

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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W18a

Appeal Filed: 07/06/18
 49th Day: Waived
 Staff: M. Sinkula - V
 Staff Report: 09/27/18
 Hearing Date: 10/10/18



STAFF REPORT: APPEAL
SUBSTANTIAL ISSUE

APPEAL NO.: A-4-STB-18-0041

APPLICANT: Rancho Cuarta, General Partnership

APPELLANTS: Commissioner Peskin and Commissioner Groom

LOCAL GOVERNMENT: County of Santa Barbara

LOCAL DECISION: Coastal Development Permits (Nos. 15CDH-00000-00041 and 16CDH-00000-00037) approved with conditions by Zoning Administrator on June 4, 2018

PROJECT LOCATION: Parcel 136 of Hollister Ranch, Santa Barbara County (APN 083-700-032)

PROJECT DESCRIPTION: Construction of an 800 sq. ft., 16-ft. tall single-family residence with a 151 sq. ft. attached mechanical space, a 586 sq. ft. detached guest house with a 56 sq. ft. attached mechanical space, a 68 sq. ft. detached mechanical space, a 24 sq. ft. accessory structure, a 120 sq. ft. greenhouse, and a 120 sq. ft. generator shed, replacement of an existing destroyed onsite access bridge, resurfacing of portions of an existing onsite access road, and installation of roof-mounted solar panels, a solar hot water system, a wastewater treatment system, one wind turbine, two cattle troughs, two 5,000-gallon water tanks, and native/drought tolerant landscaping.

STAFF RECOMMENDATION: Substantial Issue Exists

MOTION & RESOLUTION: Pages 7-8

NOTE: The Commission will not take public testimony during this “substantial issue” phase of the appeal hearing unless at least three commissioners request it. If the Commission finds that the appeal raises a substantial issue, it will schedule the de novo phase of the hearing for a future meeting, during which it will take public testimony. Written comments may be submitted to the Commission during either phase of the hearing.

SUMMARY OF STAFF RECOMMENDATION: SUBSTANTIAL ISSUE EXISTS

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal has been filed. The **motion** and **resolution** for a “no substantial issue” finding (for which a “no” vote is recommended) are found on **pages 7-8**.

The standard of review for this phase of the appeal is whether a substantial issue exists with respect to the grounds raised by the appellants relative to the project’s conformity with the policies contained in the certified County of Santa Barbara Local Coastal Program (LCP) and/or the public access policies of the Coastal Act. Pursuant to the Coastal Act, the Commission shall hear all appeals and act on them de novo unless it determines that no substantial issue exists with respect to the grounds on which the appeal has been filed. In other words, there is a presumption that the Commission will hear appeals, and it takes a majority vote of commissioners present to decide that an appeal does not raise a substantial issue and therefore to *not* hear an appeal. Here, the appellants contend that the approved project is not consistent with the policies and provisions of Santa Barbara County’s certified Local Coastal Program (LCP) and the Coastal Act regarding the provision of public access and opportunities for recreation, including Land Use Plan (LUP) Policies 2-15, 7-1, 7-2, and 7-18, Coastal Zoning Ordinance (IP/CZO) Section 35-50, and Coastal Act Sections 30210, 30212, 30220, 30221, 30223, 30610.3 and 30610.8.

Santa Barbara County approved two coastal development permits for new development on an unoccupied parcel within Hollister Ranch. Development permitted pursuant to the first permit includes an 800 sq. ft., 16-ft. tall single-family residence with a 151 sq. ft. attached mechanical space, a 586 sq. ft. detached guest house with an attached 56 sq. ft. mechanical space, a 68 sq. ft. detached mechanical space, a 24 sq. ft. accessory structure, a 120 sq. ft. greenhouse, and a 120 sq. ft. generator shed; resurfacing of portions of an existing onsite road; installation of roof-mounted solar panels, a solar hot water system, a wastewater treatment system, one wind turbine, two cattle troughs, two 5,000-gallon water tanks, and native/drought tolerant landscaping. Development permitted pursuant to the second permit includes removal of existing debris from a destroyed bridge that crossed Cuarta Creek and provided access to the site, installation of a new 54-ft. pre-fabricated span bridge, installation of four caissons outside of the top of bank of Cuarta Creek to support the new bridge, installation of sandstone riprap to minimize erosion and undercutting of existing riparian vegetation along the toe of the creek bank, and restoration of riparian habitat along the creek. Grading for the project includes 618 cu. yds. of cut and 318 cu. yds. of fill, and excess cut is proposed for use onsite to complete the access road improvements. All structural development is proposed to take place within a 2-acre envelope and the residential development and accessory structures approved by the County in the first coastal development permit described above will be a minimum of 100 ft. from the outer extent of the riparian habitat along Cuarta Creek. In addition, the project does not propose the removal of any trees onsite.

The County approved the development described above through two separate permit actions due to the fact that vehicular access to the subject parcel currently does not exist. The proposed installation of a new bridge onsite, pursuant to the second permit described above, would restore vehicular access to the project site that is needed to complete soil testing to finalize the design of the proposed new septic system. The County is required to approve the

design of the proposed new septic system before issuance of the separate permit for the residence, guest house, and accessory development.

