

## CALIFORNIA COASTAL COMMISSION

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# M12a

## **STAFF REPORT: APPEAL** **SUBSTANTIAL ISSUE**

**LOCAL GOVERNMENT:** County of Santa Barbara  
**LOCAL DECISION:** Approval with Conditions  
**APPEAL NO.:** A-4-STB-07-052  
**APPLICANT:** HR52 Partnership, Contact Michael Parsons  
**APPELLANT:** Commissioners Patrick Kruer and Sara Wan  
**PROJECT LOCATION:** Lot 52, Hollister Ranch, unincorporated Santa Barbara County (Assessor Parcel No. 083-680-003)

**PROJECT DESCRIPTION:** Construction of a 1,578 sq. ft., two-story, accessory structure (795 sq. ft. guest house on the second floor with a 783 sq. ft. garage on the first floor), 381 sq. ft. deck, landscaping, garden wall, 343 sq. ft. porch, retaining walls and 800 cu. yds. of grading. The project also includes the installation of a 5,000 gallon water tank for potable water and fire response and widening and improvements to an approximately 1,040 ft. long existing unimproved ranch road/driveway, extending from Segundo Road to the project site, in order to meet Santa Barbara County Fire Department standards. In addition to the accessory structure and driveway improvements, the project further includes improvements to Segundo Road (a private Hollister Ranch common road) which will include the removal of five (5) oak trees.

**MOTION & RESOLUTION:** Page 4

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### **SUMMARY OF STAFF RECOMMENDATION:**

Staff recommends that the Commission determine that a **substantial issue exists** with respect to the appellants' assertions that the project is not consistent with the environmentally sensitive habitat area (ESHA), native grassland and oak woodland habitat policies of the certified Local Coastal Program (LCP).

As approved by the County, the project would result in permanent adverse impacts to approximately 0.25 acres of native grassland habitat (including purple needle grass habitat), removal of five (5) oak trees, and may also result in an unspecified amount of trimming, limbing, or other modification to oak trees that are part of an oak woodland. Additionally, a single family residence is currently under construction on a different area of the site which was approved by the County pursuant to another coastal development permit. Since the guest house will not be located in the same area as the primary

residence, development on site would not be clustered in a manner that would serve to minimize the loss of sensitive habitat areas. Further, the proposed guesthouse is an accessory structure and therefore the “no project” alternative is a feasible alternative since the presence of the existing residence and agricultural operations denote a present economic use of the property. However, if a guest house is constructed on site, there are feasible alternative designs and building locations (such as locating the primary residence and guest house together in a clustered location) that would result in fewer significant adverse impacts to sensitive habitat and which have not been analyzed.

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## **EXHIBITS**

- Exhibit 1.** Vicinity Map
- Exhibit 2.** Post-LCP Certification Map
- Exhibit 3.** Parcel Map
- Exhibit 4.** Project Plans
- Exhibit 5.** Aerial Photograph
- Exhibit 6.** Final Local Action Notice
- Exhibit 7.** Commissioner Appeals

**SUBSTANTIVE FILE DOCUMENTS:** County of Santa Barbara Local Coastal Program; Proposed Final Mitigated Negative Declaration, Hollister Ranch Parcel 52 (County of Santa Barbara, February 16, 2007);

## **I. APPEAL JURISDICTION AND PROCEDURES**

### **A. APPEAL JURISDICTION**

Under Section 30603 of the Coastal Act, development approved by a local government may be appealed to the Commission if it is located within the appealable areas, such as those located between the sea and the first public road paralleling the sea, 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 greater, on state tidelands, or along or within 100 feet of any wetland, estuary, or stream. Further, any development approved by a local County government that is not designated as the principal permitted use within a zoning district may also be appealed to the Commission, irrespective of its geographic location within the coastal zone. Finally, development that constitutes major public works or major energy facilities may also be appealed to the Commission.

In this case, the project site is located between the first public road and the sea and, therefore, within the geographic appeals area of the County's jurisdiction as shown on the Post Local Coastal Program (LCP) Certification Permit and Appeal Jurisdiction map (Santa Barbara County Coastal Zone Map Sheet 120, Exhibit 2) certified for the County of Santa Barbara. Thus, the project is appealable to the Commission.

### **B. APPEAL PROCEDURES**

The Coastal Act provides that after certification of Local Coastal Programs, a local government's actions on Coastal Development Permits in certain areas and for certain types of development may be appealed to the Coastal Commission. Local governments must provide notice to the Commission of its coastal permit actions. During a period of 10 working days following Commission receipt of a notice of local permit action for an appealable development, an appeal of the action may be filed with the Commission.

#### **1. Grounds for Appeal**

The grounds for appeal of development approved by the local government and subject to appeal to the Commission shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in the Coastal Act (Section 30603[b][1] of the Coastal Act).

#### **2. Substantial Issue Determination**

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds

on which the appeal was filed. When Commission staff recommends that a substantial issue exists with respect to the grounds of the appeal, a substantial issue is deemed to exist unless three or more Commissioners wish to hear arguments and vote on substantial issue. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. Pursuant to Section 13117 of the Commission's regulations, the only persons qualified to testify before the Commission at the substantial issue stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. It takes a majority of Commissioners present to find that no substantial issue is raised by the appeal.

### **3. De Novo Permit Review**

If a substantial issue is found to exist, the Commission will evaluate the project under a de novo permit review. The de novo permit may be considered by the Commission at the same time as the substantial issue hearing or at a later time. The applicable test for the Commission to consider in a de novo review of the project is whether the proposed development is in conformity with the certified Local Coastal Program and the public access and public recreation policies of the Coastal Act. If a de novo hearing is held, testimony may be taken from all interested persons.

## **C. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL**

On April 9, 2007, the Zoning Administrator for the County of Santa Barbara approved Coastal Development Permit No. 06CDH-00000-00036 to construct a two-story guesthouse with attached garage and access driveway. The Notice of Final Action for the project was received by Commission staff on May 16, 2007. A ten working day appeal period was set and notice provided beginning May 17, 2007, and extending to May 31, 2007.

An appeal of the County's action was filed by Commissioners Patrick Kruer and Sara Wan on May 31, 2007, during the appeal period. Commission staff notified the County, the applicant, and all interested parties that were listed on the appeals and requested that the County provide its administrative record for the permit.

## **II. STAFF RECOMMENDATION FOR SUBSTANTIAL ISSUE**

**MOTION:**      *I move that the Commission determine that Appeal No. A-4-STB-07-052 raises NO substantial issue with respect to the grounds on which the appeals have been filed under § 30603 of the Coastal Act.*

**STAFF RECOMMENDATION:**

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local actions will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

**RESOLUTION TO FIND SUBSTANTIAL ISSUE:**

The Commission hereby finds that Appeal No. A-4-STB-07-052 presents a substantial issue with respect to the grounds on which the appeals have been filed under §30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

### **III. FINDINGS AND DECLARATIONS FOR SUBSTANTIAL ISSUE**

The Commission hereby finds and declares:

**A. PROJECT DESCRIPTION**

On April 9, 2007, the Zoning Administrator of the County of Santa Barbara undertook final discretionary action to approve the construction of a guest house with attached garage, access drive, and improvements to Segundo Road.

The project includes the construction of a 1,578 sq. ft., two-story, accessory structure (795 sq. ft. guest house on the second floor with a 783 sq. ft. garage on the first floor) , 381 sq. ft. deck, landscaping, garden wall, 343 sq. ft. porch, and retaining walls, and 800 cu. yds. of grading. The project includes the installation of a 5,000 gallon water tank for potable water and fire response and also includes widening and improvements to an approximately 1,040 ft. long existing ranch road/driveway to meet Fire Department standards. In addition to the guest house and driveway improvements, the project includes improvements to Segundo Road (a private Hollister Ranch common road) as required by the County Fire Department. Five oak trees would be removed to facilitate such improvements. Access to the guest house would be taken via a private drive from Segundo Road. (Project plans are shown in Exhibit 4; Aerial photograph of the project site is provided as Exhibit 5)

Prior to June 14, 2007, the County LCP's height requirements were measured in terms of "average height." In this case, the average height of the structure is 14 feet, 6 inches. This measurement is somewhat misleading in terms of understanding the overall height of the structure due to the methodology of calculating *average height* under the County's LCP. It is worth noting that the structure is two stories, built into the hillside with an overall maximum height of approximately 28 feet (i.e., the maximum height

shown on the South elevation from finished grade to the top of the roof as shown in Exhibit 4).

Although the staff report and MND indicate that road improvements are necessary for an existing 300 ft. long access road, the report is unclear where the 300 feet is measured from. The project plans indicate greater than a 1,000 ft. (0.2 mile) distance from Segundo Road to the subject guest house along the existing ranch road/driveway. The project plans indicate that the existing on-site road is approximately 9 feet in width. This 9 ft. width would be expanded into a proposed final driveway width of approximately 16 feet made up of a 14 ft. road width with a 1 ft shoulder on each side of the road.

Additionally, though the reduced copy of the floor plans indicate that the garage is 598 sq. ft., the full-size plans (dated March 26, 2007) received as part of the record do not match the reduced plans. The full-size plans indicate that the garage would be 783 sq. ft. Since the full-size plans appear to be more current and were the only full-size plans submitted as part of the official County record, staff is interpreting that the garage is proposed to be a total of 783 sq. ft.

Because the project is located in a high fire area, the project will require fuel modification within 100 feet of the proposed structure. The specific fuel modification requirements for this project, as provided in the County's approval, are as follows:

- Maintenance of a 100-foot wide fuel management area around the proposed dwelling. Clearance/thinning of brush and weeds would be required in this area.
  - Within the 30-foot wide fuel modification zone, vegetation shall be removed completely with the exception of specimen trees which shall be limbed up to six feet in height. Grasslands within 30 feet of the guest house shall be mowed to 4-inches after going to seed and prior to May 1 of each year.
  - Within the 70-foot wide fuel modification zone, vegetation shall be selectively thinned. Native purple Needlegrass shall not be disturbed, or at most mowed above the basal tuft.
  - Vegetation to be removed shall be cut at the base of the stump, allowed to resprout, then maintained as a small shrub by periodic trimming. All vegetation removed shall be chipped on-site and used as mulch in areas of disturbed soils to reduce soil erosion.
- Clearance of brush and vegetation 10 feet from both edges of the proposed driveway.

## **B. BACKGROUND**

The subject parcel (Assessor Parcel No. 083-680-003, Exhibit 3) is located in Hollister Ranch and zoned *Agriculture*, minimum 320 acres (AG-II-320). The County's staff report indicates that the project site is currently used for cattle grazing as part of the larger

Hollister Ranch grazing cooperative. A single-family residence is currently under construction. Access to the parcel is via the private Segundo Road.

The parcel is located in the north-central portion of Hollister Ranch, approximately seven miles west of Gaviota State Park and Highway 101 (Exhibit 1). The proposed guest house would be located approximately 300 feet from the private road leading to the parcel. Slopes on the parcel range from 10-40%, and slopes at the building site are approximately 5-30%.

Agujas Creek is an intermittent blue-line stream that borders the eastern portion of the parcel in a southerly direction, forming an incised canyon perpendicular to the coastline and ultimately discharging to the Pacific Ocean. The project site is located approximately 400 feet west of Agujas Creek (Exhibit 2).

Soils within the proposed project site consist of a layer of colluvial material of silty sand and silty clay weathered Gaviota formation. The proposed building site lies near of the base of a prominent rocky ridge that slopes northward at over 30%. The topography also drops off to the east and west of the project site at slopes greater than 30%.

Plant communities on the subject parcel consist of coast live oak woodland, California sagebrush, central maritime chaparral, coyote brush and native grasslands dominated by purple needlegrass.

The proposed guest house site is located within a designated high fire hazard area. There is a high probability that any new development on the proposed parcel would be exposed to a major wildfire. The steep topography, high fuel load, and frequency of "sundowner" winds create the potential for major wildfires.

### **C. LOCAL PERMIT HISTORY**

On April 9, 2007, the Zoning Administrator of the County of Santa Barbara approved a coastal development permit (06CDH-00000-00036) for the project subject to 35 conditions of approval. The project as approved consists of the construction of a new 1,578 sq. ft., two-story, accessory structure (795 sq. ft. guest house on the second floor with a 783 sq. ft. garage on the first floor), and associated retaining walls. The structure would have an "average height" of 14 feet - 6 inches, although the overall maximum height of the structure from finished grade to highest point of the roof would be approximately 28 ft. in height. An existing ranch road would be improved to Fire Department standards and would serve as the access driveway for the project. A 5,000 gallon water tank would be installed directly above the guesthouse in order to provide potable water and fire response. Improvements would be made to Segundo Road (a private Hollister Ranch common road) as required by the County Fire Department. Five oak trees would be removed to facilitate such improvements. Approximately 800 cubic yards of grading would be required to prepare the site for development. The site would be served by a private water system, a private septic system and the County Fire Department. Access would be taken via a private drive from Segundo Road.

The County ran a local appeal period for ten calendar days following the date of the Zoning Administrator's decision. No local appeals were filed.

Commission staff received the Notice of Final Action for the Zoning Administrator's approval of the Coastal Development Permit (06CDH-00000-00036) on May 16, 2007. A 10 working day appeal period was set, extending to May 31, 2007. Appeals were received from Commissioners Patrick Kruer and Sara Wan on May 31, 2007.

### **Other Permits for Development on Site**

The main residence on the subject site is under construction. The County authorized construction of an approximately 2,432 square foot residence with an attached garage of approximately 893 square feet immediately adjacent to riparian habitat on the subject property pursuant to Coastal Development Permit No. 02CDH-00000-00008. The County Zoning Administrator approved the coastal development permit on March 7, 2005. However, a review of the Commission's records has confirmed that although the coastal permit for the primary residence is an appealable permit, no Final Local Action Notice was ever submitted by the County for that permit action. Commission staff have notified the County that no final local action notice was ever received for the above referenced permit; however, the required final local action notice has still not been submitted. Therefore, although the property owner has already commenced construction, the Commission's Appeal Period has still not run for the main residence.

### **D. APPELLANTS' CONTENTIONS**

The appeals filed by Commissioners Caldwell and Kruer are attached as Exhibit 7. The appeals contend that the approved project is not consistent with the provisions of the certified LCP the protection of environmentally sensitive habitat areas, native grassland and oak woodland habitats. The proposed guesthouse is an accessory structure and therefore the "no project" alternative is a feasible alternative since the presence of the existing residence (currently under construction) and existing agricultural operations constitute a present economic use of the property. Additionally, if a guest house/accessory structure is allowed on site, there are feasible alternative designs/locations that would avoid and/or reduce adverse impacts to sensitive habitat areas on site. No findings were included in the County's staff report that any of these alternatives had been analyzed.

The appeals contend that the project is inconsistent with the following LCP provisions: 1-1, 1-2, 9-18, 9-35, 9-36; Coastal Act Sections 30107.5 and 30240 as incorporated into the LCP pursuant to Policy 1-1; and Article II of the Zoning Code Sections 35-53, 35-97.3, 35-97.7, 35-97.10, and 35-97.18. The cited LCP provisions limit development in and around environmentally sensitive habitat areas, native grassland and oak woodland habitats. Additionally, these policies provide that development must be sited and designed to prevent impacts to these resources.

As reported by the appellants citing the Final Mitigated Negative Declaration (February 16, 2007), the proposed project would result in permanent loss of 0.19 acres (~8,275



sq. ft.) of purple needlegrass habitat. The negative declaration also asserts that an additional 0.06 acre (~2,600 sq. ft) of purple needlegrass habitat would be impacted as a result of fire clearance activities.

Additionally, the Negative Declaration reports that “improvements to portions of Segundo Road (Hollister Ranch common road) would necessitate the removal of 5 oak trees and potential construction-related impacts could impact several additional oak trees.” However, it is not clear in either the Negative Declaration or the findings of the County’s staff report whether there are feasible alternatives to the removal of the trees.

Further, the installation of a 5,000 gallon water tank to serve the guest house and fire clearance activities (100 foot clearance around the structure) have the potential to result in significant impacts to existing oak woodland habitat and chaparral habitat. No individual trees are expected to be removed as a result of either construction of the development or fire clearance. However, the Negative Declaration notes that individual trees could be limbed as part of the fire clearance activities.

