

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST DISTRICT OFFICE  
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**F14a**

Appeal Filed: 12/14/18  
 SI Found: 2/07/19  
 De Novo Action: Denial  
 Action Date: 5/09/19  
 Revised Findings  
 Staff Report: 8/29/19  
 Hearing Date: 9/13/19

**STAFF REPORT: REVISED FINDINGS**

**APPLICATION NO.:** A-4-STB-18-0074

**APPLICANT:** Wall Family Trust

**PROJECT LOCATION:** Parcel 36 of Hollister Ranch, Santa Barbara County  
(APN 083-670-011)

**PROJECT DESCRIPTION:** Construction of a 60 ft. by 16 ft. swimming pool, detached 8 ft. by 12 ft. in-ground spa, and associated equipment. The permit approval also includes excavation of 89 cu. yds. of soil to be exported off site.

**COMMISSION ACTION:** Denial

**DATE OF COMMISSION ACTION:** May 9, 2019

**COMMISSIONERS ON THE PREVAILING SIDE:** Bochco, Aminzadeh, Brownsey, Groom, Howell, Luevano, Padilla, Mann, Uranga, and Vargas

**SUMMARY OF COMMISSION ACTION**

On May 9, 2019, the Coastal Commission denied the subject coastal development permit (CDP) by a vote of 10-0. Because the Commission action differed from the staff recommendation of approval with conditions, this report contains revised findings to reflect the Commission's action to deny the permit application. Commissioners who are eligible to vote on the revised findings are those from the prevailing side who were present at the May 9, 2019 hearing (Commissioners Bochco, Aminzadeh, Brownsey, Groom, Howell, Luevano, Padilla, Mann, Uranga, and Vargas). Changes to the findings are shown in ~~strike through~~ and underline starting on page 4.

At the May 9, 2019 hearing, the Commission found that the proposed project was inconsistent with the LCP's policies and provisions that protect public access in the County's Coastal Zone, as well as the applicable policies of the Coastal Act that protect public access, which have been incorporated into the County's Land Use Plan. Specifically, Policy 2-15 of the County's Land Use Plan prohibits issuance of coastal development permits for development at Hollister Ranch

unless the 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. Because public access and public recreational opportunities have not been provided at Hollister Ranch in the manner called for by the Coastal Act and LCP, and are not proposed to be provided concurrently with new development in this case, the Commission found the proposed development to be inconsistent with Policy 2-15 and related provisions of the LCP and Coastal Act.

**STAFF RECOMMENDATION ON REVISED FINDINGS**

Staff is recommending that the Commission adopt the following revised findings in support of the Commission's action on May 9, 2019 to deny Coastal Development Permit No. A-4-STB-18-0074. The motion to accomplish this recommendation is found on Page 4 of this staff report.

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**EXHIBITS**

- Exhibit 1 - Vicinity Map**
- Exhibit 2 - Parcel Map**
- Exhibit 3 - Site Plan**
- Exhibit 4 - Aerial Views**

## I. MOTION AND RESOLUTION

**MOTION:** *I move that the Commission adopt the revised findings in support of the Commission's action on May 9, 2019 concerning its denial of Coastal Development Permit No. A-4-STB-18-0074.*

### **STAFF RECOMMENDATION TO ADOPT REVISED FINDINGS:**

Staff recommends a **YES** vote on the following motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the revised findings hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

### **RESOLUTION TO ADOPT REVISED FINDINGS:**

*The Commission hereby adopts the findings set forth below in support of its May 9, 2019, denial of Coastal Development Permit No. A-4-STB-18-0074 on the grounds that the findings support and accurately reflect the reasons for the Commission's May 9, 2019 denial of the permit.*

## II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

### **A. PROJECT DESCRIPTION AND PHYSICAL SETTING**

The subject coastal development permit (CDP) is for development within Hollister Ranch. The 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 101.95-acre parcel (APN 083-670-011) ~~zoned Agriculture II (AG-II-320)~~ that lies approximately three quarters of a mile inland from the beach and comprises Hollister Ranch Parcel 36 in the Gaviota area of Santa Barbara County (**Exhibit 2**). The site is developed with a single-family residence, guesthouse, and barn (**Exhibit 3**). The subject property is zoned Agriculture II (AG-II-320), which requires a minimum lot size of 320 acres, and the purpose of which "is to establish agricultural land use for large prime and non-prime lands in the rural areas of the County (minimum 40 to 320 acre lots) and to preserve prime and non-prime soils for long-term agricultural use." (Article II, Coastal Zoning Ordinance, Section 35-69.1.)

On November 15, 2018, Santa Barbara County approved a CDP for construction of a 60 ft. by 16 ft. swimming pool, detached 8 ft. by 12 ft. in-ground spa, associated equipment, and excavation of 89 cu. yds. of soil to be exported off site (**Exhibit 4**).