Both the Coastal Act and the County's certified LCP prioritize the public's right to access the shoreline and require the balanced provision of maximum public access as a component of new development. For almost four decades, the homeowners association, property owners, and representatives of the Hollister Ranch subdivision have challenged the Coastal Commission's requirement for the implementation of public access to the Hollister Ranch coastline. This public access requirement has been administered through individual development permit conditions applied by the Commission and through legislation (Assembly Bill 643 (1979) and Assembly Bill 321 (1982)) that created an in-lieu fee program to fund the "expeditious" and "timely" implementation of a coastal access program at Hollister Ranch. However, to date, implementation of public access to the Hollister Ranch coastline has not been fulfilled, either through use of the in-lieu fees collected or pursuant to a permit or action taken by the County.

In its approval of the two subject permits, the County required one payment of the \$5,000 in-lieu fee specified in Coastal Act Section 30610.8. In addition, the prior owner of this parcel was required to, and did, make an offer to dedicate public access easements to and along the coast in Hollister Ranch. However, although those easements were accepted by the Coastal Conservancy, they have never been opened and their validity is the subject of current litigation. Thus, the intent of the Coastal Act and the County's LCP to expeditiously provide public access to the coastline of Hollister Ranch has not been met. The County's approval of new development on Hollister Ranch without the provision of public access raises questions regarding the development's consistency with the policies of the Coastal Act and the County's LCP that require an expeditious implementation of public access at Hollister Ranch.

To determine whether the appeal raises a substantial issue, the Commission considers the following five factors: 1) the degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP; 2) the extent and scope of the development as approved or denied by the local government; 3) the significance of coastal resources affected by the decision; 4) the precedential value of the local government's decision for future interpretation of its LCP; and 5) whether the appeal raises only local issues, or those of regional or statewide significance.

In this case, the County's findings did not specifically address the implementation of public access as a requirement of approval for development on Hollister Ranch. The County's findings state that Coastal Act Section 30610.8 requires a \$5,000 fee be provided by the permit applicant "in lieu of granting public access to the beach." However, this is an incomplete description of the provision's requirements. Section 30610.8 requires an in-lieu payment to be assessed with the issuance of each permit in Hollister Ranch so that public access can be provided in an "expeditious" and "timely manner"; this provision was not intended by the Legislature to require collection of fees as a permanent substitute for granting public access to Hollister Ranch. Accordingly, there is inadequate factual evidence and legal support for the County's decision. The provision of public access at Hollister Ranch represents a significant coastal resource, as evidenced by legislation enacted to ensure its provision and the priority and protections it is given in both the County's LCP and the Coastal Act. The County's decision to approve further

development of Hollister Ranch without prior or concurrent implementation of a public access program could also have a significant precedential value for future CDP decisions because future development projects on Hollister Ranch could continue to pay in lieu fees without there ever being an actual program that provides public access to the coastline. Lastly, the subject appeal not only raises local public access issues, but also has implications on regional and statewide public access, as no public access to or along the coastline currently exists for the 30-mile stretch of coast that extends from Gaviota State Park (one mile to the east of Hollister Ranch) to Jalama Beach Park. Along the 64 miles of shoreline in North Santa Barbara County, there are only four areas that amount to 1.3 miles of coastline available for public use. The Hollister Ranch coastline provides unique visual and recreational opportunities and habitat values, and none of these coastal resources are currently available to members of the public; rather, they are available—only to those owning land along this stretch of coast, their guests, or those who travel to this area by boat and remain solely on public tidelands on the beach.

The staff therefore recommends that the Commission determine that a substantial issue exists with respect to the grounds raised by Commissioners Peskin and Groom in the subject appeal because there are questions as to whether the two permits approved by Santa Barbara County are consistent with the public access and recreational policies and provisions of the County's certified LCP and the public access policies of the Coastal Act.

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APPENDIX A: Substantive File Documents

EXHIBITS

- Exhibit 1.** Vicinity Map
- Exhibit 2.** Parcel Map
- Exhibit 3.** Aerial Views
- Exhibit 4.** Site Plans, Floor Plans and Elevations
- Exhibit 5.** Final Local Action Notice
- Exhibit 6.** Appeal Form

I. APPEAL JURISDICTION AND PROCEDURES

A. APPEAL PROCEDURES

The Coastal Act provides that after certification of LCPs, a local government's actions on Coastal Development Permit (CDP) applications for development 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 their CDP actions. During a period of ten 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. Appeal Areas

Approvals of CDPs by cities or counties may be appealed if the development authorized is to be located within the appealable areas, which include the areas 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 natural watercourses and lands within 300 feet of the top of the seaward face of a coastal bluff. (Coastal Act § 30603(a)). Any development approved by a County that is not designated as a principal permitted use within a zoning district may also be appealed to the Commission irrespective of its geographic location within the Coastal Zone. (Coastal Act § 30603(a)(4)). Finally, developments which constitute major public works or major energy facilities may be appealed to the Commission. (Coastal Act § 30603(a)(5)).

In this case, the County's CDP approval is appealable to the Coastal Commission because the entire project site is located between the sea and the first public road paralleling the sea.

2. Grounds for Appeal

The grounds for appeal of a local government approval of development shall be limited to an allegation that the development does not conform to the standards set forth in the certified LCP and/or the public access policies set forth in the Coastal Act (See Public Resources Code § 30603(b)(1)).

3. 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 the substantial issue question. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side, at the Chair's discretion, 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.

