CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT OFFICE
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Th10b

Appeal Filed: 2/21/19
49th Day: 5/1/19
Staff: M. Kubran - V
Staff Report: 3/21/19
Hearing Date: 4/11/19

STAFF REPORT: APPEAL SUBSTANTIAL ISSUE

APPEAL NO.:	A-4-STB-19-0014
APPLICANT:	Joanne Williamson
APPELLANTS:	Commissioner Peskin and Commissioner Uranga
LOCAL GOVERNMENT:	County of Santa Barbara
LOCAL DECISION:	Coastal Development Permit (No. 18CDH-00000-00004) approved with conditions by the Director of the Planning and Development Department on December 12, 2018
PROJECT LOCATION:	Parcel 83 of Hollister Ranch, Santa Barbara County (APN 083-690-002)
PROJECT DESCRIPTION:	After-the-fact approval of an 8 ft. by 13 ft. pool, 308 sq. ft. pool/spa enclosure, 72 sq. ft. generator shed, ground mounted solar arrays, 192 sq. ft. garage/equipment shed, and 180 sq. ft. wine cellar that was converted to storage.
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 LCP and the Coastal Act regarding the provision of public access and opportunities for recreation, including Land Use Plan Policies 2-15, 7-1, 7-2, and 7-18, Gaviota Coast Plan Development Standard REC-3, Coastal Zoning Ordinance Section 35-50, and Coastal Act Sections 30210, 30211, 30212, 30220, 30221, 30223, 30610.3 and 30610.8.

On December 12, 2018, Santa Barbara County approved a CDP for after-the-fact approval of the six unpermitted residential accessory structures on Parcel No. 84 on Hollister Ranch. The approved structures include an 8 ft. by 13 ft. pool, 308 sq. ft. pool/spa enclosure, 72 sq. ft. generator shed, ground mounted solar arrays, 192 sq. ft. garage/equipment shed, and a 180 sq. ft. wine cellar that was converted to storage (Exhibit 3). In addition to the aforementioned accessory structures, the site is developed with a legally-existing single-family residence and agricultural and other accessory structures. The accessory structures subject to this appeal are located within approximately 150 ft. of the existing single-family residence.

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 certain new development. 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. Coastal Act Section 30610.3 imposes a public access-related fee on development of certain vacant lots within particular, subdivided areas such as Hollister Ranch, and Coastal Act Section 30610.8(b), which is a more specific statutory provision that was adopted later, provides more detail regarding how this fee must be assessed for property within Hollister Ranch. Specifically, it states that "the fee shall be five thousand dollars ($5,000) for each permit," in lieu of granting public access to/from each individual property, in order to mitigate for the potential impacts to public access in that area. Policy 2-15 of the County's LCP includes reference to the requirement provided by Section 30610.3, and the County has typically been requiring the fee as a condition of coastal development permits issued in Hollister Ranch. The property's existing single-family residence was approved prior to the effective date of the Coastal Act, so no fee had been previously required for the residential development of this parcel.

Recently, and prior to the County's action on the subject CDP, the Gaviota Coast Plan was certified by the Commission as a component of the County's LCP. Gaviota Coast Plan Development Standard REC-3 references Coastal Act Section 30610.8, which is the more specific statutory provision, and clarifies that a $5,000 in-lieu fee shall be assessed with each coastal development permit issued for development in Hollister Ranch. The payments collected through the in-lieu fee program are designated to be used for a public access program to the coastline of the ranch. However, 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, and, to date, implementation of public access on Hollister Ranch has not been fulfilled, either through use of the in-lieu fees collected to-date or pursuant to a permit or action taken by the County.

