan of Property Showing Three Land Use Zones
18. 2004 Proposed Project Submittal Plans
  - a. Site Plan with Topography
  - b. Site Plan of Existing Development, Development to be Removed and Proposed New Residential Site
  - c. New Residential Site and Roof Plan
  - d. Floor Plans of Proposed Residence
  - e. Elevations of Proposed Residence
  - f. Energy Systems Analysis

- g. Garage Plans and Elevations
  - h. Agricultural Worker Housing Plans
  - i. "Life Time Estate" Residence to be Converted to a Guest House
  - j. Driveway/Grading and Erosion Control/Utility Plans
19. Cela O'Connor letter, October 16, 2004
  20. Environmental Action Committee of West Marin letters, October 11, 2004 and Response September 22, 2004 Department of Conservation, State of California
  21. Marin Conservation League letter September 14, 2004
  22. Michael Moritz letters, September 2, 2004 and October 18, 2004
  23. Bolinas CPUD e-mail, November 16, 2004 and letters, November 19, 2004, and November 23, 2004
  24. Cela O'Connor letter, November 17, 2004
  25. Doug P. Ferguson letters, January 12, 2005, January 6, 2005, and November 29, 2004, and e-mail November 10, 2004
  26. State of California, Department of Conservation letter, December 17, 2004
  27. Government Code Sections 51245, 51254, 51255, 51070, 51238, 51281

*(Note: The Planning Commission Moritz Master Plan Waiver, Coastal Permit, Design Review, and Use Permit August 23, 2004 Staff Report and November 15, 2004 and December 6, 2004, Memoranda on file at the Community Development Agency, Room 308, during the hours of 8:00 a.m. to 4:00 p.m. daily are incorporated into this Memorandum by reference.)*

*Cur/jp/pc/moritz PC memo January 24, 2005:final .doc*