4. De Novo Permit Hearing

Should the Commission determine that a substantial issue exists, the Commission will consider the CDP application de novo. 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 LCP and, if the development is between the sea and the first public road paralleling the sea, the public access policies of the Coastal Act. If a de novo hearing is held, testimony may be taken from all interested persons.

B. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL

On June 4, 2018, the Zoning Administrator of the County of Santa Barbara approved CDPs 15CDH-00000-00041 and 16CDH-00000-00037 subject to multiple conditions for the construction of a single-family dwelling and associated accessory development and a permit for the replacement of an existing destroyed bridge that once crossed Cuarta Creek. The Zoning Administrator’s approval of the CDPs was not appealed locally (i.e. to the Planning Commission and/or the Board of Supervisors). The Notice of Final Action for the project was received by Commission staff on June 21, 2018 (**Exhibit 5**). The Commissioner’s ten-working day appeal period for this action began on June 22, 2018 and concluded at 5 p.m. on July 6, 2018.

An appeal of the County’s action was filed by Commissioners Peskin and Groom on July 6, 2018, during the appeal period (**Exhibit 6**). Commission staff immediately notified the County, the applicant, and interested parties that were listed on the appeal form of the appeal, and requested that the County provide its administrative record for the permit. The administrative record was received on July 25, 2018 and September 10, 2018.

I. STAFF RECOMMENDATION FOR SUBSTANTIAL ISSUE

MOTION: *I move that the Commission determine that Appeal No. A-4-STB-18-0041 raises NO substantial issue with respect to the grounds on which the appeal has been filed under Section 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 action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present (i.e., a tied vote results in a finding that a “substantial issue” is raised).

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-4-STB-18-0041 raises a **Substantial Issue** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Program and the public access policies of the Coastal Act.

II. FINDINGS AND DECLARATIONS FOR SUBSTANTIAL ISSUE

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND PHYSICAL SETTING

Hollister Ranch extends, east to west, from Gaviota State Park to approximately three miles east of Point Conception and, north to south, from the crest of the Santa Ynez Mountains to the ocean (**Exhibit 1**). The Ranch is a working cattle ranch that has been in operation for over 100 years, totals 14,500 acres, and is subdivided into 100-acre (plus) parcels. The majority of this land is currently undeveloped. The Ranch has approximately 8.5 miles of shoreline that includes several cove beaches.

The subject property is a 160.66-acre parcel (APN 083-700-032) zoned Agriculture II (AG-II-320) that lies approximately two miles inland from the beach and comprises Hollister Ranch Parcel 136 (**Exhibit 2**) in the Gaviota area of northern Santa Barbara County. The site is not developed with any buildings but contains an existing graded road, two existing 30,000-gallon water tanks, an existing water well, existing utility lines, and debris associated with an existing destroyed bridge that previously crossed Cuarta Creek to provide access to the site (**Exhibit 3**).

On June 4, 2018, Santa Barbara County approved two CDPs for new development on the subject parcel that includes (1) an 800 sq. ft., 16-ft. tall single-family residence with a 151 sq. ft. attached mechanical space, a 586 sq. ft. detached guest house with an attached 56 sq. ft. mechanical space, a 68 sq. ft. detached mechanical space, a 24 sq. ft. accessory structure, a 120 sq. ft. greenhouse, and a 120 sq. ft. generator shed; resurfacing of portions of an existing onsite road; installation of roof-mounted solar panels, a solar hot water system, a wastewater treatment system, one wind turbine, two cattle troughs, two 5,000-gallon water tanks, and native/drought tolerant landscaping (**Exhibit 4**); and (2) removal of existing debris from a destroyed bridge, installation of a new 54-ft. pre-fabricated span bridge, installation of four caissons outside of the top of bank of Cuarta Creek to support the new bridge, installation of sandstone riprap to minimize erosion and undercutting of existing riparian vegetation along the toe of the creek bank, and restoration of riparian habitat along the creek.

The subject parcel is defined by Cañada de la Cuarta (“Cuarta Creek”), an intermittent stream that drains down the center of the lot and is flanked by a narrow ribbon of riparian woodland habitat containing arroyo willow thickets and coast live oak. A biological report (Rachel Tierney Consulting, dated April 24, 2017; revised January 25, 2018) completed for the subject development identified the presence of the California red-legged frog within the stream bed of Cuarta Creek. This species is currently listed as threatened under the federal and state Endangered Species Act. The biological report also identified the presence of the coast range

newt, two-striped garter snake, and south western pond turtle, which are all designated as California Listed Species of Special Concern. Additional oak woodland and clusters of oaks are established outside of the riparian habitat. The remainder of the site contains a valley floor and side canyons covered with grasses (native purple needlegrass and non-native annual brome grassland) and chaparral and scrub vegetation (big pod ceanothus chaparral, California sagebrush scrub, and coyotebrush scrub).

The proposed residence and accessory structures would be located in a relatively flat open area surrounded by mild to moderate slopes and over 100 feet west of Cuarta Creek. Grading for the project includes 618 cu. yds. of cut and 318 cu. yds. of fill, and excess cut is proposed for use onsite to complete the access road improvements. The majority of cut proposed is required for the bunkering of the new guest house into an onsite slope. There are no other suitable areas of the site that could be developed with less alteration of the existing terrain, as the remainder of the site is characterized by steep slopes, oak woodland, and dense native vegetation. All structural development is proposed to take place within a 2-acre envelope, and the residential development and accessory structures approved by the County in the first CDP described above will be a minimum of 100 ft. from the outer extent of the riparian habitat along Cuarta Creek. In addition, the project does not propose the removal of any trees onsite.

