

CALIFORNIA COASTAL COMMISSION

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DATE: June 29, 2018

TO: Commissioners and Interested Parties

FROM: John Ainsworth, Executive Director

SUBJECT: **Informational briefing on the Hollister Ranch settlement agreement.**
No action will be taken by the California Coastal Commission at the July 13, 2018 Commission hearing in Scotts Valley.

SUMMARY

Hollister Ranch in Santa Barbara County has been a working cattle ranch for over 100 years. It is approximately 14,500 acres in size and is located west of Gaviota State Park (See Exhibits 1, 2, 3). The Ranch has about 8.5 miles of shoreline, with several cove beaches. In 1970, the owner of Hollister Ranch sold the YMCA of Metropolitan Los Angeles a parcel of land located immediately inland of Hollister Ranch. The owner also conveyed various easements over portions of the Ranch to the YMCA, including easements to a beach located within Hollister Ranch. The grant deed allowed the YMCA to have up to 250 campers, staff and guests per day. In 1971 (prior to Proposition 20 and the Coastal Act) Hollister Ranch itself was subdivided into a gated community of 135 parcels of about 100 acres each. The codes, covenants, and restrictions (CC&Rs) for the subdivision limit the number of guests that property owners within the Ranch may have at any one time.

In 1980, the South Central Coast Regional Commission approved a Coastal Development Permit (CDP # 309-25) for the YMCA to construct an overnight and day use camp area in the Hollister Ranch area. The permit included a condition requiring the YMCA to record a legally binding agreement 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 easement did not permit any other means of public access to the beach such as vehicular or pedestrian access. The Hollister Ranch Owner's Association (HROA) appealed the permit to the State Commission, which found No Substantial Issue (NSI), and the South Central Coast Regional Commission conditional approval became final.

In 1982, the YMCA recorded the required offer to dedicate lateral and vertical public access easements (OTD) to and along Cuarta Canyon Beach. The YMCA exercised the permit when it

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brought power to the site and began construction. However, the YMCA's approved facilities were never completed, and the HROA purchased the property in 1984, reselling it two years later. Efforts by the HROA to extinguish the OTD in 1996, 1998 and 2012 were unsuccessful, and the OTD was accepted by the Coastal Conservancy in 2013. Soon thereafter the HROA and other plaintiffs filed suit against the Conservancy and the Commission.

In December 2017, the Commission and Conservancy reached a settlement with the HROA. This settlement would allow the public to gain access to the beach only from the ocean, and require a managed access program to bring students and non-profit groups, including those serving underprivileged groups, to various beaches along the Hollister Ranch shoreline. The Commission and the Conservancy have also entered into a proposed class action settlement agreement with the other plaintiffs in the lawsuit. The class action settlement agreement requires court approval.

Because this proposed settlement agreement involves relinquishing a public easement to the beach, the Santa Barbara County Superior Court required public notice regarding the proposed agreement and has allowed members of the public who wish to object to the class action settlement to file a legal motion to intervene in the litigation. Members of the public who wish to submit objections with the court must file a motion to intervene with the court by July 23, 2018.

On June 6, 2018, the Executive Director gave a briefing to the Commission on the status of the pending settlement agreement. Given the number of both Commissioner and public member questions and concerns, the Director decided to hold a noticed Informational briefing regarding the proposed settlement, on July 13, 2018. This briefing is informational only; no vote will be taken by the Commission.

YMCA CDP Background

The public access easements that are the subject of the proposed class action settlement agreement were obtained per permit conditions imposed by the Coastal Commission for approval of the YMCA camp in 1980 (CDP # 309-05). The Commission- approved YMCA camp site was located about 2 miles west of the Hollister Ranch entrance gate. The future camp was to be located on two non-contiguous parcels; an inland parcel (160 acres in size and located about a mile inland from the coast) that would contain overnight facilities (cabins, dining area, pool, etc) for 150 campers and an exclusive easement beach parcel (one acre in size) that would accommodate 50 campers per day.

At the beach parcel, the approved Ocean Camp project included various improvements, including an educational facility, deck, ramp and stairway down to the bluff to the beach. Although the proposed camp project would provide public access opportunities, users needed to be members of the YMCA and also be able and willing to camp overnight. The Commission found that general public day use opportunities must also be provided to be consistent with the Coastal Act. The Commission found that as the YMCA was establishing a large scale recreational facility, would operate a shuttle service from the Hollister Ranch gate for its members and guests, and would provide supervision, maintenance and cleanup of the beach area, the YMCA therefore had the capability to provide for the facility as well as provide for an additional 50 general day-use visitors. Therefore, the Commission required that the YMCA

record an agreement to allow public access onto an approximately $\frac{3}{4}$ mile long stretch of beach adjacent to the Ocean Camp and to allow up to 50 people per day to be brought to the beach via a shuttle bus.