In its approval of the subject permit, the County included an analysis of Policy 2-15, but did not provide an analysis of the project with regards to Gaviota Coast Plan Development Standard REC-3. Additionally, the County incorrectly stated in its findings that a "one-time" $5,000 fee was required to be paid in-lieu of providing public access to the beach. Since Development Standard REC-3 specifically requires payment of the in-lieu fee required by Section 30610.8 for each coastal development permit issued for development in Hollister Ranch, the County's findings to support its decision to approve the subject permit are inconsistent with the County's LCP. Moreover, 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 did not condition the subject permit to require the in-lieu fee consistent with Land Use Plan Policy 2-15 and Gaviota Coast Plan Development Standard REC-3 or provide adequate findings to support its decision. Additionally, the County's findings did not specifically address the implementation of public access as a requirement of approval for development on Hollister Ranch. 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." Therefore, 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 requiring payment of the in-lieu fee consistent with the policies of the LCP and without prior or concurrent implementation of a public access program could also have a significant precedential value for future CDP decisions. By requiring payment of the $5,000 in-lieu fee, but labeling it as a "one-time" fee, future development on the subject parcel would presumably not be conditioned to require payment of the in-lieu fee. These findings could be applied on projects across Hollister Ranch, and future development could continue to proceed either without payment of such fees, or with payment of the in-lieu fees but 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 applicant provided a letter to the Commission that was received on March 11, 2019 (Exhibit 6). The letter does not raise any additional issues with regards to the appellant's contentions that are not addressed in the staff report. Staff therefore recommends that the Commission determine that a substantial issue exists with respect to the grounds raised by Commissioners Peskin and Uranga in the subject appeal, because there are questions as to whether the permit approved by Santa Barbara County is 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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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 December 12, 2018, the Director of the Planning and Development Department for the County of Santa Barbara approved CDP 18CDH-00000-00004 subject to conditions for after-the-fact approval of an 8 ft. by 13 ft. pool, 308 sq. ft. pool/spa enclosure, 72 sq. ft. generator shed, ground mounted solar arrays, 192 sq. ft. garage/equipment shed, and 180 sq. ft. wine cellar that was converted to storage. The Planning Director's approval of the CDP 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 February 6, 2019 (Exhibit 4). The Commissioner's ten working day appeal period for this action began on February 6, 2019 and concluded at 5 p.m. on February 21, 2019.

An appeal of the County's action was filed by Commissioners Peskin and Uranga on February 21, 2019, during the appeal period (Exhibit 5). 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 March 5, 2019.

II. STAFF RECOMMENDATION FOR SUBSTANTIAL ISSUE

MOTION: ***I move that the Commission determine that Appeal No. A-4-STB-19-0014 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-19-00014 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.

III. 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 101.91-acre parcel (APN 083-690-002) zoned Agriculture II (AG-II-320) that lies approximately two miles inland from the beach and comprises Hollister Ranch Parcel 83 (Exhibit 2) in the Gaviota area of Santa Barbara County. The site is developed with a legally-existing single-family residence, agricultural accessory structures, and six unpermitted residential accessory structures. On December 12, 2018, Santa Barbara County approved a CDP for after-the-fact approval of the six unpermitted accessory structures: an 8 ft. by 13 ft. pool, 308 sq. ft. pool/spa enclosure, 72 sq. ft. generator shed, ground mounted solar arrays, 192 sq. ft. garage/equipment shed, and a 180 sq. ft. wine cellar that was converted to storage (Exhibit 3). The approved pool is partially above ground and partially below ground. The approved project also includes a total of 4 cu. yds. of as-built cut and 30 cu. yds. of as-built imported fill. The subject accessory structures are located within approximately 150 ft. of the existing single-family residence.

B. BACKGROUND AND PERMIT HISTORY

In 1971 Hollister Ranch was subdivided into 135 100-acre (plus) parcels. During the late 1970s, the Commission approved several permits for new homes within Hollister Ranch, and conditioned each of them to require offers to dedicate (OTDs) to provide pedestrian trails, recreation areas, and a shuttle system for transporting the public to the coast at the ranch. 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 Hollister Ranch Owners' Association (HROA). However, before the court issued 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 appropriately 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). The Commission is currently working with sister agencies and the public to solicit input on potential changes and updates to the program.