The County determined that the proposed residence and accessory structures have been sited and designed to avoid environmentally sensitive habitat areas to the maximum extent feasible. The County worked with the applicants to reduce the footprint of development and cluster all proposed buildings and structures to avoid sensitive vegetation. For unavoidable impacts to habitat areas, the County required mitigation. The County has also conditioned its approval of the proposed development to require protective fencing around all sensitive vegetation areas, including riparian habitat and native grassland areas, during construction to prevent any encroachment into and impacts to sensitive habitat areas.

The proposed bridge replacement would occur within the riparian corridor of Cuarta Creek in the same location as the existing, destroyed bridge. The proposed bridge replacement does not require the removal of any existing vegetation. The construction of the new bridge includes the installation of four caissons, with two caissons on each side of the creek and outside of the top of creek bank. The proposed new span bridge does not require any footings or caissons to be located within the creek bed, and no construction would occur within the creek banks. Upon installation of the bridge, 53 cu. yds. of sandstone riprap is proposed to be placed along the southernmost bank of Cuarta Creek. Due to the alignment of the creek corridor, the southernmost bank receives the majority of water flows during the rainy season. The riprap is proposed for the purpose of protecting the creek bank against further erosion and the existing riparian vegetation along the bank from being undercut by stream flows. The County has conditioned its approval of the debris removal and bridge installation to require an Erosion and Sediment Control Plan, restoration of riparian habitat along Cuarta Creek, and biological monitoring to avoid adverse impacts to sensitive species during construction. The permit conditions also limit construction equipment for this portion of the project to the use of hand tools and cranes that will be located outside of the creek.

In order to avoid impacts to the special status wildlife species discussed above, the County has conditioned its approval of the two permits to require preconstruction surveys, a worker education program, and stop work order if such species are discovered during construction activities. No special status bird species were identified during the biological surveys. Due to the fact that special status bird species have the potential to occur at the project site, the County has conditioned its approval of the two permits to require vegetation clearance to take place outside of bird breeding season if possible. If construction does occur during bird breeding season, further biological surveys and implementation of appropriate buffers are required.

B. BACKGROUND AND PERMIT HISTORY

The subject parcel used to be owned by the Young Men's Christian Association (YMCA), which in turn had obtained it from the owners of Hollister Ranch on June 3, 1970, before the Ranch was subdivided into 135 100-acre (plus) parcels in 1971. The owner also conveyed various easements over portions of the Ranch to the YMCA, including easements to a beach location within Hollister Ranch. The grant deed to the YMCA was recorded on June 29, 1970 and expressly authorized the YMCA to have up to 250 campers, staff, and guests on the property daily to use the parcel and its associated easements. The YMCA subsequently applied to the South Central Coast Regional Commission to develop the parcel, and the Commission approved a permit pursuant to public access conditions allowing 150 campers to use the subject parcel for overnight facilities (cabins, dining area, pool, etc.) in conjunction with the provision of public access for 50 campers on another, non-contiguous beachfront parcel also owned by the YMCA at the time. The permit included a condition requiring the YMCA to record a legally binding agreement (an "offer to dedicate," or OTD) to provide public access to and along Cuarta Canyon beach over an easement held by the YMCA. Public access to the beach would be provided by shuttle bus operated by the YMCA and would be limited to 50 people per day. The Hollister Ranch Owners' Association (HROA) appealed the permit to the State Commission, which found No Substantial Issue, and the South Central Coast Regional Commission's conditional approval became final.

The YMCA coastal development permit expressly provides that its "terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions." In 1982, the YMCA recorded the required OTD public access easements and began performance of development under the permit; thus, the permit vested and became binding on all successors-in-interest. The HROA, representing all owners of property in Hollister Ranch, sued the YMCA on June 25, 1982. To settle that litigation, the HROA purchased the YMCA property with the vested permit and acquired all of the YMCA's property interests.

Efforts by the HROA to extinguish the OTD in 1996, 1998, and 2012 were unsuccessful, and the Coastal Conservancy accepted the OTD in 2013. Soon thereafter, the HROA filed suit against the Conservancy and the Commission. In December 2017, the Commission and the Conservancy reached a settlement agreement with the HROA and reached a separate settlement with other plaintiffs in the lawsuit, though the separate settlement requires approval by the court, which has not yet granted such approval. The settlement agreements only address the provision of public access on the beachfront parcel previously owned by YMCA, not the inland parcel that is the

subject of this appeal. However, that access (the OTD) was granted by the then-owner of the inland parcel that is the subject of this appeal.

Separately, during the late 1970s, the Commission approved several permits for new homes within Hollister Ranch, and conditioned each of them to require OTDs providing pedestrian trails, recreation areas, and a shuttle system for transporting the public to the coast. The property owners sued, arguing that they were unable to convey the easements required by their permits because the land underlying the main accessways was owned and controlled by a third party—the HROA. However, before the court could issue a decision on the merits, Assembly Bill 643 was passed to amend the Coastal Act, and the passage of the bill allowed the presiding judge to avoid ruling on the merits of the case.