The OTD provided for shuttle access on the main ranch road, a vertical easement from the road towards the beach along Cuarta Canyon, to and along 3880 linear ft. (approx. $\frac{3}{4}$ mile) of Cuarta Canyon Beach. It included a bluff top trail for times when the beach was impassible. The OTD also provided that access to the beach for 50 members of the general public would be provided by a shuttle bus from Gaviota State Park. The OTD was irrevocable for 21 years, running from 10 years after recordation date.

On April 3, 2013, Santa Barbara County conducted a public hearing to consider accepting the OTD. The County decided not to accept the OTD. By law the State Coastal Conservancy is required to accept any OTD within 90 days of expiration, therefore the Conservancy accepted the OTD on April 26, 2013. The HROA and other plaintiffs filed suit soon thereafter.

Although the YMCA exercised the permit by commencing construction of camp facilities on the inland parcel, it did not build any of the approved facilities for the Ocean Camp, open any campground facilities, or establish the shuttle bus system. The HROA purchased the YMCA's interest as part of the settlement of litigation it brought against the YMCA to prevent construction of the camp. Thus the infrastructure and services that would have supported and facilitated the public's ability to get to and use the beach were never built or implemented.

The Public Access Easements are held by the Conservancy; opening them for public use would require several steps. As the Conservancy is not a park district with ranger staff, a managing agency would need to be contracted with to create, operate and maintain the shuttle system (the easement only allows access by shuttle bus), the beach trail, the tunnel, the chute and beach area (restroom facilities were not approved).

At for the trailhead at Cuarta Canyon, the Easement follows along a grassy slope which turns into a riparian area, then to a 10 ft. high concrete tunnel that empties onto the beach. This tunnel structure goes through an embankment that supports an overhead train track that spans Cuarta Creek. A seasonal creek flows through the tunnel and daylights on the beach. Fluctuations in creek flow and sand levels create changing situations that would affect the public's ability to use the tunnel. When the creek is flowing, the tunnel floor is covered with water, and depth depends upon the amount of rain. Debris from the upper watershed lodges in the tunnel, and may include slippery rocks, downed wood, brush, logs, etc. The tunnel itself is unlit; making it difficult to see where to safely place footsteps. At the terminus of the tunnel is a concrete chute that exits onto the beach. As the beach sand levels rise and fall, the chute can be located several feet above the sand level (requiring a jump down onto the beach) or the sand level can be so high as to almost block off the exit of the chute (requiring sand removal by shovel). (See Exhibits 4 and 5).

Legislative History and Public Access Program

The YMCA permit was not the first attempt to open public access at Hollister Ranch. During the late 1970s, the Commission approved several permits for new homes within Hollister Ranch, and

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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, a bill was passed in Sacramento, AB 643 (Calvo, Ch.919, Stats of 1979) that amended the Coastal Act and allowed the judge to avoid ruling on the merits.

In the first few years following the passage of the Coastal Act, dozens of bills were introduced every session to refine, clarify, amend or repeal various sections of the Act. Assembly Bill 643, introduced by Assemblyman Victor Calvo (D-Merced) in 1979, was one of these. The bill made numerous substantive changes to the Coastal Act, primarily focused on streamlining or eliminating procedures for various types of coastal development permits. The bill added several new sections to the Public Resources Code, including Section 30610.3(a)-(g), creating an alternative for providing comprehensive coastal access in a planned community which would alleviate the obligation for individual property owners to provide parcel-by-parcel access. The 30610.3 process begins when the Commission formally designates an area as eligible, and 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.

But first, the Conservancy must determine the cost of acquiring the necessary access easements. In the absence of a fixed price agreed to by both the Conservancy and the seller, the Conservancy must specify an estimated acquisition cost based on a formal appraisal of the access areas. Once a fixed cost is determined, that total figure is divided to calculate an appropriate in-lieu fee. Thereafter, any lot owner who receives a coastal development permit must pay the in-lieu fee, but will not be required to provide access directly. The Conservancy may use the in-lieu funds for acquisition and facilities development. (Note: The Conservancy may not acquire property for public access through eminent domain, unless the Legislature specifically authorizes it do so through a budget act. The Legislature has never provided such authorization.)