The appellants assert that development on the subject parcel would not be clustered since the new guest house would be located hundreds of feet in distance from the primary residence, would not utilize shared/overlapping fuel modification zones, and would require improvements to a 300 ft. long access road that would only serve the guest house. Further, the project would result in adverse impacts to native grassland and oak woodland environmentally sensitive habitat areas inconsistent with the LCP policies. In its findings for approval of the permit, the County did not include any analysis of alternatives to reduce the impacts, either through alternative siting, design, or the “no project” alternative.

The Negative Declaration for the project indicates that the subject site and the surrounding area are predominantly vegetated with native grasses, including purple needle grass. Native grasslands constitute an environmentally sensitive habitat area (ESHA). Section 30240 of the Coastal Act, as incorporated in the LCP, requires that “environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.” Section 30240, as incorporated in the LCP, restricts development on the parcel to only those uses that are dependent on the resource. The applicant proposes to construct a new guest house on the parcel, which would result in the loss of sensitive habitat area and vegetation within the guest house building pad and driveway areas, as well as within those areas where fuel modification would be required for fire protection purposes. As residential development (including guest houses) does not have to be located within ESHA to function, it is not considered to be dependent on ESHA resources. Application of Section 30240, as incorporated in the LCP, by itself, would require denial of the project, because the project would result in significant disruption of habitat values and is not a use dependent on those sensitive habitat resources.

The only alternative that could completely avoid these impacts would be the “no project” alternative. Even clustering the guest house with the main residence would have impacts because there are no locations that would avoid expanding the fuel modification

into sensitive habitat areas. Since a single family residence was previously approved by the County on the site and the Negative Declaration indicates that the property is presently part of the Hollister Ranch grazing cooperative, the applicant has already realized a reasonable economic use of the property. Thus, in regards to the new proposed guest house, the “no project” alternative is considered feasible as it would not prevent the applicant from a reasonable economic use of the property. However, the County did not address this alternative in its analysis in its findings for approval of this project.

Another alternative includes siting the proposed guest house in a different area of the property in order to cluster development, reduce additional fuel modification requirements and eliminate the need to construct or improve additional roads. Clustering the proposed guest house in the same area of the site where the primary residence will be located, would allow for an overlap in fuel modification and brushing areas required for the primary residence and the proposed guest house, thereby reducing the total amount of vegetation removal required. Additionally, construction of a guest house adjacent to the primary residence would eliminate the requirement to make improvements to an approximately 300 ft.<sup>1</sup> long access road. However, the County did not address this alternative in its analysis in its findings for approval of this project.

## **E. ANALYSIS OF SUBSTANTIAL ISSUE**

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for an appeal is whether a substantial issue exists with respect to the grounds raised by the appellants relative to the project’s conformity to the policies contained in the certified County of Santa Barbara Local Coastal Program (LCP) or the public access policies of the Coastal Act.

The appellants are appealing the project based on the project’s impacts to native grassland and oak woodland habitat. The appellants assert that the project is not consistent with the policies of the Local Coastal Plan designed to protect native grassland, oak woodland, and environmentally sensitive habitat. The Commission finds that a substantial issue exists with respect to the grounds on which the appeals have been filed because the appeals raise significant questions about whether the approved project is consistent with policies of the LCP for the specific reasons discussed below.

### **1. Environmentally Sensitive Habitat Area (ESHA) Policies**

The appellants contend that the project, as approved by the County does not conform to the policies of the LCP with regard to oak woodlands, native grassland habitat, and

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<sup>1</sup> Note, the appellants’ cite a 300 ft. access driveway. However, as discussed previously, a review of the official record submitted by the County indicates that such an access road would be greater than 1,000 feet in length, from Segundo Road to the subject guest house along the existing ranch road/driveway. The project plans indicate that the existing on-site 9-ft wide road would be expanded into a proposed final driveway width of approximately 16 feet made up of a 14 ft. road width with a 1 ft shoulder on each side of the road.

environmentally sensitive habitat areas (ESHA). There are several policies in the County LCP that have been cited by appellants that relate to ESHA protection.

Policy 1-1: All Chapter 3 policies of the Coastal Act have been incorporated in their entirety in the certified County LUP as guiding policies pursuant to Policy 1-1 of the LUP.

Section 30107.5 of the Coastal Act and Article II, Section 35-58 of the certified LCP state:

***"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.***

Section 30240 of the Coastal Act states:

***(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.***

***(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.***

Policy 1-2 Resource Protection:

***Where policies within the land use plan overlap, the policy which is most protective of coastal resources shall take precedence.***

Policy 9-18 Native grassland:

***Development shall be sited and designed to protect native grassland areas.***

Policy 9-35 Native Plant Communities (e.g., coastal sage scrub, chaparral, coastal bluff, closed cone pine forest, California native oak woodland (also individual oak trees), endangered and rare plant species & other plants of special interest):

***Oak trees, because they are particularly sensitive to environmental conditions, shall be protected. All land use activities, including cultivated agriculture and grazing, should be carried out in such a manner as to avoid damage to native oak trees. Regeneration of oak trees on grazing lands should be encouraged.***

Policy 9-36 Native Plant Communities:

***When sites are graded or developed, areas with significant amounts of native vegetation shall be preserved. All development shall be sited, designed, and constructed to minimize impacts of grading, paving, construction of roads or structures, runoff, and erosion on native vegetation. In particular, grading and paving shall not adversely affect root zone aeration and stability of native trees.***

Sec. 35-53. Overlay District Designations and Applicability. (*in relevant part*):

***...If any of the provisions of the overlay district conflict with provisions of the zoning district regulations, the provisions which are most restrictive shall govern... The provisions of the ESH Overlay District are more restrictive than any base zone district and therefore the provisions of the ESH shall govern over the regulations of any base zone or other overlay district.***

Sec. 35-97.3. Identification of Newly Documented Sensitive Habitat Areas:

*If a newly documented environmentally sensitive habitat area, which is not included in the ESH Overlay District, is identified by the County on a lot or lots during application review, the provisions of Secs. 35-97.7. - 35-97.19. shall apply. The County will periodically update the application of the ESH Overlay District to incorporate these new habitat areas (including the 250 foot area around the habitat).*

Sec. 35-97.7. Conditions on Coastal Development Permits in ESH:

*A coastal development permit may be issued subject to compliance with conditions set forth in the permit which are necessary to ensure protection of the habitat area(s). Such conditions may, among other matters, limit the size, kind, or character of the proposed work, require replacement of vegetation, establish required monitoring procedures and maintenance activity, stage the work over time, or require the alteration of the design of the development to ensure protection of the habitat. The conditions may also include deed restrictions and conservation and resource easements. Any regulation, except the permitted or conditionally permitted uses, of the base zone district may be altered in furtherance of the purpose of this overlay district by express condition in the permit.*

Sec. 35-97.10. Development Standards for Native Grassland Habitats:

- 1. Grazing shall be managed to protect native grassland habitats.*
- 2. Development shall be sited and designed to protect native grassland areas.*

Sec. 35-97.18. Development Standards for Native Plant Community Habitats:

*Examples of such native plant communities are: coastal sage scrub, chaparral, coastal bluff, closed cone pine forest, California native oak woodland (also individual oak trees), endangered and rare plant species as designated by the California Native Plant Society, and other plants of special interest such as endemics.*

- 1. Oak trees, because they are particularly sensitive to environmental conditions, shall be protected. All land use activities, including cultivated agriculture and grazing, should be carried out in such a manner as to avoid damage to native oak trees. Regeneration of oak trees on grazing lands should be encouraged.*
- 2. When sites are graded or developed, areas with significant amounts of native vegetation shall be preserved. All development shall be sited, designed, and constructed to minimize impacts of grading, paving, construction of roads or structures, runoff, and erosion on native vegetation. In particular, grading and paving shall not adversely affect root zone aeration and stability of native trees.*

## **2. Site Characteristics and LCP Policy Discussion**

According to the Mitigated Negative Declaration for this project, the project site has been historically grazed by cattle as part of the Hollister Ranch Cooperative cattle ranching operation, and as such, some sensitive habitat areas on site have already been moderately disturbed.

Specifically, site visits performed by the applicant's biologist and the County's staff biologist identified the following plant communities on the site:

**Flora:**

*Coast Live Oak Series dominated by coast live oak (Quercus agrifolia) and including Refugio manzanita (Arctostaphylos refugioensis) occurs primarily on the slope north*

*of the guest house site, continues east down slope towards the residence under construction and along the ephemeral drainage adjacent to the lower portion of the existing access road. Coast Live Oaks are also present along portions of Segundo Road in the southern portion of the subject parcel.*

*Coyote Brush Series dominated by coyote brush and including California sagebrush (*Artemisia californica*) occurs primarily along the lower portion of the access road and along the lower portion of the eastern slope toward the residence under construction. Purple Needlegrass (*Nasella pulchra*) occurs within the openings adjacent to the larger, more dominant shrubs.*

*California Sagebrush Series dominated by California Sagebrush and including coast goldenbrush, California figwort (*Scrophularia californica*) and coyote brush occurs along the slopes surrounding the project site to the east, west and south.*

*Mixed Chaparral including lemonade berry (*Rhus integrifolia*), coyote brush, California sagebrush and Refugio Manzanita covers the rocky hillside northeast of the access road and the hillside north of and within a portion of the proposed building site. The mixed chaparral integrates with the coast live oak series.*

*Purple Needlegrass Series dominated by purple Needlegrass (*Nasella pulchra*) occurs within the proposed building site, driveway and hammerhead turnaround and along the ridge to the south of the proposed guest house. There are also patches of the purple Needlegrass series along the slopes to the east and west of the guest house ridge.*

Under the certified LCP, oak woodlands and native grassland habitats are specifically identified as unique, rare, and fragile habitats and specific policies are included in the LCP to provide protection of these resources. The certified LCP includes policies that require development adjacent to ESHA to be designed and located in a manner that will avoid adverse impacts to habitat resources, including measures such as setbacks, buffers, grading and water quality controls. Additionally the LCP provides specific development standards by ESHA type.

In addition, all Chapter 3 policies of the Coastal Act have been incorporated in their entirety in the certified LCP as guiding policies pursuant to Policy 1-1 of the LCP. Section 30240 of the Coastal Act, incorporated into the LCP, requires the protection of environmentally sensitive habitat areas against any significant disruption of habitat values, and no development may be permitted within ESHA except for uses that are dependent on the resource. Section 30240 further requires development adjacent to ESHA to be sited and designed to prevent impacts that would significantly degrade ESHA and to be compatible with the continuance of the habitat areas. Section 30240 of the Coastal Act, as incorporated in the LCP, also requires that development adjacent to parks and recreation areas to be sited and designed to prevent impacts.

The LCP policies applied together require siting and design measures to protect native grassland, oak woodland habitat, and individual oak trees. LCP Policies 1-2, 9-18, 9-35, 9-36, and Coastal Act Section 30240, as incorporated by LCP Policy 1-1; and Zoning Ordinance Sections 35-97.7, 35.97.10 and 35-97.18 necessitate measures including siting the project with setbacks and buffers to prevent impacts which would degrade

these sensitive resources. Specifically, Policy 9-18 states that development shall be sited and designed to protect native grassland areas. Policy 9-35 requires that oak trees, because they are particularly sensitive to environmental conditions, shall be protected. All land use activities, including cultivated agriculture and grazing, should be carried out in such a manner as to avoid damage to native oak trees. Regeneration of oak trees on grazing lands should be encouraged.

Native Plant Communities, including coastal sage scrub, chaparral, California native oak woodland, individual oak trees, endangered and rare plant species & other plants of special interest, are addressed under Policy 9-36. Policy 9-36 dictates that when sites are graded or developed, areas with significant amounts of native vegetation shall be preserved. All development shall be sited, designed, and constructed to minimize impacts of grading, paving, construction of roads or structures, runoff, and erosion on native vegetation. In particular, grading and paving shall not adversely affect root zone aeration and stability of native trees.

### **3. Project Impacts**

As discussed previously, the project consists of the construction of two-story accessory structure (795 sq. ft. guest house on the second floor with a 783 sq. ft. garage on the first floor), 381 sq. ft. deck, landscaping, garden wall, 343 sq. ft. porch, retaining walls; improvements to a 1,000 ft. long existing access driveway; improvements to Segundo Road; 5,000 gallon water tank; removal of five oak trees; and 800 cu. yds. of grading.

The Mitigated Negative Declaration for the project specifically states that (pg 7):

*Implementation of the proposed project has the potential to cause a loss or disturbance, a reduction in the numbers or restriction in the range, and a reduction in the extent of diversity or quality of unique plant communities located on-site. Construction of the guest house, driveway and hammerhead turnaround would result in the permanent loss of approximately 0.19 acres of purple Needlegrass habitat (Padre Assoc., February 2007). . . . Also, temporary impacts due to fire clearance activities (annual mowing) would occur to approximately 0.06 acres of grasslands. In the long-term, the annual mowing would likely result in a benefit to the grassland within the fire clearance area by promoting more vigorous growth and greater relative density over time. However, due to the fact that the aerial extent of combined impacts (both permanent and temporary) equates to 0.25 acres (The County's threshold in this regard), the applicant would be required to preserve an area of approximately 0.75 acres of Purple Needlegrass located directly to the west of the guesthouse site beyond required fire clearance activities, in perpetuity. 3 to 1 preservation on site would reduce impacts to less than significant.*

*Disturbance from utility trenching between the proposed guest house and residence under construction could impact the coyote brush scrub habitat. Further, installation of the proposed 5,000 gallon water tank upslope of the building site and fire clearance activities (100 foot clearance around the structure) have the potential to result in significant impacts to existing oak woodland habitat and to chaparral habitat including individual Manzanita.*

*The use of heavy equipment during construction has the potential to impact additional purple Needlegrass, oak woodlands and Manzanita habitats if it is operated outside the project construction boundaries. Impacts are potentially significant.*

As reported in the Mitigated Negative Declaration (MND) for this project, construction of the guest house would result in the permanent loss of 0.19 acres of purple needlegrass (*Nasella pulchra*) habitat, a native perennial grassland species, and an additional 0.06 acres would be impacted as a result of fuel modification. Although the MND indicates that the 0.06 acre impacted as a result of fuel modification is a temporary impact associated with annual mowing; the Commission finds that this is not a temporary impact since the grassland would be periodically impacted on an on-going, permanent basis. In its approval of this permit, the County, found that the 0.25 acres of purple needlegrass habitat that would be permanently lost would be offset through the establishment of an on-site native grassland preserve on a 3:1 basis (0.75 acres restored) as required by County Condition of Approval #4 (Exhibit 6). The preserve area would encompass an existing area of purple needlegrass. The County Condition #4 does not require the preserve area to be restored but would prohibit development and tilling of soil in perpetuity. However, as approved by the County, although some mitigation would be required to offset the permanent loss of ESHA, the findings of approval did not include any analysis of alternatives to the project that would actually avoid the permanent loss of ESHA.

Further, it appears that the project would also result in additional impacts above the 0.25 acres recognized by the County. The County's calculation appears to only include impacts associated with fuel modification to the 30-foot fire clearance zone. However, County Condition of Approval #15 (Exhibit 6) allows for future mowing of purple needlegrass beyond the 30-foot fire clearance zone. County Condition #15 states: "Within the 70-foot wide fuel modification zone, vegetation shall be selectively thinned. Native purple Needlegrass shall not be disturbed, or at most mowed above the basal tuft." It does not appear that the impact from mowing beyond the 30-foot zone was analyzed or mitigated.

In addition to impacts to native grassland habitat, the MND identifies potential impacts to oak trees that are associated with an extensive oak woodland community. According to the Mitigated Negative Declaration, construction of the road improvements on Segundo Road would result in the removal of five oak trees. There is no description of the improvements to Segundo Road (e.g., quantity of grading, extent of any road widening, paving, if applicable). The project plans indicate that the final road would vary in width from approximately 15 to 18 feet; however, the plans do not indicate the existing road configuration/condition or what improvements are actually proposed. The project plans also show six turnouts along this 2,372 ft. (0.5-mile) stretch of Segundo Road, grading on the adjacent slopes, and installation of energy dissipators consisting of large rocks in three locations along Segundo Road. It is reported in the County's staff report for the project that the modifications to Segundo Road are necessary to meet Fire Department requirements.