Assembly Bill 643 revised the Coastal Act to add Section 30610.3, which creates an alternative for owners of subdivided lots to provide comprehensive coastal access when they are unable to provide parcel-by-parcel access through individual permits. This process begins when the Commission formally designates an area as eligible. The Commission then prepares an access program for the area outlining what type of public uses will be permitted, the facilities that will be provided, and how the program will be managed. Once adopted, the Coastal Conservancy is responsible for implementing the program. After Assembly Bill 643 was enacted, the court handling the Hollister property owners' lawsuit recognized the potential to apply this legislation to Hollister Ranch, and remanded the case back to the Commission in July 1980 for further consideration. In September of that year, the Commission adopted a resolution designating Hollister Ranch as an appropriate area for an in-lieu fee program pursuant to Section 30610.3.

Following this designation, staff from the Commission and the Coastal Conservancy worked together to develop an access program for Hollister Ranch. The staff determined that fieldwork would be necessary to accurately evaluate the area's natural resources and to site the proposed access facilities. This fieldwork required surveying the common areas of the Ranch, as well as nineteen private parcels. The HROA allowed staff to visit the common areas; however, fourteen of the nineteen landowners would not give permission for staff to survey their property. After concluding that a survey of only five of the nineteen private parcels would be inadequate, staff was forced to limit its fieldwork to the common areas of the Ranch.

Nevertheless, Commission and Conservancy staff prepared the Hollister Ranch Coastal Access Program based on the limited data available. The program calls for a phased and monitored approach to opening and managing access to the Ranch. It proposes the construction of beach facilities for 100-150 daily users, with pedestrian trails, bicycle paths, and shuttle vans to access those facilities. The program also prioritizes protection of sensitive habitat areas and acknowledges the property owners' privacy needs. Both agencies jointly adopted the program on August 18, 1981 (with revisions adopted in May 1982, and revised findings for those revisions adopted in August 1982).

However, without adequate access to all parcels, the Conservancy could not obtain necessary appraisal data. The Conservancy therefore had no way to determine the cost of acquiring and developing the public access easements proposed in the plan. Without knowing the costs, staff could not calculate the value of the in-lieu fees necessary to fund the program. As a result, the Conservancy was unable to implement the Hollister Ranch Coastal Access Program.

Recognizing that the establishment of an in-lieu fee could be delayed indefinitely if the landowners did not cooperate in the appraisal process, in February 1982, the Legislature passed Assembly Bill 321 (Hannigan, Ch. 42, Stats. Of 1982), which added Section 30610.8 to the Coastal Act. This legislation fixed the amount of the in-lieu fee at Hollister Ranch at \$5,000 per permit and appropriated \$500,000 for expenditure by the Conservancy to implement the access program. After 37 years, the Conservancy has received in-lieu fees totaling \$295,000. To date, implementation of a public access program at the Hollister Ranch has not been fulfilled.

In the local approvals of the two permits that are the subject of this appeal, the County conditioned the permit for the residence and associated accessory development (CDP No. 15CDH-00000-0004) to require one payment of the \$5,000 in-lieu fee. The permit for the removal of the existing destroyed bridge and installation of a replacement bridge (CDP No. 16CDH-00000-00037) was not conditioned by the County to require payment of an in-lieu fee.

C. APPELLANTS' CONTENTIONS

The appeal filed by Commissioners Peskin and Groom is attached as **Exhibit 6**. The appeal grounds assert that the approved project is not consistent with policies and provisions of Santa Barbara County's certified LCP and the Coastal Act regarding the provision of public access and recreational opportunities, including LUP Policies 2-15, 7-1, 7-2, and 7-18, IP/CZO Section 35-50, and Coastal Act Sections 30210, 30211, 30212, 30220, 30221, 30223, 30610.3 and 30610.8.

D. ANALYSIS OF SUBSTANTIAL ISSUE

1. Public Access and Recreation

The appellants assert that the proposed project fails to conform with the following LCP policies and provisions regarding provision of public access and recreational opportunities:

Land Use Plan Policy 1-1 states that all Chapter 3 policies of the Coastal Act have been incorporated in their entirety in the certified County Land Use Plan as guiding policies.

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212 of the Coastal Act states, in relevant part:

- (a) *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agricultural would be adversely effected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

Section 30220 of the Coastal Act states:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30223 of the Coastal Act states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Section 30610.3 of the Coastal Act states, in relevant part:

- (a) *Whenever the Commission determines (1) that public access opportunities through an existing subdivided area, which has less than 75 percent of the subdivided lots built upon, or an area proposed to be subdivided are not adequate to meet the public access requirements of this division and (2) that individual owners of vacant lots in those areas do not have the legal authority to comply with public access requirements as a condition of securing a coastal development permit for the reason that some other person or persons has legal authority, the Commission shall implement public access requirements as provided in this section.*
- (b) *The Commission, on its own motion or at the request of an affected property owner, shall identify an area as meeting the criteria specified in subdivision (a). After an area has been identified, the Commission shall, after appropriate public hearings adopt a specific public access program for the area and shall request that the State Coastal Conservancy, established pursuant to Division 21 (commencing with Section 31 000), implement the program. The access program shall include, but not be limited to, the identification of specific land areas and view corridors to be used for public access, any facilities or other development deemed appropriate, the commission's recommendations regarding the manner in which public access will be managed, and the types of permitted public uses. The State Coastal Conservancy shall, pursuant to its authority, implement the public access program.*
- (c) *The State Coastal Conservancy shall be authorized to expend funds when appropriated from the Coastal Access Account for the purchase of land and view easements and to pay for any development needed to carry out the public access program specified in subdivision (a). Not more than 5 percent of the amount of funds*