After AB 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 30610.3.¹

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 field work would be necessary to accurately evaluate the area's natural resources and to site the proposed access facilities. This field work required surveying the common areas of the Ranch as well as 19 private parcels. The HROA allowed staff to visit the common areas. However, most of the

¹ The YMCA parcel was not part of the Hollister Ranch subdivision, so it was not subject to the in lieu fee provisions of Sections 30610.3 and 30610.8.

landowners would not give permission for staff to survey their property. After concluding that a survey of only 5 parcels would be inadequate, staff was forced to limit its field work 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 revised findings adopted August 1982).

However, without necessary appraisal data, the Conservancy 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 Public Resources Code. This legislation fixed the amount of the in-lieu fee at Hollister Ranch at \$5,000 and appropriated \$500,000 for expenditure by the Conservancy to implement the access program. The bill did not include any provision for adjusting the fee for inflation. After 37 years, the Conservancy has received in-lieu fees totaling \$295,000. Periodic attempts to revisit the feasibility of implementing the Hollister Access Plan have stalled, as the HROA continues to cite privacy and environmental concerns.

The fate of the YMCA easement is a matter of heightened public interest because it is very likely the only access easement that will ever exist at Hollister Ranch, unless sufficient funding² is made available to the Conservancy to implement the Hollister Ranch Access Plan.

Litigation

On May 31, 2013, the HROA, the Hollister Ranch Cooperative, and three individuals who own property within Hollister Ranch filed suit against the Commission and the State Coastal Conservancy. The lawsuit also contains class action allegations on behalf of others who own property within Hollister Ranch. The lawsuit alleges that the YMCA did not have the right to record the OTD because it did not own fee title to the properties subject to the OTD, that the OTD and the certificate that the Conservancy recorded accepting the OTD were legally deficient, that the easements identified in the OTD were unenforceable because they conflicted with the Hollister Ranch CC&Rs, that those who acquired property in Hollister Ranch after the OTD was recorded acquired their property free and clear of the OTD because it wasn't in their chain of title, and that the easements constitute a taking of plaintiffs' property without just compensation.

² While not sufficient, an additional source of some funding is a \$1,000,000 in lieu fee was paid to the County, per CDP (E-85-2) approved by the Commission to Chevron for the Point Arguello pipeline project, to be used for future public access improvements at Hollister Ranch.

Over the course of several rulings in response to multiple motions filed during the litigation, the trial court ruled that the statute of limitations bars the plaintiffs from pursuing claims that attack the Commission's decisions in 1980 and 1982, including its approval of the YMCA's permit; the conditions that the Commission included in the permit; and the Commission's authority to require the YMCA to record the OTD. The court, however, also ruled that the statute of limitations does not bar the plaintiffs from pursuing claims that the YMCA lacked the right to convey the easements described in the OTD or from pursuing other claims related to the Conservancy's acceptance of the OTD in 2013.

On the merits of plaintiffs' claims, the court ruled that the YMCA lacked the authority to grant easements over areas that the YMCA did not own in fee, including the beach and the road and trail easements leading towards or along the beach. The court, however, allowed the Commission and the Conservancy to defend the OTD and its acceptance as an "irrevocable license" allowing public access to the areas identified in the OTD. The court further ruled that unresolved factual issues precluded a final ruling regarding whether the OTD and acceptance constituted an irrevocable license until after trial. Similarly, the court ruled that disputed issues of fact regarding the plaintiffs' claims that the OTD was void and that the OTD did not bind those who purchased property within the Ranch after it was recorded could only be resolved at trial. Copies of the court rulings summarized here are available on the Commission's website: <https://www.coastal.ca.gov/hollister-ranch/>. The court ordered the case to be tried in three phases. The first phase was set for trial in May 2017.