The project plans for the Segundo Road improvements show where the five oak trees are located that will be removed to facilitate road improvements. To address impacts associated with the removal of these oak trees, County Condition of Approval #13 requires an oak tree protection and replacement plan (Exhibit 6). As approved by the County, any protected trees which are removed, relocated and/or damaged (more than

20% encroachment into the critical root zone) shall be replaced on a 10:1 basis. However, it is not clear, based on the findings in the staff report, whether there are feasible alternatives to avoid or reduce adverse impacts to sensitive habitat (including the removal of 5 oak trees).

In addition, neither the Mitigated Negative Declaration (MND) nor the County's staff report quantify other impacts to oak trees such as trimming, limbing, or encroachment into the root zone or protected zones (5 feet from the dripline of the tree canopy). Although the MND indicates that potential impacts to oak trees will occur, it does not identify the location or extent of the other potential impacts or evaluate alternatives that would avoid or minimize these impacts. For instance with regard to the improvements to Segundo Road, the MND indicates that "potential construction-related impacts could impact several additional oak trees [beyond the removal of the five oak trees]"; however, there is no other information provided in the record regarding what these impacts involve.

Further, the MND reports that there may be impacts to oak woodland habitat in connection with the installation of the water tank for the guest house. Specifically, the MND concludes that the "installation of the proposed 5,000 gallon water tank upslope of the building site and fire clearance activities (100 foot clearance around the structure) have the potential to result in significant impacts to existing oak woodland habitat and individual Manzanita." Although the MND found that no individual oak trees are expected to be *removed* as a result of either construction of the guest house or the associated fuel modification, the MND also found that an unspecified number of "individual trees could be limbed as part of the fire clearance activities." There is no further information in the County's record as to where limbing might be necessary. County Condition #9 (Exhibit 6) indicates that the final location of the proposed 5,000 gallon water tank shall be adjusted, as necessary, to ensure complete avoidance of the existing coast live oak trees and Manzanita(s) located upslope of the proposed guest house. It is unclear where this water tank might eventually be located or what the potential impacts would be to oak woodlands or other sensitive habitats.

In its approval, the County required numerous other measures to address impacts to biological resources such as flagging and/or fencing off sensitive areas during construction, having a biological monitor on site during construction, conducting pre- and post- biological surveys, restoring graded areas for utility trenches, requiring construction access and staging plans, and limiting exterior night lighting to low intensity, low glare design, and fully hooded to direct light downward.

Thus, as discussed in detail above, the appeals contend that the proposed project is inconsistent with Coastal Act Section 30240, as incorporated into the certified LCP; LCP Policies 1-2, 9-18, 9-35, 9-36; and Zoning Ordinance Sections 35-97.7, 35.97.10 and 35-97.18 which require the protection of environmentally sensitive habitat areas (ESHA), including sensitive species, oak woodlands, and native grassland habitat. These policies require development adjacent to ESHA to be designed and located in a manner that will avoid adverse impacts to habitat resources (including measures such as setbacks and buffers to prevent impacts which would degrade these sensitive resources). Specifically, Policy 9-18 states that development shall be sited and



designed to protect native grassland areas. Policy 9-35 requires that oak trees, because they are particularly sensitive to environmental conditions, shall be protected. All land use activities, including cultivated agriculture and grazing, should be carried out in such a manner as to avoid damage to native oak trees. Regeneration of oak trees on grazing lands should be encouraged.

As discussed above, the proposed project will result in direct removal of native grassland habitat and oak trees. There may also be additional impacts to grassland as a result of fire clearance activities that were not considered because County Condition of Approval #15 appears to allow for the potential for the mowing of purple needlegrass beyond the 30-foot fire clearance zone. The MND also determined that there may be additional impacts to oak trees in relation to fire clearance activities associated with the guest house and there may be additional impacts to oak trees in connection with the road widening. Although the project includes mitigation of the impacts to native grassland and oak trees, the findings for approval failed to address potential feasible alternatives that would serve to avoid or reduce the impacts (including alternatives in design and location).

Therefore, for all of these reasons, the Commission finds that a substantial issue is raised with respect to the appellants' contention that the project does not meet provisions of the certified Local Coastal Program regarding oak woodland, native grassland habitat, and ESHA protection.

#### **4. Alternatives Analysis**

The appeals assert that the project would have significant impacts to environmentally sensitive habitat areas, including removal of purple needlegrass habitat and oak trees. The provisions of the LCP require implementation of alternatives that would avoid adverse impacts to these coastal resources, including siting alternatives and/or design alternatives. In addition to siting and design alternatives, there may be other project modifications that could be implemented to further reduce impacts to coastal resources.

The Commission finds that the "no project" alternative is a feasible alternative for the reasons discussed below and this alternative would entirely avoid the impacts these sensitive coastal resources. The project approved by the County is for a new guest house on a lot where a single family residence has already been previously approved by Santa Barbara County pursuant to Permit 02CDH-00000-00008 and is currently under construction. However, a review of Commission records indicates that although the entire project site is located within the appealable jurisdiction of the certified LCP, no Final Local Action Notice for the single family residence was processed by the Commission. Regardless, the single family residence is currently under construction and would constitute the primary use for the subject property and the new proposed guest house would constitute a non-essential accessory use.

In addition, as approved by the County, development on the subject parcel would not be clustered to reduce impacts, since the new guest house would be located hundreds of feet in distance from the primary residence; would not utilize shared/overlapping fuel modification zones; and would require improvements to a 1000 ft. long access road that

would only serve the guest house. Further, the project would result in significant adverse impacts to native grassland and oak woodland environmentally sensitive habitat areas inconsistent with the LCP policies mentioned above. In its approval of the permit, the County did not analyze alternatives to reduce the impacts, either through alternative siting or the “no project” alternative.

The Negative Declaration for the project indicates that the subject site and the surrounding area are predominantly vegetated with native grasses, including purple needle grass. Native grasslands constitute an environmentally sensitive habitat area (ESHA). Section 30240 of the Coastal Act, as incorporated in the LCP, requires that “environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.” Section 30240, as incorporated in the LCP, restricts development on the parcel to only those uses that are dependent on the resource. The applicant proposes to construct a new guest house on the parcel, which would result in the loss of ESHA habitat area and vegetation within the guest house building pad and driveway areas, as well as within those areas where fuel modification would be required for fire protection purposes. As residential development (including guest houses) do not have to be located within ESHAs to function, the Commission does not consider these uses to be dependent on ESHA resources. Application of Section 30240, as incorporated in the LCP, by itself, would require denial of the project, because the project would result in significant disruption of habitat values and is not a use dependent on those sensitive habitat resources.

However, the Commission must also consider the Supreme Court decision in *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 112 S.Ct. 2886. The subject of what government action results in a “taking” was addressed by the U.S. Supreme Court in *Lucas v. South Carolina Coastal Council*. In *Lucas*, the Court identified several factors that should be considered in determining whether a proposed government action would result in a taking. For instance, the Court held that where a permit applicant has demonstrated that he or she has a sufficient real property interest in the property to allow the proposed project, and that project denial would deprive his or her property of all economically viable use, then denial of the project by a regulatory agency might result in a taking of the property for public use unless the proposed project would constitute a nuisance under State law. Another factor that should be considered is the extent to which a project denial would interfere with reasonable investment-backed expectations.

The Commission interprets the *Lucas* decision, to mean that if denial of the project, by either the Commission or a local government implementing its LCP, would deprive an applicant’s property of all reasonable economic use, then it may be necessary to allow some development even where a Coastal Act or LCP policy would otherwise prohibit it, unless the proposed project would constitute a nuisance under state law. In other words, Section 30240 of the Coastal Act, as incorporated in the LCP, cannot be read to deny all economically beneficial or productive use of land because Section 30240, as incorporated in the LCP, cannot be interpreted to require the Commission or the local government to act in an unconstitutional manner.

While the applicant is entitled to an assurance that the Commission or local government will not act in such a way as to take their property, this section does not authorize the Commission or local government to avoid application of the policies of the LCP, including Section 30240, altogether. Instead, the Commission or the local government is only directed to avoid construing these policies in a way that would take property. Aside from this instruction, the local government is still otherwise directed to enforce the requirements of the LCP. Therefore, in this situation, both the local government and the Commission must still comply with Section 30240, as incorporated in the LCP, by avoiding impacts that would disrupt and/or degrade environmentally sensitive habitat, to the extent this can be done without a taking of the property.

However, as previously discussed, the County has previously approved other residential development on the site, including a single family residence on the northern portion of the property, and the Negative Declaration for the project indicates that the property is presently being utilized as part of the Hollister Ranch grazing cooperative. These uses indicate that the property already realizes an economically viable use. Further, the ongoing construction of the single family residence on the property has already resulted in the loss of ESHA within areas of the site. Construction of the new proposed accessory structure (guest house) would result in even greater loss of ESHA. Additionally, removal of habitat area for such residential development and the presence of human activity on the site will result in impacts to the ESHA that will remain on the site through habitat fragmentation and disturbance through noise, lighting, and other impacts.

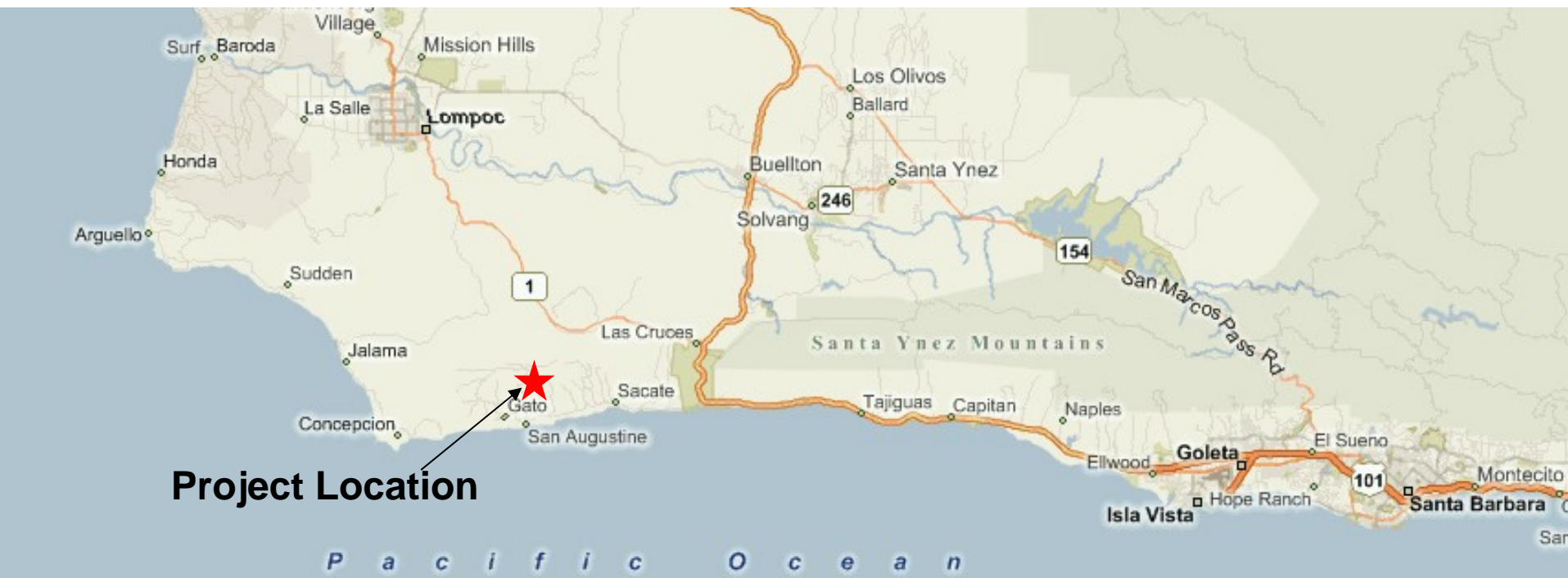
The only alternative that could avoid these impacts would be the “no project” alternative. Since a single family residence was previously approved by the County on the site and the Negative Declaration indicates that the property is presently part of the Hollister Ranch grazing cooperative, the applicant has already realized a reasonable economic use of the property. Thus, in regards to the new proposed guest house, the “no project” alternative is considered feasible as it would not prevent the applicant from a reasonable economic use of the property. However, the County did not address this alternative in its analysis in its findings for approval of this project.

Another alternative includes siting the proposed guest house in a different area of the property in order to cluster development, reduce additional fuel modification requirements and eliminate the need to construct additional roads. Clustering the proposed guest house in the same area of the site where the primary residence would be located, would allow for an overlap in fuel modification and brushing areas required for the primary residence and the proposed guest house, thereby reducing the total amount of vegetation removal required. Additionally, construction of a guest house adjacent to the primary residence would eliminate the requirement to make improvements to the access road. However, the County did not address this alternative in its analysis in its findings for approval of this project.

Therefore, for all of these reasons, the Commission finds that a substantial issue is raised with respect to the appellants’ contention that the project does not meet provisions of the certified Local Coastal Program regarding oak woodland, native grassland habitat, and ESHA protection.

## **F. CONCLUSIONS REGARDING SUBSTANTIAL ISSUE**

The purpose of the substantial issue determination is to review the administrative record and establish whether a substantial question is raised with respect to the appellants' assertions that the project does not conform to the certified LCP and public access policies of the Coastal Act. As described above, the Commission finds that the appellants' contentions do raise substantial issues with regard to the consistency of the approved project with oak woodland, native grassland, and environmentally sensitive habitat standards of the certified Local Coastal Program.



**Project Location**

Exhibit 1  
A-4-STB-07-052  
Vicinity Map



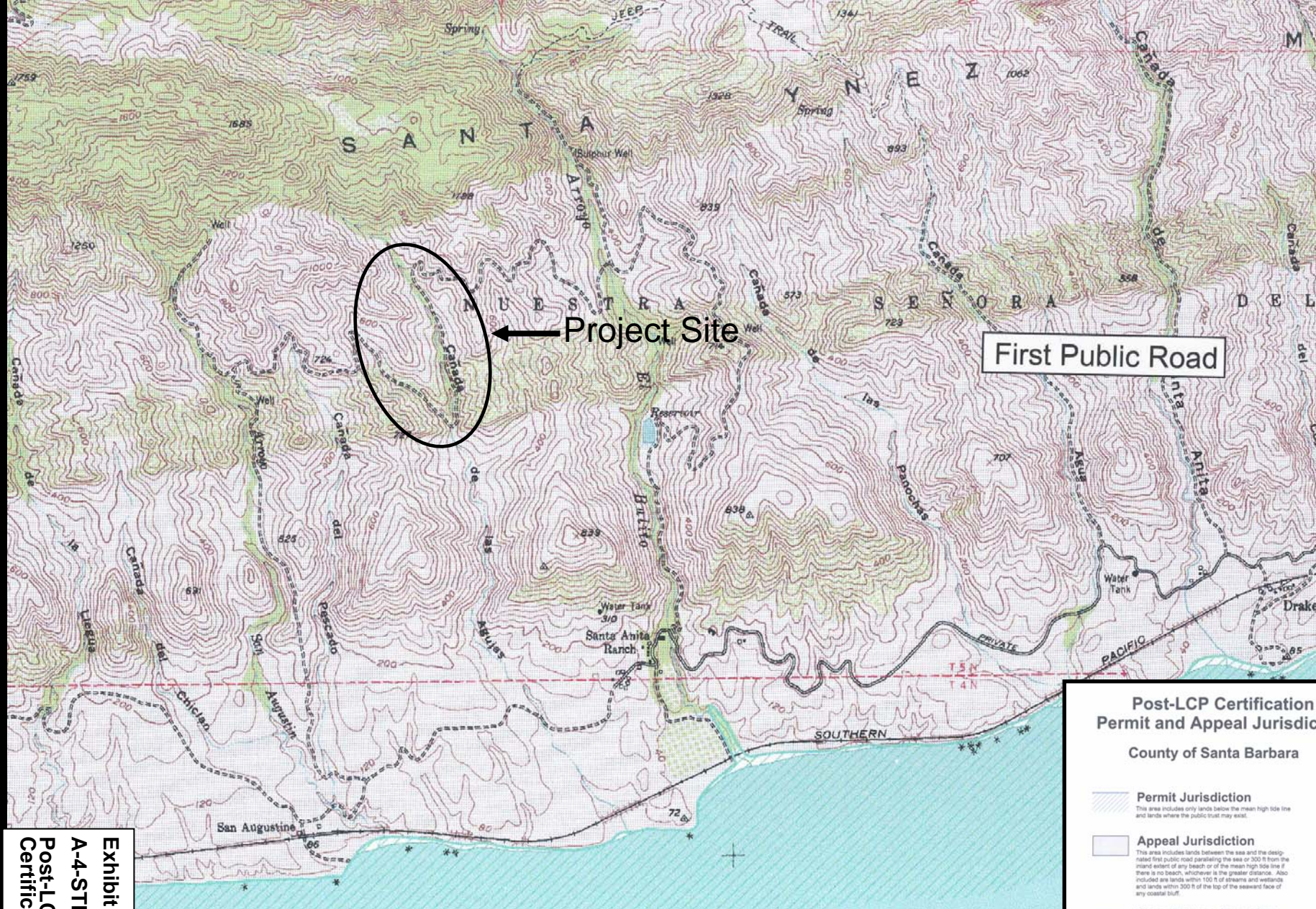


Exhibit 2  
A-4-STB-07-052  
Post-LCP  
Certification Map

### Post-LCP Certification Permit and Appeal Jurisdiction County of Santa Barbara

-  **Permit Jurisdiction**  
This area includes only lands below the mean high tide line and lands where the public trust may exist.
-  **Appeal Jurisdiction**  
This area includes lands between the sea and the designated first public road paralleling the sea or 300 ft from the inland extent of any beach or of the mean high tide line if there is no beach, whichever is the greater distance. Also included are lands within 100 ft of streams and wetlands and lands within 300 ft of the top of the seaward face of any coastal bluff.
-  **Coastal Zone Boundary**  
The area shown on this map is located entirely within the Coastal Zone Boundary.