- necessary to carry out each public access program may be provided as a grant to the State Coastal Conservancy for its administration incurred in carrying out the access program.*
- (d) *The State Coastal Conservancy may enter into any agreement it deems necessary and appropriate with any state or local public agency or with a private association authorized to perform those functions for the operation and maintenance of any access facilities acquired or developed pursuant to this section.*
- (e) *Every person receiving a coastal development permit or a certificate of exemption for development on any vacant lot within an area designated pursuant to this section shall, prior to the commencement of construction, pay to the commission, for deposit in the Coastal Access Account, an "in-lieu" public access fee. The amount of each fee shall be determined by dividing the cost of acquiring the specified lands and view easements by the total number of lots within the identified area. The proportion of acquisition cost that can be allocated to lots built upon pursuant to permits that were not subject to public access conditions under this division or the California Coastal Zone Conservation Act of 1972 (former Division 18 (commencing with Section 27000)) shall be paid from the Coastal Access Account. An "in-lieu" public access fee may be in the form of an appropriate dedication, in which event the lots to which the dedication can be credited shall not be counted toward the total number of lots used in arriving at the "in-lieu" public access fee share for each remaining lot.*
- (f) *For purposes of determining the acquisition costs specified in subdivision (e), the State Coastal Conservancy may, in the absence of a fixed price agreed to by both the State Coastal Conservancy and the seller, specify an estimated cost based on a formal appraisal of the value of the interest proposed to be acquired. The appraisal shall be conducted by an independent appraiser under contract with the State Coastal Conservancy and shall be completed within 120 days of the adoption of the specific public access program by the commission pursuant to subdivision (b). The appraisal shall be deemed suitable for all purposes of the Property Acquisition Law (Part 11, (commencing with Section 15850 of the Government Code)). For every year following public acquisition of the interests in land specified as part of a public access program and prior to payment of the required "in-lieu" fee, a carrying cost factor equal to 5 percent of the share attributable to each lot shall be added to any unpaid "in-lieu" public access fee provided, however, that a lot owner may pay the "in-lieu" public access fee at any time after public acquisition in order to avoid payment of the carrying cost factor.*

Section 30610.8 of the Coastal Act states:

- (a) *The Legislature hereby finds and declares that a dispute exists at the Hollister Ranch in Santa Barbara County with respect to the implementation of public access policies of this division and that it is in the interest of the state and the property owners at the Hollister Ranch to resolve this dispute in an expeditious*

manner. The Legislature further finds and declares that public access should be provided in a timely manner and that in order to achieve this goal, while permitting property owners to commence construction, the provisions of this section are necessary to promote the public's welfare.

- (b) For purposes of Section 30610.3 and with respect to the Hollister Ranch public access program, the in-lieu fee shall be five thousand dollars (\$5,000) for each permit. Upon payment by the applicant for a coastal development permit of this in-lieu fee to the State Coastal Conservancy for use in implementing the public access program, the applicant may immediately commence construction if the other conditions of the coastal development permit, if any, have been met. No condition may be added to a coastal development permit that was issued prior to the effective date of this section for any development at the Hollister Ranch.*
- (c) It is the intent of the Legislature that the State Coastal Conservancy and the State Public Works Board utilize their authority provided under law to implement, as expeditiously as possible, the public access policies and provisions of this division at the Hollister Ranch in Santa Barbara County.*
- (d) Notwithstanding provision 2 of category (2) of Item 3760-490-721 of the Budget Act of 1984, all in-lieu fees received pursuant to this section shall be deposited in the State Coastal Conservancy Fund and shall be available for appropriation to the conservancy for the purposes specified in subdivision (d) of Section 5096.151.*

Land Use Plan Policy 2-15 states:

The County shall not issue permits for non-exempt development on the Hollister Ranch unless the Coastal Commission certifies that the requirements of PRC Section 30610.3 have been met by each applicant or that the Commission finds that access is otherwise provided in a manner consistent with the access policies of the Coastal Act.

Land Use Plan Policy 7-1 states:

The County shall take all necessary steps to protect and defend the public's constitutionally guaranteed rights of access to and along the shoreline. At a minimum, County actions shall include:

- a. Initiating legal action to acquire easements to beaches and access corridors for which prescriptive rights exist consistent with the availability of staff and funds.*
- b. Accepting offers of dedication which will increase opportunities for public access and recreation consistent with the County's ability to assume liability and maintenance costs.*
- c. Actively seeking other public or private agencies to accept offers of dedications, having them assume liability and maintenance responsibilities, and allowing such agencies to initiate legal action to pursue beach access.*

Land Use Plan Policy 7-2 states, in relevant part:

For all development between the first public road and the ocean granting of an easement to allow vertical access to the mean high tide line shall be mandatory unless:

- a. *Another more suitable public access corridor is available or proposed by the land use plan within a reasonable distance of the site measured along the shoreline, or*
- b. *Access at the site would result in unmitigable adverse impacts on areas designated as “Habitat Areas” by the land use plan, or*
- c. *Findings are made, consistent with Section 30212 of the Act, that access is inconsistent with public safety, military security needs, or that agriculture would be adversely affected, or*
- d. *The parcel is too narrow to allow for an adequate vertical access corridor without adversely affecting the privacy of the property owner. In no case, however, shall development interfere with the public’s right of access to the sea where acquired through use unless an equivalent access to the same beach area is guaranteed.*

Land Use Plan Policy 7-18 states:

Expanded opportunities for access and recreation shall be provided in the Gaviota Coast planning area.