Settlement

At a pre-trial mandatory settlement conference, the parties entered into settlement negotiations. The Commission and the Conservancy approved the settlement in duly-noticed closed sessions in November 2017 and the HROA approved the settlement at its membership meeting in December 2017. Under that settlement agreement, the Commission and the Conservancy agreed to extinguish the OTD, abandon the Conservancy's certificate of acceptance of the OTD, and disclaim any claims for rights of public access based on the OTD or the certificate of acceptance. In exchange, the HROA agreed that the area of the beach described in the OTD would be subject to an irrevocable license allowing passive recreational use by members of the public. The public's use of the license beach area would be subject to a number of restrictions. These include a requirement that access to the beach be only from the ocean, limits on the sizes of boats and kayaks that could be brought onto the beach above the mean high tide line, and a prohibition on commercial activities. Commercial operators may transport members of the public to the beach so long as boats in the license beach area do not exceed the size limits. The license is irrevocable, except that it automatically terminates if a public agency initiates a condemnation process for any property within the Ranch for obtaining public access or recreational use or facilities for public access.

In addition, the HROA agreed to provide public access through the Hollister Ranch Managed Access Program (Program). The Program will consist of two elements: the Tidepool School Program for K-12th grade students and the Non-Profit Access Program. The Tidepool School Program must provide at least 24 opportunities per year. Each opportunity must allow for at least 20 participants.

The Non-Profit Access Program will provide 20 opportunities per year by the end of a five-year phase in period, with at least seven opportunities on weekends. At least seven non-profit opportunities must be provided during the first year of the Program. Organizations eligible to participate in the Program must be a non-profit or not-for-profit entity that provides outdoor educational and recreational experiences. When selecting groups to participate in the Program, the Conservancy and the HROA may consider a group's mission to provide services to individuals such as the disabled, children, or underserved populations who would benefit from therapeutic, recreational, or educational experiences on the coast.

As with the Tidepool School Program, each non-profit opportunity must allow for at least 20 participants. Each non-profit opportunity must be allowed to be on Ranch property for at least four hours. Opportunities provided through the Program may occur on any beach within the Ranch with appropriate facilities and features. The Managed Access Program automatically terminates under the same circumstances that would cause termination of the irrevocable license.

The settlement agreement with the HROA requires the Commission and the Conservancy to execute the quitclaim extinguishing the OTD and abandoning the Conservancy's certificate of acceptance only after the judgment resolving all the claims by all the plaintiffs in the litigation is final. The judgment becomes final once any appellate review is completed or the deadline for seeking appellate review has expired.

The Commission and the Conservancy have also entered into a related proposed class action settlement with the other plaintiffs in the litigation. Under the proposed class action settlement, the plaintiffs, including all members of the alleged classes of Hollister Ranch property owners, would waive all claims related to the allegations in the lawsuit or to the settlement agreement between the Commission, the Conservancy, and the HROA, including claims based on the irrevocable license or the managed access program. The Commission and the Conservancy, in turn, would execute the quitclaim extinguishing the OTD and abandoning the Conservancy's certificate of acceptance once the stipulated judgment in the case becomes final.

Judicial Review of Settlement and Public's Opportunity to Intervene

Because the proposed settlement agreement would resolve class action claims, it requires approval by the court. The court has provided preliminary approval of the proposed settlement and approved the notice that must be provided to class members (i.e., those who own property within Hollister Ranch) in order to give them an opportunity to present any objections to the proposed settlement. In addition, because the proposed settlement involves abandonment of certain disputed rights of public access, the court required notice to be provided to the public at large in order to provide an opportunity for members of the public who may object to the proposed settlement to move to intervene in the litigation.

Under the court's order, any member of the public who wishes to present objections regarding the proposed class action settlement agreement to the court must file a motion to intervene in the litigation pursuant to California Code of Civil Procedure section 387 no later than July 23, 2018. Any substantive comments to the court regarding the settlement agreement must also be filed by that date. The court's hearing on whether to approve the proposed class action settlement agreement is scheduled to occur on September 10, 2018, at 1:30 p.m. The public notice

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regarding the proposed settlement provides additional detail regarding where to file the motion and regarding mailing copies of the motion to the attorneys for the parties to the litigation. Any member of the public interested in filing a motion to intervene should consult with an attorney regarding whether and how to do so.

To date the Commission has received 798 public comments in response to this informational hearing on the settlement agreement (See attached Correspondence). The overwhelming majority of these comments are opposed to the proposed settlement agreement.

EXHIBITS

Exhibit 1 – Vicinity Map

Exhibit 2 – Hollister Ranch and Gaviota State Park area

Exhibit 3 – Easement overview

Exhibit 4 - Cuarta Canyon Photo

Exhibit 5 - Easement photos

CORRESPONDENCE

Public Comment letters (798 to date – June 20, 2018)

Additional Information

The Coastal Commission website -- <https://www.coastal.ca.gov/hollister-ranch/> -- contains additional background materials.