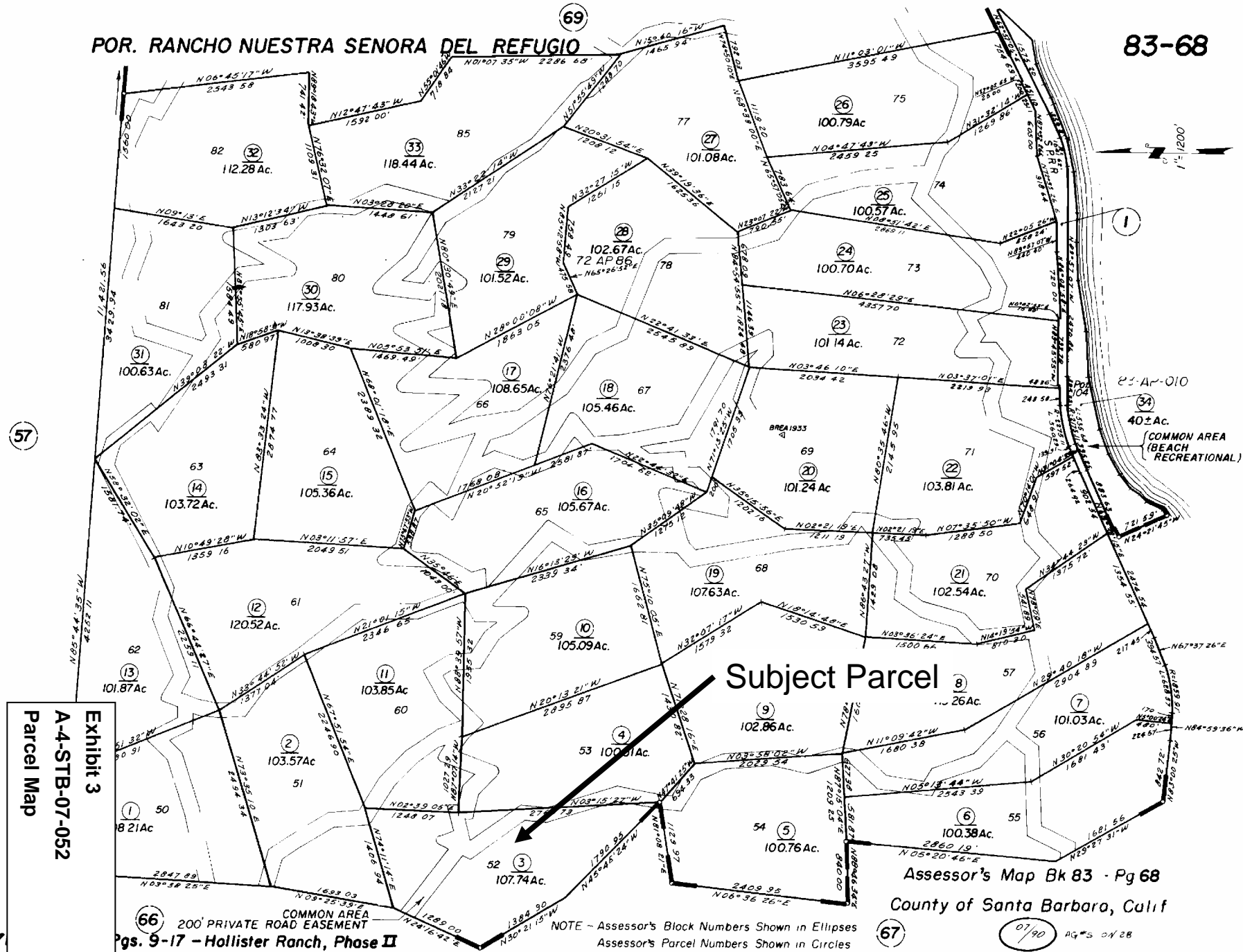
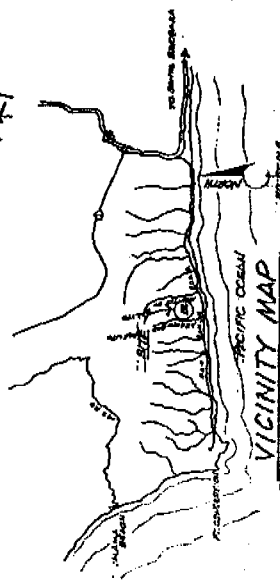
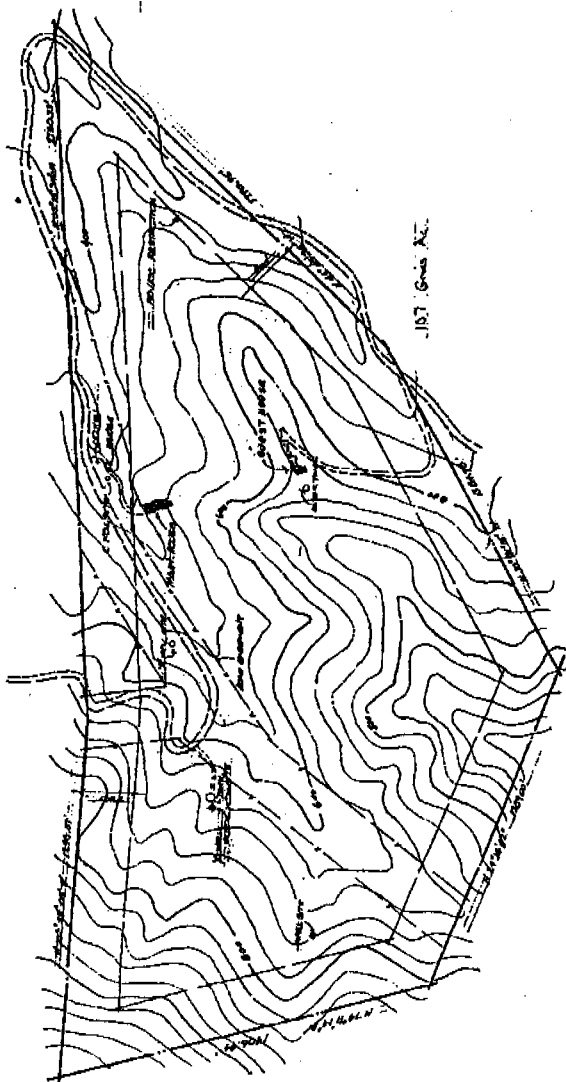


Exhibit 3  
 A-4-STB-07-052  
 Parcel Map

# INDEX

1. PARCEL MAP
2. SITE & DESIGN RUN
3. SITE SECTIONS & NOTES
4. FLOOR PLAN
5. ELEVATIONS
6. ROOF PLAN



(Information from proposed master plan, 10-1-10, including aerial, ground, computer)

## PARCEL MAP

10-1-10, 10-1-10, 10-1-10

## PARCEL 52 GUESTHOUSE

10-1-10, 10-1-10, 10-1-10

10-1-10, 10-1-10, 10-1-10

10-1-10, 10-1-10, 10-1-10



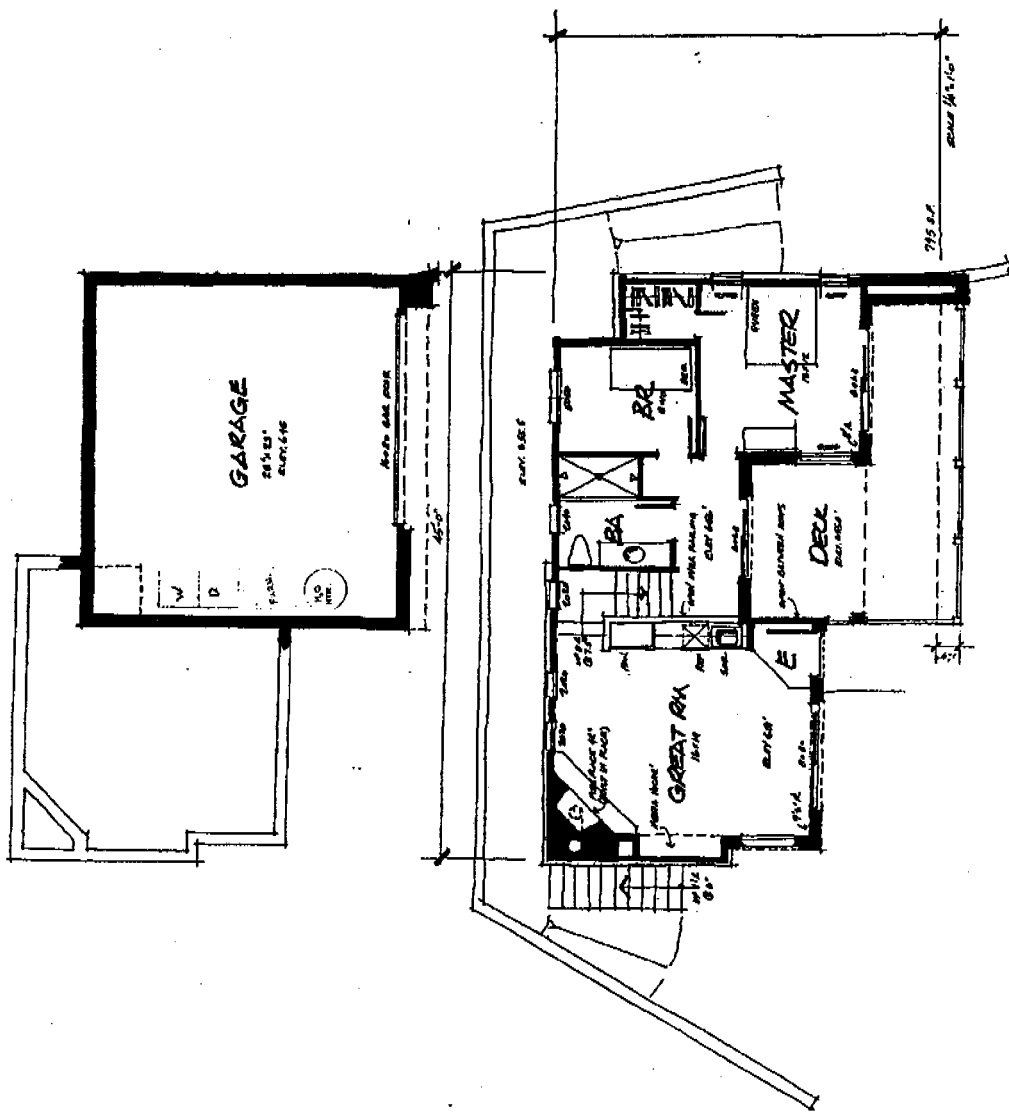
EXHIBIT 4

A-4-STB-07-052

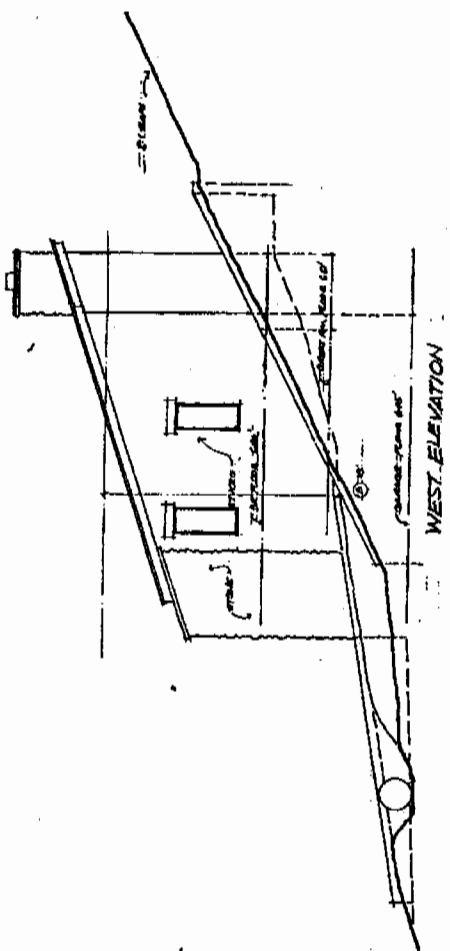
Project Plans



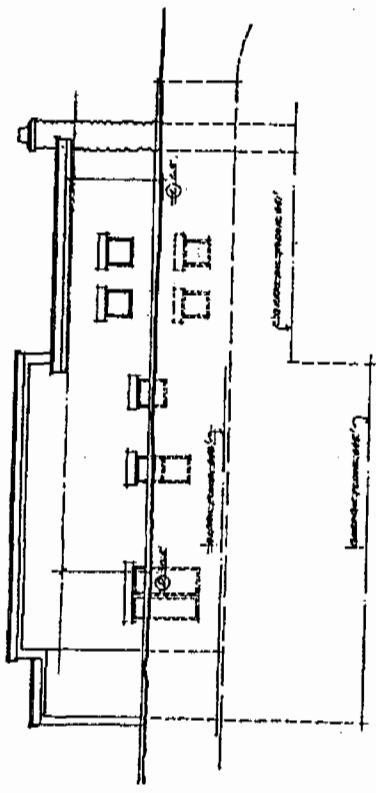




# **FLOOR PLANS** **PARCEL 52 GUEST HOUSE**



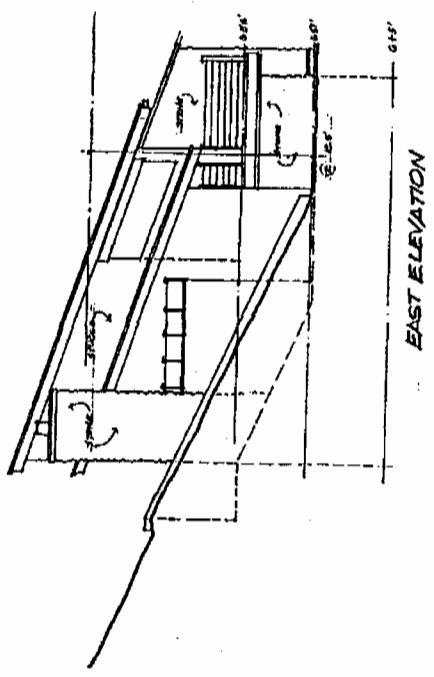
WEST ELEVATION



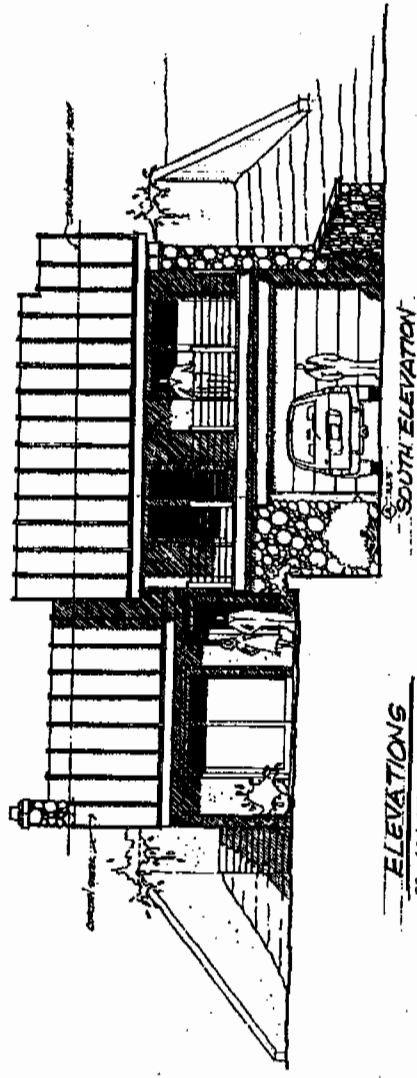
NORTH ELEVATION

PERMITS

NO.	DATE	DESCRIPTION
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EAST ELEVATION