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. To date, implementation of a public access program at Hollister Ranch has not been fulfilled.

On November 7, 2018, prior to the County's action on the subject CDP, the Commission certified the Gaviota Coast Plan, which functions as a stand-alone area plan that is a component of the County's LCP. Certification of the Gaviota Coast Plan applied new goals, policies, and development standards developed specifically for the Gaviota Coast Plan area, which includes Hollister Ranch. These goals, policies, and development standards address protection of

environmental resources, agricultural resources, and public access among other land use issues. Development within the plan area also continues to be subject to the policies and provisions of the remainder of the County's LCP. One of the Gaviota Coast Plan development standards (Development Standard REC-3) reflects Coastal Act Section 30610.8, which requires payment of a fee for each coastal development permit issued for development in Hollister Ranch. In the local approval of the permit that is the subject of this appeal, the County required payment of the $5,000 in-lieu fee, but the County's findings incorrectly state that it is a "one-time" fee. This is inconsistent with Gaviota Coast Plan Development Standard REC-3 and Coastal Act Section 30610.8, which require payment of the $5,000 in-lieu fee for each permit issued for development at Hollister Ranch.

C. APPELLANTS' CONTENTIONS

The appeal filed by Commissioners Peskin and Uranga is attached as Exhibit 5. 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 Gaviota Coast Plan Development Standard REC-3, Land Use Plan (LUP) Policies 2-15, 7-1, 7-2, and 7-18, Implementation Plan/Coastal Zoning Ordinance (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.

Gaviota Coast Plan Development Standard REC-3 (Hollister Ranch Public Access) states:

In order to mitigate for the potential impacts to public access from the development of Hollister Ranch, a fee consistent with Section 30610.8 of the California Public Resources Code shall be required as a condition of each coastal development permit issued for

development in Hollister Ranch.

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 Hollister Ranch Owner's Association (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. As described in more detail above, the State Legislature amended the Coastal Act by adding Section 30610.3, and the more specific Section 30610.8, to address the lack of public access at Hollister Ranch. Together, these Coastal Act Sections specifically require a $5,000 in-lieu fee to be assessed with each permit for development in Hollister Ranch. The assessed fees are required in lieu of granting public access to/from each individual property in order to mitigate for the impacts of not providing public access at Hollister Ranch on an individual property basis. The collected fees are designated to go toward implementing a public access program to the coastline of the ranch.

In 1982, Santa Barbara County's LCP was initially certified and included Policy 2-15, which references the requirement provided by Section 30610.3. However, the LCP did not contain the more detailed requirement provided by Section 30610.8. Nonetheless, Santa Barbara County has typically been requiring this fee as a condition of coastal development permits, and as of 2013, the County had collected $290,000. However, to ensure that applicants, decision-makers, and the public are aware of the specific provision of 30610.8 as it applies to Hollister Ranch, Development Standard REC-3 was included in the recently certified Gaviota Coast Plan. The Gaviota Coast Plan is a component of the County's LCP and applies specifically to the Gaviota Coast area, including Hollister Ranch. Gaviota Coast Plan Development Standard REC-3, which references Coastal Act Section 30610.8, requires permit applicants to pay a $5,000 fee prior to development, which would go toward providing public access to the coastline of Hollister Ranch. In this case, Santa Barbara County conditioned the permit to require the $5,000 in-lieu fee, but incorrectly found that the required payment would be a "one-time" fee. The existing single-family residence was approved for development prior to the effective date of the Coastal Act, so no fee had been previously required for this property. Even though an in-lieu fee had not been required when the subject parcel was initially developed with a residential use, the County's findings to require a "one-time" fee are inconsistent with Gaviota Coast Plan Development Standard REC-3 and Coastal Act Section 30610.8, which specifically require payment of an in-lieu fee for each permit issued for development at Hollister Ranch. By requiring payment of the $5,000 in-lieu fee, but labeling it as a "one-time" fee, future development on the subject parcel would presumably not require payment of the in-lieu fee as a condition of approval.