The proposed swimming pool and spa would be located adjacent to and just south of the existing residence. The associated pool and spa equipment would also be located west of the residence. The project involves grading but does not propose the removal of any trees or native vegetation.

## **B. BACKGROUND AND LOCAL 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) easements 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, b~~Before the court issued a decision on the merits, Assembly Bill 643 was passed to amend the Coastal Act to add Section 30610.3, and the ~~passage of the bill allowed the presiding judge to avoid ruling~~ declined to rule 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 January 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 then 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~~ expectations. 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~~ Hollister Ranch property, 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 required by Section 30610.3. 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 in 1982 and appropriated \$500,000 for expenditure by the Conservancy to implement the access program. When adding Sections 30610.3 and 30610.8 ~~were added~~ to the Coastal Act, the Legislature's intent was to create an in-lieu fee program to allow ~~for~~ initial development at Hollister Ranch ~~to proceed~~ without applicants having to wait for ~~the~~ final resolution of the actual provision of public access, while simultaneously securing funds ~~for~~ toward the ultimate goal of providing public access to the Ranch's coastline. However, the Legislature also intended for the access programs to result in timely public access, as evidenced in Section 30610.8, which states that "public access should be provided in a timely manner." To date, implementation of a public access program at Hollister Ranch has not been fulfilled.

In 1982, the YMCA – then an owner of a parcel at Hollister Ranch that it purchased prior to the Ranch's subdivision – recorded an Offer to Dedicate a public access easement (OTD) over Hollister Ranch Road and 3,880 feet of beach to satisfy a condition of approval to construct camp and beach facilities. The OTD contemplated a YMCA-operated transit system to bring up to 50 members of the public per day from Gaviota State Beach to Cuarta Canyon. From Cuarta Canyon, the public would hike down Cuarta Creek through a drainage tunnel to access the sandy beach. After 1982, the HROA sued the YMCA, which resulted in the HROA purchasing the YMCA property and the YMCA discontinuing operations. In 2013, the Coastal Conservancy accepted the OTD, which had not expired. Subsequently, the HROA and a plaintiff class of Hollister Ranch property owners – including the owner of the subject property and all but one owner at Hollister Ranch – sued the Coastal Conservancy and Coastal Commission to invalidate the public access easement. This litigation is ongoing.

In 2018, Assemblymember Limón authored a bill, AB 2534, that, among other things, would have clarified existing law and created funding mechanisms to provide public access to the public's tide and submerged lands within Hollister Ranch. On September 30, 2018, Governor Brown vetoed AB 2534 stating, "this bill relies on the implementation of a coastal access program adopted in 1982...it is now outdated." Governor Brown asked that state agencies "work together to craft a sensible and fiscally responsible plan." Accordingly, On March 1, 2019, the staffs of the Coastal Commission, State Lands Commission, Coastal Conservancy, and Department of Parks and Recreation entered into an inter-agency Collaboration Agreement to further the State of California's public policy of responsibly expanding and enhancing the public's access to and along the coast and the public's cultural, educational and recreational experiences at Hollister Ranch. The purpose of this Agreement is to ~~establish a framework for effective and efficient communication and collaboration among the agencies to~~ develop a new, contemporary Public Access Program informed by meaningful and comprehensive public

outreach and stakeholder engagement in a timely manner. As such, the effort of public outreach and engagement to develop a contemporary Public Access Program is currently underway.

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 CDP issued for development in Hollister Ranch.

In the local approval of the permit that is the subject of this appeal, the County did not require payment of the \$5,000 in-lieu fee. Additionally, the County does not have a record of in-lieu fees being paid in connection with prior County coastal development permits issued for any of the existing development on the property, which includes a single-family residence and guesthouse approved for development in 2001, a barn approved in 2010, and an accessory storage structure approved in 2011.

### **C. PUBLIC ACCESS AND RECREATION**

The following policies and provisions of the Santa Barbara County LUP and the associated Implementation Plan/Coastal Zoning Ordinance (IP/CZO) standards provide for the provision of public access and recreational opportunities in the coastal zone of Santa Barbara County. In addition, Policy 1-1 of the LUP incorporates the Chapter Three policies of the Coastal Act as guiding policies of the LCP. Additionally, the project must be consistent with the Coastal Act's public access and recreation policies because it is located between the first public road and the sea.

#### **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.

Additionally, as described in more detail above, the State Legislature amended the Coastal Act by adding Section 30610.3, and the more detailed Section 30610.8, to specifically address the lack of public access at Hollister Ranch. Together, these Coastal Act Sections 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 subdividing and developing the Ranch and not providing public access 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. 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 as a condition of each coastal development permit prior to development, which would go toward providing public access to the coastline of Hollister Ranch. However, this policy does not supersede or limit Coastal Act Section 30610.8, which still applies and which states that actual public access should be provided in a timely manner.