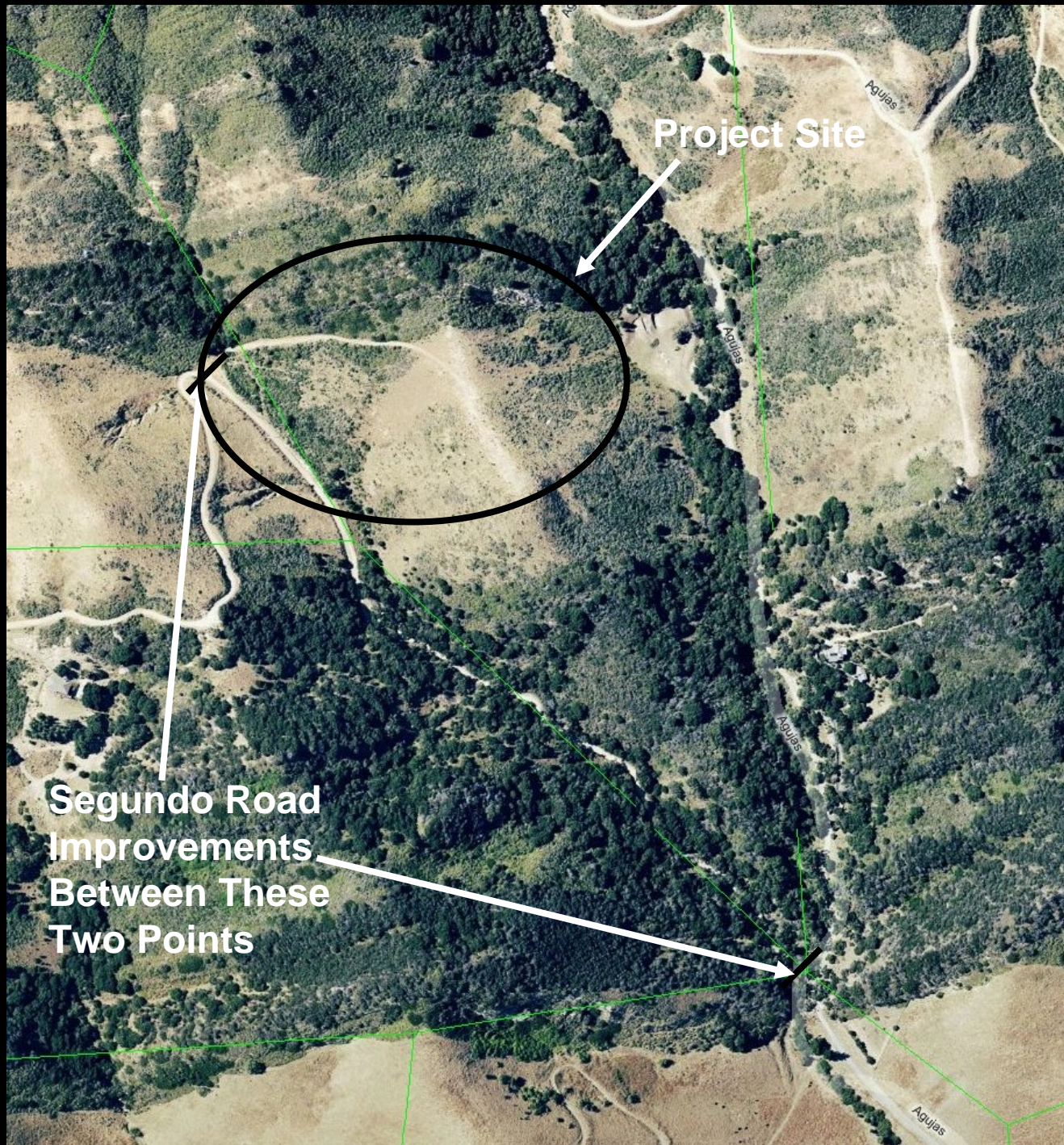
SOUTH ELEVATION

ELEVATIONS

PARCEL 52 GUEST HOUSE

12/1/88





**Exhibit 5**  
**A-4-STB-07-052**  
**Aerial Photograph of**  
**Project Site**





Appeal period start 5/17/07 4-STB-07-129  
**County of Santa Barbara**  
**Planning and Development**

John Baker, Director  
Dianne Meester Black, Assistant Director

**NOTICE OF FINAL ACTION**

**RECEIVED**  
MAY 16 2007

DATE: April 20, 2007

TO: California Coastal Commission  
Shana Gray  
89 South California Street, Suite 200  
Ventura, California 93001

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

On April 9, 2007 Santa Barbara County took final action on the appealable development described below:

- ☒ Appealable Coastal Development Permit, Case No. 06CDH-00000-00036  
☐ Appealable Coastal Development Permit [case number] following discretionary case [#]  
☐ Discretionary action on a case

**Project Applicant:**

HR52 Partnersh c/o Michael Parsons  
49 Asher Avenue  
Los Gatos, CA 95030

**Property Owner:**

Same

**Project Description:** Hearing on the request of Michael Parsons, owner, to consider Case No. 06CDH-00000-00036, [application filed on July 24, 2006] for a Coastal Development Permit in compliance with Section 35-169 of the Article II Coastal Zoning Ordinance, on property zoned Ag-II-320 to develop a new guesthouse with attached garage and access driveway, and to approve the Negative Declaration 07NGD-00000-00003 pursuant to the State Guidelines for Implementation of the California Environmental Quality Act. As a result of this project, significant but mitigable effects on the environment are anticipated in the following categories: Biological Resources, Cultural Resources, Fire Protection and Geologic Processes. The application involves AP No. 083-680-003, located at HR Lot 52, in the Gaviota area, Third Supervisorial District.

**Location:** Parcel 52, Hollister Ranch, Gaviota Area

The receipt of this letter and the attached materials start the 10 working day appeal period during which the County's decision may be appealed to the Coastal Commission. Appeals must be in writing to the appropriate Coastal Commission district office.

Please contact Errin Briggs, the case planner at 805-568-2047 if you have any questions regarding the County's action or this notice.

*Errin Briggs*

Errin Briggs, Project Planner

4/12/07  
Date

Attachment: Final Action Letter dated April 9, 2007

cc: Case File:  
Cintia Mendoza, Hearing Support



COURT HOUSE

April 9, 2007

# COUNTY OF SANTA BARBARA CALIFORNIA

## ZONING ADMINISTRATOR

COUNTY ENGINEERING BUILDING  
123 E. ANAPAMU STREET  
SANTA BARBARA, CALIFORNIA 93101-2058  
PHONE: (805) 568-2000

RECEIVED  
MAY 16 2007

Michael Parsons  
49 Asher Avenue  
Los Gatos, CA 95030

CALIFORNIA  
ZONING ADMINISTRATOR  
HEARING OF APRIL 9, 2007  
SOUTH CENTRAL COAST DISTRICT

**RE: HR52 Partnership Guest House, 06CDH-00000-00036**

Hearing on the request of Michael Parsons, owner, to consider Case No. 06CDH-00000-00036, [application filed on July 24, 2006] for a Coastal Development Permit in compliance with Section 35-169 of the Article II Coastal Zoning Ordinance, on property zoned Ag-II-320 to develop a new guesthouse with attached garage and access driveway; and to approve the Negative Declaration 07NGD-00000-00003 pursuant to the State Guidelines for Implementation of the California Environmental Quality Act. As a result of this project, significant but mitigable effects on the environment are anticipated in the following categories: Biological Resources, Cultural Resources, Fire Protection and Geologic Processes. The application involves AP No. 083-680-003, located at HR Lot 52, in the Gaviota area, Third Supervisorial District.

Dear Mr. Parsons:

At the regular hearing of the Santa Barbara County Zoning Administrator on April 9, 2007, Case No. 06CDH-00000-00036 marked "Officially Accepted, County of Santa Barbara April 9, 2007, Zoning Administrator Exhibit #1" was conditionally approved, based upon the project's consistency with the Comprehensive Plan including the Coastal Land Use Plan and based on the ability to make the required findings. The Zoning Administrator also took the following actions:

1. Accepted a late submittal into the record from the Department of Conservation dated March 22, 2007;
2. Adopted the required findings for the project specified in Attachment A of the staff report, dated March 16, 2007, including CEQA findings;
3. Accepted the Negative Declaration, included in Attachment D of the staff report dated March 16, 2007, and adopted the mitigation monitoring program contained in the Conditions of Approval; and;
4. Approved the project subject to the conditions included in Attachment B of the staff report dated March 16, 2007.

***The Findings, Coastal Development Permit and the Conditions of Approval reflect the action of the Zoning Administrator and are included in this letter as Attachment A and Attachment C.***

- The Zoning Administrator's decision may be appealed locally by the applicant, an aggrieved person, as defined under Section 35-58, or any two members of the Coastal Commission within 10 calendar days of the date of the Administrator's decision.
- If a local appeal is filed, it shall be processed in accordance with all provisions of Section 35-182.3 of the Coastal Zoning Ordinance, and shall be taken to the Santa Barbara County Clerk of the Board, 105 East Anapamu Street - Room 407, Santa Barbara, California before the appeal period expires.
- No filing fee is required for an appeal since this project may ultimately be appealed to the Coastal Commission under Section 35-182.4.2.
- Please be advised that if a local appeal is filed, the final action on the appeal by the Board of Supervisors may be appealed to the California Coastal Commission if that final action includes the approval of a permit.
- **Local appeal period expires on Thursday, April 19, 2007 at 5:00 P.M.**

Sincerely,

  
ZORAIDA ABRESCH  
Zoning Administrator

xc: Case File: 06CDH-00000-00036  
Hearing Support Zoning Administrator File  
Petra Leyva  
Records Management  
Architect: Clark Butts, 133 Iverness Avenue, Lompoc, CA 93436  
Contractor: Bob Curtis, P.O. Box 519, Buellton, CA 93427  
Address File: HR Lot 52, Gaviota, CA  
Shana Gray, California Coastal Commission, 89 South California St., Ste 200, Ventura, CA 93001  
County Surveyor's Office  
County Fire Department  
Environmental Health Services  
Air Pollution Control District  
Department of Conservation, 801 K Street, MS 18-01, Sacramento, CA 95814  
Supervisor Firestone, Third District  
Errin Briggs, Planner

**Attachments:**            **Attachment A – Findings**  
                                 **Attachment B – Conditions of Approval**

ZA:ah

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## **ATTACHMENT A: FINDINGS**

### **1.0 CEQA FINDINGS**

- 1.1 The Zoning Administrator has considered the Mitigated Negative Declaration (07NGD-00000-00003) together with the comments received and considered during the public review process. The Mitigated Negative Declaration reflects the independent judgment of the Zoning Administrator and has been completed in compliance with CEQA, and is adequate for this proposal.
- 1.2 The Zoning Administrator finds that through feasible conditions placed upon the project, the significant impacts on the environment have been eliminated or substantially mitigated.
- 1.3 The documents and other materials which constitute the record of proceedings upon which this decision is based are in the custody of Dianne Black, the Planning Commission Secretary, at 123 E. Anapamu Street, Santa Barbara, CA 93101.
- 1.4 Public Resources Code Section 21081.6 requires the County to adopt a reporting or monitoring program for the changes to the project which it has adopted or made a condition of approval in order to mitigate or avoid significant effects on the environment. The approved project description and conditions of approval, with their corresponding permit monitoring requirements, are hereby adopted as the monitoring program for this project. The monitoring program is designed to ensure compliance during project implementation.

### **2.0 ADMINISTRATIVE FINDINGS**

Pursuant to §35-169.6, a Coastal Development Permit shall only be issued if all of the following findings are made:

- 2.1 ***The proposed development conforms to 1) the applicable policies of the Comprehensive Plan, including the Coastal Land Use Plan, and 2) with the applicable provisions of this Article and/or the project falls within the limited exception allowed under Section 35-161.7.***

As discussed in Sections 6.2 and 6.3 of this staff report and incorporated herein by reference, the proposed project would be consistent with all applicable policies of the Comprehensive Plan, including the Coastal Land Use Plan and applicable provisions of the Article II Zoning Ordinance. As conditioned, the proposed project would be consistent with the policies and provisions relating to agricultural resources, retention and protection of natural drainage and environmentally sensitive habitat areas, archeological resources, biological resources, and visual resources/aesthetics. Therefore, the proposed project is consistent with the requirements of this finding.

- 2.2 ***That the proposed development is located on a legally created lot.***

The proposed project would occur on a legal lot, created as Lot No. 52 of the Hollister Ranch Tract, phase II, recorded in Assessor Map Book 83, page 68 dated December 23, 1971. Therefore, the project is consistent with the requirements of this finding.

- 2.3 ***That the subject property is in compliance with all laws, rules, and regulations pertaining to zoning uses, subdivisions, setbacks, and any other applicable provisions of this article, and such zoning violation fees as established from time to time by the***



***Board of Supervisors have been paid. This subsection shall not be interpreted to impose new requirements on legal non-conforming uses and structures under section 35-160 et seq.***

As discussed in Section 6.3 of this staff report and incorporated herein by reference, the proposed project would conform to all applicable laws, rules, and regulations pertaining to the AG-II-320 zone district. There are no current zoning violations associated with the subject parcel.

**2.4    *The development does not significantly obstruct public views from any public road or from a public recreation area to, and along the coast.***

The project consists of the construction of a new 795 square foot guesthouse with attached garage and on-site access improvements. These development activities would not result in the obstruction of views from any public road as the roads in Hollister Ranch are private. The project would not be visible from any public recreation area.

**2.5    *The development is compatible with the established physical scale of the area.***

The proposed project would be compatible with the development of Hollister Ranch. The proposed guest house is designed to be compatible with rural, agricultural surroundings and would be limited to a height of 16 feet. The proposed guest house would be developed in a location where it fits into the natural topography and therefore would be compatible with the established physical scale of the area.

**2.6    *The development is in conformance with the public access and recreation policies of Article II and the Coastal Land Use Plan.***

The proposed project would not impact public access to the beaches along this area of the coast as the project site is located approximately 2 miles from the ocean. However, at the time the Hollister Ranch subdivision was recorded, the California Coastal Act was amended to require a \$5,000 fee to be assessed with the development of each parcel in Hollister Ranch, in lieu of granting public access to the beach [Public Resources Code Section 30610.8(b)]. As the fee was previously paid in connection with the main residence on this parcel, payment will not be required as a condition of approval on the Coastal Development Permit.

**APPROVAL/INTENT TO ISSUE  
A DISCRETIONARY APPEALABLE  
COASTAL DEVELOPMENT PERMIT (CDP)**

**Case No.:** 06CDH-00000-00036      **Planner:** E. Briggs  
**Project Name:** HR52 Partnership New Guesthouse  
**Project Address:** Parcel 52, Hollister Ranch  
**A.P.N.:** 083-680-003



The Zoning Administrator *grants approval* of this discretionary Coastal Development Permit for the development described below, subject to the attached conditions and final issuance of the Coastal Development Permit.