Additionally, by requiring in-lieu fees, the intent of Coastal Act Section 30610.8 was to create a program to ensure the "expeditious" provision of public access to the coastline of Hollister Ranch. Although the County has collected in-lieu fees for some of the new development at the

Ranch, past in-lieu fees have not led to any actual coastal access in Hollister Ranch. Thus, imposition of the in-lieu fee condition has not ensured 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 Land Use Plan (LUP) specifically states that the County shall not issue permits for non-exempt development on Hollister Ranch, such as the subject application, 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, the County made incorrect findings with regards to Policy 2-15, Gaviota Coast Plan Development Standard REC-3, and Coastal Act Sections 30610.3 and 30610.8. Additionally, 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, it has not led to any actual public access opportunities.

Therefore, the lack of requiring an in-lieu fee consistent with Policy 2-15 and Gaviota Coast Plan Development Standard REC-3, as well as the County's approvals of this and other 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 made incorrect findings to support its decision and did not condition the subject permit consistent with Policy 2-15 and Gaviota Coast Plan Development Standard REC-3. Instead of requiring the in-lieu fee payment consistent with Gaviota Coast Plan Development Standard REC-3, the County conditioned the subject permit to require a "one-time" $5,000 fee. Even though an in-lieu fee had not been required for development of the existing single-family residence, since that development was approved prior to the effective date of the Coastal Act, the County's findings to require a "one-time" fee are inconsistent with Gaviota Coast Plan Development Standard REC-3 and Coastal Act Section 30610.8, which specifically require payment of an in-lieu fee for each permit issued for development at Hollister Ranch. By requiring payment of the $5,000 in-lieu fee, but labeling it as a "one-time" fee, future development on the subject parcel would presumably not require payment of the in-lieu fee as a condition of approval. This is inconsistent with Policy 2-15 and the more specific provisions of Gaviota Coast Plan Development Standard REC-3, which require payment of a $5,000 in-lieu fee consistent with Coastal Act Section 30610.8 for each coastal development permit issued for development at Hollister Ranch. Therefore, the County's approval of the subject development is inconsistent with the certified LCP.

Additionally, Section 30610.8 requires that an in-lieu payment 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. The County's findings did not specifically address the implementation of public access as a requirement for approval of development on Hollister Ranch nor did the findings 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 the 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, or other access issues. Accordingly, there is inadequate factual evidence and legal support that the County's decision to determine the project is consistent with the public access provisions of the LCP and Coastal Act.

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 after-the-fact approval of six residential accessory structures on a developed parcel at Hollister Ranch. The approved structures are within approximately 150 ft. of the existing single-family residence on the parcel. Overall, the extent and scope of the subject 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 incorrectly stated in its findings that Policy 2-15 and Coastal Act Section 30610.3 require a "one-time" fee in-lieu of providing public access to the beach. Further, the County did not analyze whether the project was consistent with the more specific provisions of Gaviota Coast Plan Development Standard REC-3 and Coastal Act Section 30610.8, which require payment of an in-lieu fee for each coastal development permit issued for development at Hollister Ranch. Further, if the County does not require projects to be consistent with these provisions there will be fewer funds available for the implementation of the public access program at Hollister Ranch. Additionally, 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; rather it is available only to 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 did not sign—AB 2534, which would have established 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 Uranga in the subject appeal, relative to the approved project's conformity to the relevant policies and provisions of the Coastal Act and the County's certified LCP.

APPENDIX A

Substantive File Documents

Certified Santa Barbara County Local Coastal Plan, Gaviota Coast Plan, and Coastal Zoning Ordinance; Santa Barbara County Planning and Development Memorandum dated December 13, 2018 (No. 18CDH-00000-00004) and attachments thereto; Santa Barbara County Notice of Final Action for Coastal Development Permit 18CDH-00000-00004.