Article II Coastal Zoning Ordinance Section 35-50 states, in relevant part:

The purposes of this ordinance are to:

...

(3) Maximize public access to and along the coast and maximize public recreational opportunities in the Coastal Zone consistent with sound resource conservation principles and constitutionally protected rights of private property owners.

A fundamental goal of the Coastal Act is to “maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone” (Coastal Act § 30001.5, subd. (c)). To achieve this goal, both the Coastal Act and the County’s certified LCP set forth specific policies governing the provision of public access and recreational opportunities, and development along the coast. The Coastal Act, through Sections 30210, 30211, 30212, and the County’s certified LCP, through Policies 7-1 and 7-2 and Section 35-50, prioritize the public’s right to access the shoreline and require the balanced provision of maximum public access as a component of new development. Section 30211 specifically requires that development not interfere with the public’s right of access to the sea. Similarly, Coastal Act Sections 30220, 30221, 30223, and LUP Policy 7-18 prioritize a requirement for the provision and enhancement of public recreational opportunities in areas suitable for such uses.

Despite these requirements to maximize public access and public recreational opportunities and provide such as a component of new development, the HROA, property owners of Hollister Ranch, and representatives of the Hollister Ranch subdivision have challenged the Coastal Commission’s implementation of a public access program at Hollister Ranch for nearly four decades, and public access has not been provided along the YMCA’s easement or in the manner called for in the approved Access Program. In an effort to address the lack of public access at Hollister Ranch, the State Legislature amended the Coastal Act by adding Section 30610.8. This provision created a program to ensure the “expeditious” provision of public access to the coastline of Hollister Ranch by requiring permit applicants to pay a \$5,000 fee prior to

development, which would go toward providing public access. Here, the County of Santa Barbara conditioned the subject permit approvals to require one in-lieu fee payment. In addition, the prior owner of the subject parcel (the YMCA) recorded an offer to dedicate a coastal access easement, which was accepted by the Coastal Conservancy. However, that easement has never been opened to the public and its validity is being challenged in current litigation. Also, past in-lieu fees have not led to any actual coastal access in Hollister Ranch. Thus the prior imposition of the OTD condition has not ensured, and current imposition of the in-lieu fee will not ensure, that public access will be “*provided in a timely manner*”, as called for in Coastal Act Section 30610.8. (emphasis added.) Notwithstanding the Legislature’s clear intent to facilitate the provision of public access to Hollister Ranch, the County has continued to collect in-lieu fees for some of the new development at the Ranch, but the Coastal Conservancy and State Public Works Board have never fulfilled the requirement to carry out the Access Program or to otherwise provide public access and public recreational opportunities at the Ranch, as envisioned in Section 30610.8.

In addition, Policy 2-15 of the County’s certified LUP specifically states that the County shall not issue permits for non-exempt development on Hollister Ranch, such as the subject applications, unless the Coastal Commission certifies that the requirements of Coastal Act Section 30610.3 have been met by each applicant or that the Commission finds that access is otherwise provided in a manner consistent with the access policies of the Coastal Act. In the present case, there is a question as to whether or not the public access provisions of the Coastal Act and LCP have been met because, although the County has been imposing the in-lieu fee on some new development in Hollister Ranch, including on one of the subject permits, it has not led to any actual public access opportunities.

Therefore, the County’s approvals of development on Hollister Ranch without the provision of public access raise a substantial issue regarding the development’s consistency with the policies of the Coastal Act and the County’s LCP that require an expeditious implementation of public access at Hollister Ranch and the provision of public recreational opportunities.

2. Substantial Issue Factors Considered by Commission

The term “substantial issue” is not defined in the Coastal Act or its implementing regulations. The Commission’s regulations indicate simply that the Commission will hear an appeal unless it “finds that the appeal raises no significant question” (Cal. Code Regs., Title 14, § 13115(b)).

In evaluating the issue of whether the appeal raises a substantial issue, the Commission considers the following factors:

1. The degree of factual and legal support for the local government’s decision that the development is consistent or inconsistent with the certified LCP;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of coastal resources affected by the decision;
4. The precedential value of the local government’s decision for future interpretation of its LCP; and

5. Whether the appeal raises only local issues, or those of regional or statewide significance.

In this case, for the reasons discussed below, the Commission determines that the appeal raises a substantial issue with regard to the grounds on which the appeal has been filed.