**APPROVAL DATE:** April 9, 2007

**COUNTY APPEAL PERIOD STARTS:** April 10, 2007

**COUNTY APPEAL PERIOD ENDS:** April 19, 2007

**APPEALS:** The decision on this project may be appealed to the Board of Supervisors by the applicant, an aggrieved person, or any two members of the Coastal Commission. The written appeal must be filed with the Clerk of the Board at 105 East Anapamu Street, Santa Barbara, CA 93101 by 5:00 p.m. on or before the date the **County Appeal Period Ends** (Art. II, Sec. 35-182). If a local appeal is filed, the Board of Supervisors' final decision on the appeal may be appealed to the California Coastal Commission. If no local appeal is filed, the project may not be appealed to the California Coastal Commission, except as provided in Section 13573 of the California Coastal Commission's Administrative Regulations.

**DATE OF PERMIT ISSUANCE:**

**PROJECT DESCRIPTION AND CONDITIONS:** See Exhibit A, hereby incorporated by reference.

**EXPIRATION:**

Upon permit issuance, the permit shall be valid for two years. Failure to obtain a required construction or grading permit and to lawfully commence development within two (2) years of permit issuance, shall render this Coastal Development Permit null and void.

**Zoning Administrator Approval:**

  
Zoning Administrator Signature

1 4-9-07  
Date

**ACKNOWLEDGMENT:** Undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

Print Name

Signature

Date

**Planning & Development Issuance by:**

Name

Date

## ATTACHMENT B: CONDITIONS OF APPROVAL

Case No.: 06CDH-00000-00036

Project Name: HR52 Partnership New Guesthouse

Project Address: Lot 52, Hollister Ranch

APN: 083-680-003

1. This Coastal Development Permit is based upon and limited to compliance with the project description, the hearing exhibits marked "Zoning Administrator Hearing Exhibits A-F," dated April 9, 2007 and conditions of approval set forth below. Any deviations from this project description, exhibits or conditions must be reviewed and approved by the County for conformity with this approval. Deviations may require approved changes to the permit and/or further environmental review. Deviations without the above-described approval will constitute a violation of permit approval.

The project description is as follows:

The project consists of the construction of a new 795 square foot guesthouse with attached 589 square foot garage below and associated retaining walls. The structure would have an average height of 14 feet, 6 inches. An existing ranch road would be improved to Fire Department standards and would serve as the access driveway for the project. A 5,000 gallon water tank would be installed directly above the guesthouse in order to provide potable water and fire response. Improvements would be made to Segundo Road (a private Hollister Ranch common road) as required by the County Fire Department. Five oak trees would be removed to facilitate such improvements. Approximately 800 cubic yards of grading would be required to prepare the site for development. A residence of 2,432 is currently under construction on the site. The site would be served by a private water system, a private septic system and the County Fire Department. Access would be taken via a private drive from Segundo Road.

### MITIGATION MEASURES FROM 07NGD-00000-00003

2. Any exterior night lighting shall be of low intensity, low glare design, and shall be fully hooded to direct light downward. **Plan Requirements/Timing:** The final plans submitted to the Board of Architectural Review for approval prior to the issuance of the Coastal Development Permit shall include the locations of all exterior lighting fixtures, catalogue cut sheets of the fixtures showing the method for shielding the light source and reducing glare, information on the illumination levels, and provisions for automatic shut-off after 10 pm. **Monitoring:** P&D shall ensure that the final architectural building plans, the final landscape plans, and the final lighting plans approved by the BAR are included in the plan set accompanying the building and electrical permits.
3. The landscape plans shall be submitted for Board of Architectural Review prior to the issuance of the Coastal Development Permit. New landscaping shall be restricted to utilize native, non-invasive species. Where ecologically appropriate as determined by a qualified biologist, and where possible, the applicant is encouraged to use foothill and/or purple Needlegrass collected from the immediate area. **Plan Requirements/Timing:** The applicant shall submit two copies of a final landscape and water-conserving irrigation plan to P&D and the BAR for review and approval prior to issuance of the Coastal Development Permit. **Monitoring:** Prior to occupancy clearance, the landscape and irrigation shall be installed per the approved plans.
4. A Native Grassland Preserve Area shall be identified on the project plans, documented in a Legal Description and Notice to Property Owner (NTPO), and included with this permit approval.
  - a. A Management Plan for the Preserve Area shall be prepared indicating that the Preserve Area shall be protected and preserved in perpetuity and that no development or tilling of the soil shall be allowed within the Preserve Area. Activities shall be limited to those that will not impair the viability of Native Grasslands and any other vegetative communities present with the preserve area. The Management Plan shall include a

provision for a springtime survey in 2007 to document the baseline conditions of the preserve area and identify any criteria that must be met for the area to be maintained as Native Grassland. As appropriate, this survey may be combined with the surveys required in related conditions. The property owner shall comply with the terms of the Management Plan. Baseline documentation shall be conducted during April, May or June, and shall include a vegetation map of the preserve area, a list of plant and animal species observed or that have the potential to be present, a qualitative description and evaluation of the ecological condition of the communities present, and estimates of percent cover for native Purple Needlegrass. Timing: The Management Plan shall be reviewed and approved by P&D prior to issuance of the Coastal Development Permit. Monitoring: P&D shall check plans prior to issuance of Coastal Development Permit and shall spot check in the field.

- b. Prior to issuance of the land use permit, the applicant shall record a "Notice to Property Owner" (NTPO) for the establishment of the Native Grassland Preserve Area. The NTPO shall be reviewed and approved by P&D and County Counsel. The NTPO shall bind the owners and successors in interest of the requirements of the Management Plan and said NTPO shall run with the real property.
  - c. Prior to issuance of the Coastal Development Permit, the applicant shall construct signs around the perimeter of the Preserve Area stating, "Biological preserve area, sensitive species present," to prevent human encroachment. Such signs shall be placed at 100 foot intervals around the entire Preserve Area.
5. The applicant shall limit construction-related impacts to native grassland habitats. Chain-link fencing shall be erected at the outer edge of the proposed grading areas to protect Native Grasslands that occur south and west of the proposed building site/driveway. Fencing shall be maintained throughout construction activities. **Plan Requirements:** The location of all grassland habitat and protective fencing shall be shown on all building and grading plans. **Monitoring:** P&D shall check plans prior to issuance of Coastal Development Permit and shall spot check in the field.
6. The applicant shall retain and pay for a P&D approved biologist to inspect and monitor the project site for bird and raptor nesting activity with emphasis on the presence/absence of the Southern California rufous-crowned sparrow. The biologist shall conduct a pre-construction bird and raptor nesting inspection not more than one week prior to the proposed beginning of construction activity. If sparrows or raptors are determined to be nesting on or within the vicinity of the project site, no construction activities of any kind, including, but not limited to grading or heavy equipment operation, shall take place within 500 feet of the sparrow/raptor nest. Certain construction activities may be allowed on a case-by-case basis as reviewed and approved by P&D. **Plan Requirements and Timing:** At a minimum of two days prior to the proposed beginning of construction activity, the results of the survey shall be reviewed and approved by P&D. This condition shall be printed on all final construction, grading, and building plans.

**MONITORING:** P&D staff shall perform site inspections throughout the construction phase and receive the report from the P&D approved biologist.

7. A P&D approved biologist shall perform a spring botanical survey of the project area (April through May), to assess the project site for any late-blooming plant species not identified during the September 2006 survey, and shall provide a report to P&D. As appropriate, this survey may be combined with the surveys required in related conditions. For any sensitive species found which were not identified in earlier assessments, appropriate measures to protect these species shall be drafted by a qualified biologist including but not limited to replacement at a 3 to 1 ratio and installation of protective fencing. **Plan Requirements and Timing:** Prior to issuance of the Coastal Development Permit, the results of the survey shall be reviewed and approved by P&D. The individual habitat areas shall be printed on all final construction, grading, and building plans.

**MONITORING:** P&D staff shall receive the report from the P&D approved biologist.

8. In order to protect on-site sensitive species during construction activities, a P&D approved biologist shall perform a pre-construction survey to identify and flag all coast live oak trees, purple needlegrass habitat, and individual Manzanita(s) within 50-feet of the proposed construction area. In addition, these areas shall be identified on the site and/or grading plans. As appropriate, this survey may be combined with the surveys required in related conditions. **Plan Requirements and Timing:** Prior to the commencement of construction-related activities, the results of the survey shall be reviewed and approved by P&D. The individual habitat areas shall be printed on all final construction, grading, and building plans.

**MONITORING:** P&D staff shall perform site inspections throughout the construction phase and receive the report from the P&D approved biologist.

9. The final location of the proposed 5,000 gallon water tank shall be adjusted, as necessary, to ensure complete avoidance of the existing coast live oak trees and Manzanita(s) located upslope of the proposed guest house. **Plan Requirements and Timing:** Prior to the commencement of construction-related activities, the location of the water tank shall be reviewed and approved by P&D. Protective fencing shall be installed along the upslope perimeter of the work site to protect the mixed chaparral habitat located upslope of the work area. In addition, oak trees and Manzanita around the water tank installation area shall be fenced with protective fencing and avoided during construction.

**MONITORING:** Permit Compliance staff shall perform site inspections throughout the construction phase to ensure compliance.

10. Topsoil containing native seed shall be stockpiled and stored separately along all utility pipeline trenches. Once backfilled, the topsoil shall be replaced and reseeded with a native coastal shrub seed mix (i.e., coyote brush scrub). **Plan Requirements and Timing:** This condition shall be printed on all final construction, grading, and building plans.

**MONITORING:** Permit Compliance staff shall perform site inspections throughout the construction phase to ensure compliance.

11. The use of heavy equipment and vehicles shall be limited to existing roadways and defined staging areas/access points. The boundaries of each work area shall be clearly defined and marked in the field with visible flagging and/or orange protective fencing. **Plan Requirements/Timing:** The boundaries of the work area shall be clearly delineated on the plans prior to issuance of the Coastal Development Permit. This condition shall be printed on all building and grading plans prior to permit issuance. **Monitoring:** Permit Compliance staff shall site inspect during construction to ensure staging areas and work boundaries are marked according to the approved plan.

12. A post-construction survey shall be conducted to document any additional native grassland habitat lost during construction. This additional acreage, if any, shall be added to the preservation requirement on a 3 to 1 basis. **Plan Requirements and Timing:** After the completion of construction-related activities and before final occupancy is granted, the results of the survey shall be reviewed and approved by P&D. Any additional acreage to be added to the preserve area shall be identified and approved by P&D prior to occupancy clearance.

13. **Oak Trees:** In order to protect existing oak trees and minimize adverse effects of grading and construction onsite, the applicant shall implement a tree protection and replacement plan. All grading, trenching, ground disturbance, construction activities and structural development shall occur outside the critical root zone of all onsite oak trees, except those identified on the road improvement plans dated March 12, 2007. No ground disturbance including grading for buildings, driveways, Hollister Ranch common roads, easements and subsurface grading shall occur within

the critical root zone of any oak tree unless specifically authorized by the approved tree protection and replacement plan. The tree protection and replacement plan shall include the following:

- a. An exhibit showing the location, diameter and critical root zone of all oak trees located onsite and within the construction areas of Segundo Road.
- b. Fencing of all trees to be protected at or outside of the critical root zone. Fencing shall be at least three feet in height of chain link or other material acceptable to P&D and shall be staked every 6 feet. The applicant shall place signs stating "tree protection area" at 15 foot intervals on the fence. Said fencing and signs shall be shown on the tree protection exhibit, shall be installed prior to commencement of grading activities and shall remain in place throughout all grading and construction activities.
- c. The tree protection plan shall clearly identify any areas where grading, trenching or construction activities would encroach within the critical root zone of any native or specimen tree. All encroachment is subject to review and approval by P&D.
- d. Construction equipment staging and storage areas shall be located outside of the protected area and shall be depicted on project plans submitted for land use clearance. No construction equipment shall be parked, stored or operated within the protected area. No fill soil, rocks or construction materials shall be stored or placed within the protected area.
- e. Any proposed tree wells or retaining walls shall be shown on the tree protection plan exhibit as well as grading and construction plans and shall be located outside of the critical root zone of all protected trees unless specifically authorized.
- f. No permanent irrigation shall occur within the critical root zone of any oak tree. Drainage plans shall be designed so that tree trunk areas are properly drained to avoid ponding.
- g. Only trees designated for removal on the approved tree protection plan shall be removed.
- h. Any protected trees which are removed, relocated and/or damaged (more than 20% encroachment into the critical root zone) shall be replaced on a 10:1 basis. A drip irrigation system with a timer shall be installed. Trees shall be planted prior to occupancy clearance for the guest house and irrigated and maintained until established (five years). The plantings shall be protected from predation by wild and domestic animals, and from human interference by the use of staked, chain link fencing and gopher fencing during the maintenance period.
- i. Any unanticipated damage that occurs to trees or sensitive habitats resulting from construction activities shall be mitigated in a manner approved by P&D. This mitigation may include but is not limited to posting of a performance security, tree replacement on a 10:1 ratio and hiring of an outside consultant biologist to assess the damage and recommend mitigation. The required mitigation shall be done immediately under the direction of P&D prior to any further work occurring on site.

**Plan Requirements:** Prior to issuance of a Coastal Development Permit, the applicant shall submit grading plans and the tree protection and replacement plan to P&D for review and approval. All aspects of the plan shall be implemented as approved. **Timing:** Timing on each measure shall be stated where applicable; where not otherwise stated, all measures must be in place throughout all grading and construction activities.

**MONITORING:** Permit Compliance staff shall conduct site inspections throughout all phases of development to ensure compliance with and evaluate all tree protection and replacement measures. Release of performance security requires P&D staff signature.

14. In the event that archaeological resources and/or remains are encountered during grading activities, activities shall be temporarily suspended in the area of the find and the applicant shall retain a P&D-approved archaeologist and Native American observer to carry out a Phase 1 archaeological investigation pursuant to County Archaeological Guidelines to evaluate the significance of the find. If resources are found to be significant, the applicant shall fund a Phase 2 or Phase 3 data recovery program pursuant to the County's Archaeological Guidelines. P&D shall prepare the scope of work for all investigations. **Plan Requirements:** This condition shall be printed on all building and grading plans. **Monitoring:** P&D shall check plans prior to approval of Coastal Development Permit and shall spot check in the field.
15. In order to minimize potential fire hazards faced by the proposed development, a fire protection plan shall be prepared and implemented. **Plan Requirements and Timing:** Prior to issuance of the CDP, the Fire Protection Plan shall be provided to the County Fire Department for its review and approval. This plan shall include:
- Maintenance of a 100-foot wide fuel management area around the proposed dwelling. Clearance/thinning of brush and weeds would be required in this area.
  - Within the 30-foot wide fuel modification zone, vegetation shall be removed completely with the exception of specimen trees which shall be limbed up to six feet in height. Grasslands within 30 feet of the guest house shall be mowed to 4-inches after going to seed and prior to May 1 of each year.
  - Within the 70-foot wide fuel modification zone, vegetation shall be selectively thinned. Native purple Needlegrass shall not be disturbed, or at most mowed above the basal tuft.
  - Vegetation to be removed shall be cut at the base of the stump, allowed to re-sprout, then maintained as a small shrub by periodic trimming. All vegetation removed shall be chipped on-site and used as mulch in areas of disturbed soils to reduce soil erosion.
  - Clearance of brush and vegetation 10 feet from both edges of the proposed driveway.
  - Minimum driveway width of 12 feet.
  - Installation of water system prior to commencement of construction of new residence and associated structures.

**Monitoring:** P&D and Fire Department staff shall review the Fire Protection Plan prior to issuance of the CDP. Grading inspectors and Permit Compliance staff shall inspect the site to ensure compliance prior to occupancy clearance.

16. The landscaping plan shall utilize fire resistant native species. **Plan Requirements:** Prior to issuance of the Coastal Development Permit, the applicant shall submit landscape plans to P&D, the CBAR, and the Fire Department for review and approval. **Timing:** The applicant shall install the landscaping consistent with the approved plan prior to occupancy clearance. **Monitoring:** Prior to occupancy clearance, Permit Compliance shall site inspect to verify landscape installation.
17. Building materials for all new structures including residences, fences and accessory structures shall be constructed of fire resistant materials.
- a. P&D Building & Safety Class A or B roofing (i.e., non-combustible tile or asphalt composite shakes) shall be required for all future structures.
  - b. Spark arresters shall be required for wood burning fireplaces.