The proposed project consists of a swimming pool, spa, and associated pool equipment located adjacent to the existing single-family residence and would not result in any biological or visual resource impacts. The project as proposed does not include the in-lieu fee payment as required by LUP Policy 2-15 and Gaviota Coast Plan Development Standard REC-3, and the proposed project therefore does not meet the standards of LUP Policy 2-15 and Coastal Act Section 30610.3. Moreover, even if the in-lieu fee had been paid in this case, LUP Policy 2-15 prohibits issuance of CDPs for development at Hollister Ranch unless the 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. Coastal Act Sections 30210, 30211, 30212, and Policies 7-1 and 7-2 and Section 35-50 of 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. 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. Additionally, the intent of Coastal Act Section 30610.8 is to create a program to ensure the "expeditious" provision of public access to the coastline of Hollister Ranch.

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). In fact, the Hollister Ranch Owners' Association (HROA), property owners of Hollister Ranch, and representatives of the Hollister Ranch subdivision have challenged the Coastal Commission's and Coastal Conservancy's

implementation of a public access program and public access dedications provided by property owners at Hollister Ranch for nearly four decades. The HROA and the individual owners at Hollister Ranch, including the owner of the subject parcel, maintain that individual property owners are unable to grant public access because the HROA owns the common areas.

Because public access and public recreational opportunities have not been provided at Hollister Ranch in the manner called for by the Coastal Act and LCP, and are not proposed to be provided concurrently with new development in this case, the requirements of Coastal Act Section 30610.3<sup>1</sup> have not been met, nor has access otherwise been provided in a manner consistent with the access policies of the Coastal Act. As such, the proposed project is not consistent with LUP Policy 2-15 and the other Coastal Act and LCP requirements cited above. Therefore, in order for the proposed development to be consistent with the County's certified LCP, the applicant must pay a \$5,000 in-lieu fee prior to obtaining the CDP for the proposed development. Thus, the Commission finds that Special Condition 1 is necessary to ensure that the proposed development is consistent with LUP Policy 2-15 and Gaviota Coast Plan Development Standard REC-3 of the County's certified LCP, as well as with the public access and recreation provisions of the Coastal Act.

~~Coastal Act Section 30610.8 also states that public access should be provided at Hollister Ranch in a timely manner and that a public access program should be implemented as expeditiously as possible. While these provisions reflect legislative findings and intent for implementing public access at the Ranch, they are not standards of review for development of individual projects on properties covered by that provision. Moreover, the Legislature's intent in adding Sections 30610.3 and 30610.8 to the Coastal Act was to create an in-lieu fee program to allow for development at Hollister Ranch to proceed without applicants having to wait for the final resolution of the actual provision of public access, while simultaneously securing funds for the ultimate goal of providing public access to the Ranch's coastline. Section 30610.8 states that "[u]pon 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." (emphasis added.) Therefore, requiring the in-lieu fee for each CDP issued for development at Hollister Ranch will help provide timely access by securing funds to acquire easements and provide the means necessary to implement public access to this remote stretch of the coast. If the proposed development in this case is not approved, an in-lieu fee will not be collected, which would result in fewer funds available for implementation of a public access program. Further, work to update the 1982 Hollister Ranch Public Access Program is currently ongoing and the in-lieu fees are necessary for implementation of the program.~~

Therefore, for the reasons discussed above, the Commission finds that the proposed project, ~~as conditioned,~~ is not consistent with the public access policies and provisions of the Coastal Act and the County's certified LCP and is denied.

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<sup>1</sup> Because Section 30610.8 is tied to, and further carries out, Section 30610.3, the requirements of the two provisions are read together, and a failure to carry out 30610.8 is also a failure to carry out 30610.3.

## D. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096(a) of the Commission's administrative regulations require Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.

The County prepared a categorical exemption pursuant to CEQA Section 15303 – New Construction or Conversion of Small Structures, and found that the project is listed among classes of projects that have been determined not to have a significant adverse effect on the environment.

The Commission incorporates its findings on inconsistency with the County's certified LCP and Coastal Act at this point as if set forth in full. ~~There have been no public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report.~~ As discussed above, the proposed development, ~~as conditioned,~~ is inconsistent with the applicable policies of the certified LCP and Coastal Act, and the Commission denied the project. Feasible mitigation measures, which will minimize all adverse environmental effects, have been required as special conditions. Section 21080(b)(5) of CEQA, as implemented by section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects that a public agency rejects or disapproves. Accordingly, the Commission's denial of this project represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, does not apply.

~~As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment, and the project, as conditioned, will not have any significant impacts on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is consistent with the requirements of the certified LCP and conforms to CEQA.~~