The first factor in evaluating the issue of whether the appeal raises a substantial issue is the degree of factual and legal support for the local government's decision that the development is consistent with the subject provisions of the certified LCP. In this case, the County's findings did not specifically address the implementation of public access as a requirement for approval of development on Hollister Ranch. The County's findings state that Coastal Act Section 30610.8 requires a \$5,000 fee be provided by the permit applicant "in lieu of granting public access to the beach." However, this is an incomplete description of the provision's requirements. Section 30610.8 requires an in lieu payment to be assessed with the issuance of each permit in Hollister Ranch so that public access can be provided in an "expeditious" and "timely manner"; this provision was not intended by the Legislature to require collection of fees as a permanent substitute for granting public access to Hollister Ranch. In addition, the County's findings for approval of the development did not address or analyze the consistency of the development with the requirements of Coastal Act Sections 30210, 30211, 30212 (incorporated into the LCP through LUP Policy 1-1) or LCP Policies 7-1 and 7-2 and Section 35-50, that prioritize the public's right to access the shoreline and require the balanced provision of maximum public access as a component of new development. Further, the County's findings do not mention or analyze the project's consistency with the requirement to prioritize the provision of public recreational opportunities pursuant to Coastal Act Sections 30220, 30221, 30223 (incorporated into the LCP through LUP Policy 1-1), and LUP Policy 7-18. The findings do not include any factual or legal background describing the historic issue of lack of public access at Hollister Ranch, past efforts to establish access, the amount of in-lieu fees collected so far, any plans for using those fees to provide access, the fact that the YMCA previously provided an OTD for access as part of a development approval for this parcel, or other access issues. Accordingly, there is inadequate factual evidence and legal support for the County's decision that the bare payment of one \$5,000 fee for the two permits renders the development consistent with the LCP's and Coastal Act's access provisions.

The second factor in evaluating the issue of whether the appeal raises a substantial issue is the extent and scope of the development as approved. The subject project approved by the County includes development of an unoccupied parcel on Hollister Ranch that fails to provide public access and constitutes further development of Hollister Ranch without any actual implementation of a public access program to this portion of the Gaviota coastline. The proposed home and outbuildings are modest in size, particularly for this area; however, the development also includes a new bridge that would extend private access to this relatively undeveloped portion of Hollister Ranch. Overall, the extent and scope of development approved by the County is neither particularly significant nor insignificant, and this factor weighs neither in favor nor against finding substantial issue in this case.

The third factor in evaluating the issue of whether the appeal raises a substantial issue is the significance of coastal resources affected by the decision. Public access to the coastline of Hollister Ranch represents a significant coastal resource, as evidenced by the specific legislation

enacted to ensure its provision, the decades of litigation that resulted to compel its provision, as well as the specified priority and protections it is given in both the County's LCP and the Coastal Act.

The fourth factor in evaluating whether the appeal raises a substantial issue is the precedential value of the local government's decision for future interpretation of its LCP. In this case, the County's decision to approve further development on Hollister Ranch without implementation of a public access program could have a significant precedential value for future CDP decisions, because the County could continue to require only the payment of in-lieu fees without there ever being a program to grant public access in Hollister Ranch. The payment of in-lieu fees without ever using such fees to develop a public access program at Hollister Ranch disregards the purpose and intent of Coastal Act Sections 30610.3 and 30610.8 to collect such fees for the *timely* provision of public access to Hollister Ranch.

The final factor in evaluating the issue of whether the appeal raises a substantial issue is whether the appeal raises only local issues, or those of regional or statewide significance. The subject appeal not only raises local public access issues, but also has implications on regional and statewide public access, as no public access to or along the coastline currently exists for the 30-mile stretch of coast that extends from Gaviota State Park (one mile to the east of Hollister Ranch) to Jalama Beach Park. Along the 64 miles of shoreline in North Santa Barbara County, there are only four areas that amount to 1.3 miles of coastline available for public use. The Hollister Ranch coastline provides unique visual and recreational opportunities and habitat values, and none of these coastal resources are available to members of the public—only those owning land along this stretch of coast, their guests, or those who travel to this area by boat. The fact that this is an issue of statewide importance is highlighted by the fact that the Legislature passed—though the Governor has not yet signed—AB 2534, which establishes the means to allow for the implementation of the adopted Coastal Access Program at Hollister Ranch.

In conclusion, the Commission finds that the factors listed above demonstrate that a substantial issue exists in this case. For the reasons discussed in detail above, the appeal raises a substantial issue with respect to the consistency of the approved development with the policies and provisions of the Coastal Act and the County's certified LCP regarding the provision of public access and public recreational opportunities. In evaluating whether the subject appeal raises a substantial issue, the Commission has explicitly addressed several factors that play a part in identifying if the issues raised in an appeal are "significant". The Commission finds that there is not adequate factual and legal support for the County's position that the proposed project complies with LCP policies. The resources at issue have regional and statewide significance. Further, because the County has not ensured that the project conforms to the existing policies and provisions of the LCP and has not provided sufficient evidence to support its decision, the project will have adverse precedential value regarding interpretation of the County's LCP for future projects. Therefore, the Commission finds that a substantial issue exists with respect to the grounds raised by Commissioners Peskin and Groom in the subject appeal, relative to the approved project's conformity to the policies and provisions of the Coastal Act and the County's certified LCP.

3. Public Comment Received

Correspondence received to date is included in the correspondence section of the staff report.

APPENDIX A

Substantive File Documents

Certified Santa Barbara County Local Coastal Plan; Santa Barbara County Zoning Administrator Staff Report dated May 18, 2018 (Nos. 15CDH-00000-00041 and 16CDH-00000-00037) and attachments thereto; Santa Barbara County Notice of Final Action for Coastal Development Permits 15CDH-00000-00041 and 16CDH-00000-00037.