- c. Private decks and structural overhangs shall be constructed with fire retardant materials or heavy timber.
- d. County Fire Department fire sprinkler requirements shall be met.

**Plan Requirements:** Where appropriate, the fire prevention measures shall be graphically depicted on grading and building plans. **Timing:** Measures shall be installed prior to occupancy clearance. **Monitoring:** P&D building inspectors shall site inspect during construction.

18. The applicant shall limit excavation and grading to the dry season of the year (i.e. April 15 to November 1) unless a Building & Safety approved erosion and sediment control plan is in place and all measures therein are in effect. All exposed graded surfaces shall be reseeded with ground cover vegetation to minimize erosion. **Plan Requirements:** This requirement shall be noted on all grading and building plans. **Timing:** Graded surfaces shall be reseeded within 4 weeks of grading completion, with the exception of surfaces graded for the placement of structures. These surfaces shall be reseeded if construction of structures does not commence within 4 weeks of grading completion.

**MONITORING:** P&D shall site inspect during grading to monitor dust generation and 4 weeks after grading to verify reseeded and to verify the construction has commenced in areas graded for placement of structures.

19. During construction, the washing of concrete trucks, paint, equipment, or similar activities shall occur only in areas where polluted water and materials can be contained for subsequent removal from the site. Wash water shall not be discharged to the storm drains, street, drainage ditches, creeks, or wetlands. Areas designated for washing functions shall be at least 100 feet from any storm drain, water body or sensitive biological resources. The location(s) of the washout area(s) shall be clearly noted at the construction site with signs.

**Plan Requirements/Timing:** A washout area, acceptable to P&D, shall be shown on all grading and building plans prior to issuance of the Coastal Development Permit. This condition shall be printed on all grading and building plans. **Monitoring:** The washout area(s) shall be in place and maintained throughout construction. Permit Compliance shall site inspect throughout the construction period to ensure proper use, location, and maintenance of the washout area(s).

## PROJECT SPECIFIC CONDITIONS

20. **Board of Architectural Review:** Final Central Board of Architectural Review approval of the project and landscaping shall be required prior to issuance. The project shall be in strict conformance with the building and landscape plans as approved by the Board of Architectural Review as Case No. 06BAR-00000-00192.
21. **Construction Hours:** All site development and/or noise generating construction and construction equipment maintenance shall be limited to the hours between 7:00 a.m. and 4:30 p.m., Monday–Friday only and shall not occur on State holidays (e.g., Thanksgiving, Labor Day, etc.). Non-noise generating construction activities, such as interior painting, are not subject to these restrictions.

## APPEALABLE CDPH CONDITIONS

22. All applicable final conditions of approval shall be printed in their entirety on applicable pages of grading/construction or building plans submitted to P&D or Building and Safety Division. These shall be graphically illustrated where feasible.
23. Prior to issuance of the Coastal Development Permit, the applicant shall pay all applicable P&D permit processing fees in full.



24. The applicant's acceptance of this permit and/or commencement of construction and/or operations under this permit shall be deemed acceptance of all conditions of this permit by the permittee.
25. The use and/or construction of the building or structure, authorized by this approval cannot commence until the Coastal Development Permit and necessary Building Permits have been issued. Prior to the issuance of the Coastal Development Permit, all of the project conditions that are required to be satisfied prior to issuance of the Coastal Development Permit must be satisfied. Plans accompanying this Coastal Development Permit shall contain all project conditions.
26. The Zoning Administrator's approval of this appealable CDPH shall expire one year from the date of approval or, if appealed, the date of action by the Board of Supervisors or the California Coastal Commission on the appeal, if the permit for use, building or structure permit has not been issued. The applicant may apply for a one-time time extension before the expiration of the approval.
27. If the Zoning Administrator determines at a noticed public hearing that the permittee is not in compliance with any conditions of this permit pursuant to the provisions of Section 35-169.9 of Article II (Coastal Zoning Ordinance) of the Santa Barbara County Code, the Zoning Administrator may, in addition to revoking the permit pursuant to said section, amend, alter, delete or add conditions to this permit.
28. If the applicant requests a time extension for this permit, the permit may be revised to include updated language to standard conditions and/or mitigation measures and additional conditions and/or mitigation measures which reflect changed circumstances or additional identified project impacts.

## COUNTY RULES AND REGULATIONS

29. **Notice to Property Owner:** A recorded Notice to Property Owner (NTPO) document is necessary to ensure the guesthouse will not be used as a permanent residence. The property owner shall sign and record the document prior to issuance of the Coastal Development Permit.
30. **Permit Compliance:** The applicant shall ensure that the project complies with all approved plans and all project conditions including those which must be monitored after the project is completed. To accomplish this the applicant agrees to:
  - a. Contact P&D staff as soon as possible after project approval to provide the name and phone number of the future contact person for the project and give estimated dates for future project activities.
  - b. Contact P&D staff at **least two weeks** prior to commencement of construction activities to schedule an on-site pre-construction meeting with the owner, compliance staff, other agency personnel and with key construction personnel.
  - c. Pay a deposit fee of **\$500.00 prior to issuance** of Coastal Development Permits as authorized under ordinance and to cover costs of monitoring as described above. This may include additional costs for P&D to hire and manage outside consultants when deemed necessary by P&D staff (e.g., non-compliance situations, special monitoring needed for sensitive areas including but not limited to biologists, archaeologists) to assess damage and/or ensure compliance. In such cases, the applicant shall comply with P&D recommendations to bring the project into compliance. The decision of the Director of P&D shall be final in the event of a dispute.
  - d. In the event that staff determines that any portion of the project is not in compliance with the conditions of approval of this permit, or approved plans an immediate STOP WORK ORDER may be issued.

- 31. Signed Agreement to Comply Required:** Prior to approval of follow-on Land Use Permits for the project, the owner shall sign and record an agreement to comply with the project description and all conditions of approval.
- 32. Additional Permits Required:** Before using any land or structure, or commencing any work pertaining to the erection, moving, alteration, enlarging, or rebuilding of any building, structure, or improvement, of permit issuance, the applicant shall obtain a Land Use and Building Permit from Planning and Development. These Permits are required by ordinance and are necessary to ensure implementation of the conditions required by the Planning Commission. Before any Permit will be issued by Planning and Development, the applicant must obtain written clearance from all departments having conditions; such clearance shall indicate that the applicant has satisfied all pre-construction conditions. A form for such clearance is available from Planning and Development.
- 33. Compliance with the following condition letters is required:**
- a. County Fire Department letter dated October 17, 2006
  - b. Environmental Health Services letter dated November 20, 2006
  - c. Air Pollution Control District letter dated July 26, 2006
- 34. Indemnity and Separation Clauses:** Developer shall defend, indemnify and hold harmless the County or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees, to attack, set aside, void, or annul, in whole or in part, the County's approval of the Coastal Development Permit. In the event that the County fails promptly to notify the applicant of any such claim, action or proceeding, or that the County fails to cooperate fully in the defense of said claim, this condition shall thereafter be of no further force or effect.
- 35. Legal Challenge:** In the event that any condition imposing a fee, exaction, dedication or other mitigation measure is challenged by the project sponsors in an action filed in a court of law or threatened to be filed therein which action is brought within the time period provided for by law, this approval shall be suspended pending dismissal of such action, the expiration of the limitation period applicable to such action, or final resolution of such action. If any condition is invalidated by a court of law, the entire project shall be reviewed by the County and substitute conditions may be imposed.

## CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST DISTRICT OFFICE  
89 SOUTH CALIFORNIA STREET, SUITE 200  
VENTURA, CA 93001-4508  
VOICE (805) 585-1800 FAX (805) 641-1732



## APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Chair Patrick Kruer, California Coastal Commission

Mailing Address: 89 So. California St.

City: Ventura

Zip Code: 93001

Phone: 805-585-1800

SECTION II. Decision Being Appealed

1. Name of local/port government:

County of Santa Barbara

2. Brief description of development being appealed:

Construction of a new 795 sq. ft. guesthouse with attached 589 sq. ft. garage below, retaining walls, and approx. 800 cu. yds of grading. An existing ranch road would be improved to Fire Department standards and would serve as the access driveway for the project. A 5,000 gallon water tank would be installed directly above the guesthouse in order to provide potable water and fire response. Improvements would be made to Segundo Road (a private Hollister Ranch common road) as required by the Co. Fire Dept. Five oak trees would be removed for road improvements.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

Parcel 52, Gaviota Area, Unincorporated Santa Barbara County (Assessor Parcel No. 083-680-003)

4. Description of decision being appealed (check one.):

- ☐ Approval; no special conditions  
☒ Approval with special conditions:  
☐ Denial

**Note:** For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

**TO BE COMPLETED BY COMMISSION:**

APPEAL NO: A-4-STB-07-052

DATE FILED: May 31, 2007

DISTRICT: South Central Coast

EXHIBIT 7

A-4-STB-07-052

Commissioner Appeals

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)**

5. Decision being appealed was made by (check one):

- ☒ Planning Director/Zoning Administrator
- ☐ City Council/Board of Supervisors
- ☐ Planning Commission
- ☐ Other

6. Date of local government's decision: April 9, 2007

7. Local government's file number (if any): 06CDH-00000-00036

**SECTION III. Identification of Other Interested Persons**

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

HR52 Partnership c/o Michael Parsons, 49 Asher Ave, Los Gatos, CA 95030

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) None

(2)

(3)

(4)

## **APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)**

### **SECTION IV. Reasons Supporting This Appeal**

#### **PLEASE NOTE:**

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
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See attached



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 3

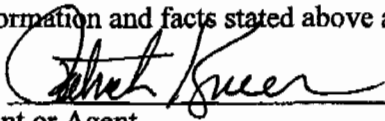
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SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed:   
Appellant or Agent

Date: May 31, 2007

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

**Parcel 52 Guest House (Hollister Ranch, Santa Barbara County)  
Grounds for Appeal**

**Exhibit A**

Appeal of decision by Santa Barbara County granting a coastal development permit for the construction of a 795 sq. ft. guesthouse with attached 589 sq. ft. garage, improvements to an existing 300 ft. long access road, improvements to Segundo Road, water tank, and 800 cu. yds. of grading located on Parcel 52, Hollister Ranch, Santa Barbara County, based on the following grounds:

The project is appealed on the grounds that it is inconsistent with the County of Santa Barbara's Local Coastal Program (LCP) policies regarding environmentally sensitive habitat areas, native grassland and oak woodland habitats.

LCP Policies 1-1, 1-2, 9-18, 9-35, 9-36; Coastal Act Sections 30107.5 and 30240 as incorporated into the LCP pursuant to Policy 1-1; and Article II of the Zoning Code Sections 35-53, 35-97.3, 35-97.7, 35-97.10, and 35-97.18 (see below) limit development in and around environmentally sensitive habitat areas, native grassland and oak woodland habitats. Additionally, these policies provide that development must be sited and designed to prevent impacts to these resources.

Policy 1-1: All Chapter 3 policies of the Coastal Act have been incorporated in their entirety in the certified County LUP as guiding policies pursuant to Policy 1-1 of the LUP.

Section 30107.5 and Article II, Section 35-58 of the certified LCP state:

***"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.***

Section 30240 of the Coastal Act states:

***(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.***

***(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.***

Policy 1-2 (Resource Protection):

***Where policies within the land use plan overlap, the policy which is most protective of coastal resources shall take precedence.***

Policy 9-18 Native grassland:

***Development shall be sited and designed to protect native grassland areas.***

Policy 9-35 Native Plant Communities (e.g., coastal sage scrub, chaparral, coastal bluff, closed cone pine forest, California native oak woodland (also individual oak trees), endangered and rare plant species & other plants of special interest):

**Parcel 52 Guest House (Hollister Ranch, Santa Barbara County)  
Grounds for Appeal**

*Oak trees, because they are particularly sensitive to environmental conditions, shall be protected. All land use activities, including cultivated agriculture and grazing, should be carried out in such a manner as to avoid damage to native oak trees. Regeneration of oak trees on grazing lands should be encouraged.*

**Policy 9-36 Native Plant Communities:**

*When sites are graded or developed, areas with significant amounts of native vegetation shall be preserved. All development shall be sited, designed, and constructed to minimize impacts of grading, paving, construction of roads or structures, runoff, and erosion on native vegetation. In particular, grading and paving shall not adversely affect root zone aeration and stability of native trees.*

**Sec. 35-53. Overlay District Designations and Applicability. (in relevant part)**

*...If any of the provisions of the overlay district conflict with provisions of the zoning district regulations, the provisions which are most restrictive shall govern... The provisions of the ESH Overlay District are more restrictive than any base zone district and therefore the provisions of the ESH shall govern over the regulations of any base zone or other overlay district.*

**Sec. 35-97.3. Identification of Newly Documented Sensitive Habitat Areas.**

*If a newly documented environmentally sensitive habitat area, which is not included in the ESH Overlay District, is identified by the County on a lot or lots during application review, the provisions of Secs. 35-97.7. - 35-97.19. shall apply. The County will periodically update the application of the ESH Overlay District to incorporate these new habitat areas (including the 250 foot area around the habitat).*

**Sec. 35-97.7. (Conditions on Coastal Development Permits in ESH):**

*A coastal development permit may be issued subject to compliance with conditions set forth in the permit which are necessary to ensure protection of the habitat area(s). Such conditions may, among other matters, limit the size, kind, or character of the proposed work, require replacement of vegetation, establish required monitoring procedures and maintenance activity, stage the work over time, or require the alteration of the design of the development to ensure protection of the habitat. The conditions may also include deed restrictions and conservation and resource easements. Any regulation, except the permitted or conditionally permitted uses, of the base zone district may be altered in furtherance of the purpose of this overlay district by express condition in the permit.*

**Sec. 35-97.10. Development Standards for Native Grassland Habitats.**

- 1. Grazing shall be managed to protect native grassland habitats.*
- 2. Development shall be sited and designed to protect native grassland areas.*

**Sec. 35-97.18. Development Standards for Native Plant Community Habitats.**

*Examples of such native plant communities are: coastal sage scrub, chaparral, coastal bluff, closed cone pine forest, California native oak woodland (also individual oak trees), endangered and rare plant species as designated by the California Native Plant Society, and other plants of special interest such as endemics.*

- 1. Oak trees, because they are particularly sensitive to environmental conditions, shall be protected. All land use activities, including cultivated agriculture and grazing, should be carried out in such a manner as to avoid damage to native oak trees. Regeneration of oak trees on grazing lands should be encouraged.*



**Parcel 52 Guest House (Hollister Ranch, Santa Barbara County)  
Grounds for Appeal**

***2. When sites are graded or developed, areas with significant amounts of native vegetation shall be preserved. All development shall be sited, designed, and constructed to minimize impacts of grading, paving, construction of roads or structures, runoff, and erosion on native vegetation. In particular, grading and paving shall not adversely affect root zone aeration and stability of native trees.***

According to the Final Mitigated Negative Declaration (February 16, 2007) for the project, construction of the guest house, driveway, and hammerhead turnaround would result in the permanent loss of approximately 0.19 acres (~8,275 sq. ft.) of purple Needlegrass habitat. The negative declaration also asserts that an additional 0.06 acre (~2,600 sq. ft) of purple Needlegrass habitat would be impacted as a result of fire clearance activities.

The Negative Declaration reports that “improvements to portions of Segundo Road (Hollister Ranch common road) would necessitate the removal of 5 oak trees and potential construction-related impacts could impact several additional oak trees.” Additionally, the installation of a 5,000 gallon water tank to serve the guest house and fire clearance activities (100 foot clearance around the structure) have the potential to result in significant impacts to existing oak woodland habitat and chaparral habitat. No individual trees are expected to be removed as a result of either construction of the development or fire clearance. However, the Negative Declaration notes that individual trees could be limbed as part of the fire clearance activities.

The project approved by the County is for a new guest house on a lot where a single family residence has already been previously approved by Santa Barbara County pursuant to Permit 02CDH-00000-00008 and is currently under construction. However, a review of Commission records indicates that although the entire project site is located within the appealable jurisdiction of the certified LCP, no Final Local Action Notice for the single family residence was processed by the Commission. Regardless, the single family residence would constitute the primary use for the subject property and the new proposed guest house would constitute a non-essential accessory use.

In addition, as approved by the County, development on the subject parcel would not be clustered since the new guest house would be located hundreds of feet in distance from the primary residence, would not utilize shared/overlapping fuel modification zones, and would require improvements to a 300 ft. long access road that would only serve the guest house. Further, the project would have impacts to native grassland and oak woodland environmentally sensitive habitat areas inconsistent with the LCP policies mentioned above. In its approval of the permit, the County did not analyze alternatives to reduce the impacts, either through alternative siting or the no project alternative.

The Negative Declaration for the project indicates that the subject site and the surrounding area are predominantly vegetated with native grasses, including purple needle grass. Native grasslands constitute an environmentally sensitive habitat area (ESHA). Section 30240 of the Coastal Act, as incorporated in the LCP, requires that “environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.” Section 30240, as incorporated in the LCP, restricts development on the parcel to only those uses that are dependent on the resource. The

**Parcel 52 Guest House (Hollister Ranch, Santa Barbara County)**  
**Grounds for Appeal**

applicant proposes to construct a new guest house on the parcel, which would result in the loss of ESHA habitat area and vegetation within the guest house building pad and driveway areas, as well as within those areas where fuel modification would be required for fire protection purposes. As residential development (including guest houses) do not have to be located within ESHAs to function, the Commission does not consider these uses to be dependent on ESHA resources. Application of Section 30240, as incorporated in the LCP, by itself, would require denial of the project, because the project would result in significant disruption of habitat values and is not a use dependent on those sensitive habitat resources.

However, the Commission must also consider the Supreme Court decision in *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 112 S.Ct. 2886. The subject of what government action results in a “taking” was addressed by the U.S. Supreme Court in *Lucas v. South Carolina Coastal Council*. In *Lucas*, the Court identified several factors that should be considered in determining whether a proposed government action would result in a taking. For instance, the Court held that where a permit applicant has demonstrated that he or she has a sufficient real property interest in the property to allow the proposed project, and that project denial would deprive his or her property of all economically viable use, then denial of the project by a regulatory agency might result in a taking of the property for public use unless the proposed project would constitute a nuisance under State law. Another factor that should be considered is the extent to which a project denial would interfere with reasonable investment-backed expectations.

The Commission interprets the *Lucas* decision, to mean that if denial of the project, by either the Commission or a local government implementing its LCP, would deprive an applicant’s property of all reasonable economic use, then it may be necessary to allow some development even where a Coastal Act or LCP policy would otherwise prohibit it, unless the proposed project would constitute a nuisance under state law. In other words, Section 30240 of the Coastal Act, as incorporated in the LCP, cannot be read to deny all economically beneficial or productive use of land because Section 30240, as incorporated in the LCP, cannot be interpreted to require the Commission or the local government to act in an unconstitutional manner.

While the applicant is entitled to an assurance that the Commission or local government will not act in such a way as to take their property, this section does not authorize the Commission or local government to avoid application of the policies of the LCP, including Section 30240, altogether. Instead, the Commission or the local government is only directed to avoid construing these policies in a way that would take property. Aside from this instruction, the local government is still otherwise directed to enforce the requirements of the LCP. Therefore, in this situation, the both the local government and the Commission must still comply with Section 30240, as incorporated in the LCP, by avoiding impacts that would disrupt and/or degrade environmentally sensitive habitat, to the extent this can be done without a taking of the property.

However, as previously discussed, the County has previously approved other residential development on the site, including a single family residence on the northern portion of the property and the Negative Declaration for the project indicates that the property is

**Parcel 52 Guest House (Hollister Ranch, Santa Barbara County)**  
**Grounds for Appeal**

presently being utilized as part of the Hollister Ranch grazing cooperative. These uses indicate that the property already realizes an economically viable use. Further, the ongoing construction of the single family residence on the property has already resulted in the loss of ESHA within areas of the site. Construction of the new proposed accessory structure (guest house) would result in even greater loss of ESHA. Additionally, removal of habitat area for such residential development and the presence of human activity on the site will result in impacts to the ESHA that will remain on the site through habitat fragmentation and disturbance through noise, lighting, and other impacts.

The only alternative that could avoid these impacts would be the “no project” alternative. Since a single family residence was previously approved by the County on the site and the Negative Declaration indicates that the property is presently part of the Hollister Ranch grazing cooperative, the applicant has already realized a reasonable economic use of the property. Thus, in regards to the new proposed guest house, the “no project” alternative is considered feasible as it would not prevent the applicant from a reasonable economic use of the property. However, the County did not address this alternative in its analysis in its findings for approval of this project.

Another alternative includes siting the proposed guest house in a different area of the property in order to cluster development, reduce or eliminate additional fuel modification requirements and eliminate the need to construct additional roads. Clustering the proposed guest house in the northern area of the site where the primary residence is already under construction, would allow for an overlap in fuel modification and brushing areas required for the primary residence and the proposed guest house, thereby reducing the total amount of vegetation removal required. Additionally, construction of a guest house adjacent to the primary residence would eliminate the requirement to make improvements to an approximately 300 ft. long access road. However, the County did not address this alternative in its analysis in its findings for approval of this project.

Thus, for the reasons discussed above, a substantial issue exists regarding the proposed project relative to its consistency with the LCP policies regarding environmentally sensitive habitat areas, native grassland and oak woodland habitats.

## CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST DISTRICT OFFICE  
89 SOUTH CALIFORNIA STREET, SUITE 200  
VENTURA, CA 93001-4508  
VOICE (805) 585-1800 FAX (805) 641-1732



## APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Commissioner Sara Wan, California Coastal Commission

Mailing Address: 89 So. California St.

City: Ventura

Zip Code: 93001

Phone: 805-585-1800

SECTION II. Decision Being Appealed

1. Name of local/port government:

County of Santa Barbara

2. Brief description of development being appealed:

Construction of a new 795 sq. ft. guesthouse with attached 589 sq. ft. garage below, retaining walls, and approx. 800 cu. yds of grading. An existing ranch road would be improved to Fire Department standards and would serve as teh access driveway for the project. A 5,000 gallon water tank would be installed directly above the guesthouse in order to provide potable water and fire response. Improvements would be made to Segundo Road (a private Hollister Ranch comon road) as required by the Co. Fire Dept. Five oak trees would be removed for road improvements.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

Parcel 52, Gaviota Area, Unincorporated Santa Barbara County (Assessor Parcel No. 083-680-003)

4. Description of decision being appealed (check one.):

- ☐ Approval; no special conditions  
☒ Approval with special conditions:  
☐ Denial

**Note:** For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

**TO BE COMPLETED BY COMMISSION:**

APPEAL NO:

A-4-STB-07-052

DATE FILED:

May 31, 2007

DISTRICT:

South Central Coast

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)**

5. Decision being appealed was made by (check one):

- ☒ Planning Director/Zoning Administrator
- ☐ City Council/Board of Supervisors
- ☐ Planning Commission
- ☐ Other

6. Date of local government's decision: April 9, 2007

7. Local government's file number (if any): 06CDH-00000-00036

**SECTION III. Identification of Other Interested Persons**

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

HR52 Partnership c/o Michael Parsons, 49 Asher Ave, Los Gatos, CA 95030

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) None

(2)

(3)

(4)

## **APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)**

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#### **PLEASE NOTE:**

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See attached



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT  
Page 3

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SEE ATTACHED  
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SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: Laura J. Wan  
Appellant or Agent

Date: May 31, 2007

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_



**Parcel 52 Guest House (Hollister Ranch, Santa Barbara County)  
Grounds for Appeal**

**Exhibit A**

Appeal of decision by Santa Barbara County granting a coastal development permit for the construction of a 795 sq. ft. guesthouse with attached 589 sq. ft. garage, improvements to an existing 300 ft. long access road, improvements to Segundo Road, water tank, and 800 cu. yds. of grading located on Parcel 52, Hollister Ranch, Santa Barbara County, based on the following grounds:

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LCP Policies 1-1, 1-2, 9-18, 9-35, 9-36; Coastal Act Sections 30107.5 and 30240 as incorporated into the LCP pursuant to Policy 1-1; and Article II of the Zoning Code Sections 35-53, 35-97.3, 35-97.7, 35-97.10, and 35-97.18 (see below) limit development in and around environmentally sensitive habitat areas, native grassland and oak woodland habitats. Additionally, these policies provide that development must be sited and designed to prevent impacts to these resources.

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Policy 1-2 (Resource Protection):

***Where policies within the land use plan overlap, the policy which is most protective of coastal resources shall take precedence.***

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**Parcel 52 Guest House (Hollister Ranch, Santa Barbara County)  
Grounds for Appeal**

*Oak trees, because they are particularly sensitive to environmental conditions, shall be protected. All land use activities, including cultivated agriculture and grazing, should be carried out in such a manner as to avoid damage to native oak trees. Regeneration of oak trees on grazing lands should be encouraged.*

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*...If any of the provisions of the overlay district conflict with provisions of the zoning district regulations, the provisions which are most restrictive shall govern... The provisions of the ESH Overlay District are more restrictive than any base zone district and therefore the provisions of the ESH shall govern over the regulations of any base zone or other overlay district.*

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*If a newly documented environmentally sensitive habitat area, which is not included in the ESH Overlay District, is identified by the County on a lot or lots during application review, the provisions of Secs. 35-97.7. - 35-97.19. shall apply. The County will periodically update the application of the ESH Overlay District to incorporate these new habitat areas (including the 250 foot area around the habitat).*

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**Sec. 35-97.10. Development Standards for Native Grassland Habitats.**

- 1. Grazing shall be managed to protect native grassland habitats.*
- 2. Development shall be sited and designed to protect native grassland areas.*

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*Examples of such native plant communities are: coastal sage scrub, chaparral, coastal bluff, closed cone pine forest, California native oak woodland (also individual oak trees), endangered and rare plant species as designated by the California Native Plant Society, and other plants of special interest such as endemics.*

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**Parcel 52 Guest House (Hollister Ranch, Santa Barbara County)  
Grounds for Appeal**

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According to the Final Mitigated Negative Declaration (February 16, 2007) for the project, construction of the guest house, driveway, and hammerhead turnaround would result in the permanent loss of approximately 0.19 acres (~8,275 sq. ft.) of purple Needlegrass habitat. The negative declaration also asserts that an additional 0.06 acre (~2,600 sq. ft) of purple Needlegrass habitat would be impacted as a result of fire clearance activities.

The Negative Declaration reports that “improvements to portions of Segundo Road (Hollister Ranch common road) would necessitate the removal of 5 oak trees and potential construction-related impacts could impact several additional oak trees.” Additionally, the installation of a 5,000 gallon water tank to serve the guest house and fire clearance activities (100 foot clearance around the structure) have the potential to result in significant impacts to existing oak woodland habitat and chaparral habitat. No individual trees are expected to be removed as a result of either construction of the development or fire clearance. However, the Negative Declaration notes that individual trees could be limbed as part of the fire clearance activities.

The project approved by the County is for a new guest house on a lot where a single family residence has already been previously approved by Santa Barbara County pursuant to Permit 02CDH-00000-00008 and is currently under construction. However, a review of Commission records indicates that although the entire project site is located within the appealable jurisdiction of the certified LCP, no Final Local Action Notice for the single family residence was processed by the Commission. Regardless, the single family residence would constitute the primary use for the subject property and the new proposed guest house would constitute a non-essential accessory use.

In addition, as approved by the County, development on the subject parcel would not be clustered since the new guest house would be located hundreds of feet in distance from the primary residence, would not utilize shared/overlapping fuel modification zones, and would require improvements to a 300 ft. long access road that would only serve the guest house. Further, the project would have impacts to native grassland and oak woodland environmentally sensitive habitat areas inconsistent with the LCP policies mentioned above. In its approval of the permit, the County did not analyze alternatives to reduce the impacts, either through alternative siting or the no project alternative.

The Negative Declaration for the project indicates that the subject site and the surrounding area are predominantly vegetated with native grasses, including purple needle grass. Native grasslands constitute an environmentally sensitive habitat area (ESHA). Section 30240 of the Coastal Act, as incorporated in the LCP, requires that “environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.” Section 30240, as incorporated in the LCP, restricts development on the parcel to only those uses that are dependent on the resource. The

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applicant proposes to construct a new guest house on the parcel, which would result in the loss of ESHA habitat area and vegetation within the guest house building pad and driveway areas, as well as within those areas where fuel modification would be required for fire protection purposes. As residential development (including guest houses) do not have to be located within ESHAs to function, the Commission does not consider these uses to be dependent on ESHA resources. Application of Section 30240, as incorporated in the LCP, by itself, would require denial of the project, because the project would result in significant disruption of habitat values and is not a use dependent on those sensitive habitat resources.

However, the Commission must also consider the Supreme Court decision in *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 112 S.Ct. 2886. The subject of what government action results in a “taking” was addressed by the U.S. Supreme Court in *Lucas v. South Carolina Coastal Council*. In *Lucas*, the Court identified several factors that should be considered in determining whether a proposed government action would result in a taking. For instance, the Court held that where a permit applicant has demonstrated that he or she has a sufficient real property interest in the property to allow the proposed project, and that project denial would deprive his or her property of all economically viable use, then denial of the project by a regulatory agency might result in a taking of the property for public use unless the proposed project would constitute a nuisance under State law. Another factor that should be considered is the extent to which a project denial would interfere with reasonable investment-backed expectations.

The Commission interprets the *Lucas* decision, to mean that if denial of the project, by either the Commission or a local government implementing its LCP, would deprive an applicant’s property of all reasonable economic use, then it may be necessary to allow some development even where a Coastal Act or LCP policy would otherwise prohibit it, unless the proposed project would constitute a nuisance under state law. In other words, Section 30240 of the Coastal Act, as incorporated in the LCP, cannot be read to deny all economically beneficial or productive use of land because Section 30240, as incorporated in the LCP, cannot be interpreted to require the Commission or the local government to act in an unconstitutional manner.

While the applicant is entitled to an assurance that the Commission or local government will not act in such a way as to take their property, this section does not authorize the Commission or local government to avoid application of the policies of the LCP, including Section 30240, altogether. Instead, the Commission or the local government is only directed to avoid construing these policies in a way that would take property. Aside from this instruction, the local government is still otherwise directed to enforce the requirements of the LCP. Therefore, in this situation, the both the local government and the Commission must still comply with Section 30240, as incorporated in the LCP, by avoiding impacts that would disrupt and/or degrade environmentally sensitive habitat, to the extent this can be done without a taking of the property.

However, as previously discussed, the County has previously approved other residential development on the site, including a single family residence on the northern portion of the property and the Negative Declaration for the project indicates that the property is

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presently being utilized as part of the Hollister Ranch grazing cooperative. These uses indicate that the property already realizes an economically viable use. Further, the ongoing construction of the single family residence on the property has already resulted in the loss of ESHA within areas of the site. Construction of the new proposed accessory structure (guest house) would result in even greater loss of ESHA. Additionally, removal of habitat area for such residential development and the presence of human activity on the site will result in impacts to the ESHA that will remain on the site through habitat fragmentation and disturbance through noise, lighting, and other impacts.

The only alternative that could avoid these impacts would be the “no project” alternative. Since a single family residence was previously approved by the County on the site and the Negative Declaration indicates that the property is presently part of the Hollister Ranch grazing cooperative, the applicant has already realized a reasonable economic use of the property. Thus, in regards to the new proposed guest house, the “no project” alternative is considered feasible as it would not prevent the applicant from a reasonable economic use of the property. However, the County did not address this alternative in its analysis in its findings for approval of this project.

Another alternative includes siting the proposed guest house in a different area of the property in order to cluster development, reduce or eliminate additional fuel modification requirements and eliminate the need to construct additional roads. Clustering the proposed guest house in the northern area of the site where the primary residence is already under construction, would allow for an overlap in fuel modification and brushing areas required for the primary residence and the proposed guest house, thereby reducing the total amount of vegetation removal required. Additionally, construction of a guest house adjacent to the primary residence would eliminate the requirement to make improvements to an approximately 300 ft. long access road. However, the County did not address this alternative in its analysis in its findings for approval of this project.

Thus, for the reasons discussed above, a substantial issue exists regarding the proposed project relative to its consistency with the LCP policies regarding environmentally sensitive habitat areas, native grassland and oak woodland habitats.