

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST DISTRICT
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W10a

Appeal Filed 6/15/21
 49th Working Day: 8/24/21
 Staff: M. Kubran-V
 Staff Report: 7/22/21
 Hearing Date: 8/11/21

STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE

APPEAL NUMBER: A-4-STB-21-0040

APPLICANT: B. Wayne Hughes

APPELLANT: Commissioner Bochco & Commissioner Padilla

LOCAL GOVERNMENT: County of Santa Barbara

LOCAL DECISION: Approval with Conditions of Coastal Development
 Permit No. 19CDH-00000-00035

PROJECT LOCATION: Hollister Ranch Parcel No. 130, Santa Barbara
 County (APN: 083-700-037)

PROJECT DESCRIPTION: Construction of a 1,500 sq. ft. pool, a 6,728 sq. ft. tennis court, a 1,535 sq. ft. expansion of an existing barn, conversion of a guest house to an accessory unit, renovation of 1,000 sq. ft. of landscaping, and 1,000 cu. yds. of grading.

STAFF RECOMMENDATION: **Substantial Issue Exists**

MOTION & RESOLUTION: **Page 7**

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

The Commission's role at the "substantial issue" phase of an appeal is to decide whether the appeal of the local government action raises a substantial issue with respect to the grounds on which the appeal was filed, which can include a claim that the approved development is not in conformity with the applicable provisions of the certified Local Coastal Program (LCP) or with the public access policies of the Coastal Act (Pub. Res. Code §§ 30210-14). Staff recommends that the Commission, after public hearing, determine that **substantial issue exists** with respect to the grounds on which the subject appeal has been filed. The **motion** and **resolution** for a "substantial issue" finding are found on **page 7**.

On May 17, 2021, Santa Barbara County approved a coastal development permit for the construction of a 1,500 sq. ft. pool, a 6,728 sq. ft. tennis court, a 1,535 sq. ft. addition to an existing barn, conversion of a guest house to an accessory unit with a half bathroom, renovation of 1,000 sq. ft. of landscaping, and 500 cu. yds. of cut and 500 cu. yds. of fill on Parcel No. 130 on Hollister Ranch. In addition to the existing barn and guest house, the parcel contains an existing single-family residence, two small accessory structures, landscaping, and hardscaping. There is also a creek on the property (Agua Caliente Creek) as well as coast live oak woodland and other native habitats.

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. At Hollister Ranch, 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. 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. In 2019, Coastal Act Section 30610.8 was amended by the Legislature (Assembly Bill 1680) to increase the amount of the in-lieu fee and require ongoing, automatic increases. Section 30610.8(b) states that "the fee shall be thirty-three thousand dollars (\$33,000) for each permit, adjusted annually for inflation pursuant to the consumer price index" in lieu of granting public access to/from each individual property, in order to mitigate for impacts to public access in that area.

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. In 2018, the Gaviota Coast Plan was certified by the Commission as a component of the County's LCP and included Development Standard REC-3, which references Section 30610.8 and clarifies that the in-lieu fee shall be assessed with each coastal development permit

issued for development in Hollister Ranch. However, in its approval of the subject permit, the County did not require payment of the in-lieu fee as required by Land Use Plan (LUP) Policy 2-15, Gaviota Coast Plan Development Standard REC-3, and Coastal Act Section 30610.8. In this case, the in-lieu fee is \$33,461.92¹, but the County determined that the in-lieu fee was not required because a \$5,000 fee was paid when the primary residence on the property was constructed. This is inconsistent with the LCP and Coastal Act policies which require payment of an in-lieu fee for each coastal development permit issued for development at Hollister Ranch.

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. As such, 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, and only 1.3 miles of coastline along the 64 miles of shoreline in North Santa Barbara County are available for public use.

Additionally, the approved project would encroach into the required 100 ft. buffer of riparian environmentally sensitive habitat (ESH) as well as the critical root zone of at least ten oak trees, which are part of a larger area of coast live oak woodland habitat ([Exhibit 3](#)). However, the County's findings did not address the impact to ESH from the provision of an inadequate buffer or make a determination as to whether or not the oak trees are part of an oak woodland habitat that is ESH pursuant to Gaviota Coast Plan Policy NS-4. Policy NS-4 states that native woodlands are a habitat type that is rare and/or especially valuable and meets the definition of ESH, unless the habitat area is so small and isolated or degraded that it is no longer sustainable, based on site-specific characteristics and evidence. Based on the site-specific biological report included in the County's record and a review of aerial photos, the subject site appears to be part of a large contiguous area of native habitat, and thus, would meet the LCP definition of ESH. Gaviota Coast Plan Development Standard NS-2 requires development to provide a minimum 100-foot buffer from the outer edge of ESH areas. In addition, Gaviota Coast Plan Policy NS-2 states that non-resource dependent uses may only be allowed in ESH and ESH buffer areas if avoidance is infeasible and would preclude reasonable use of a parcel, in which case the alternative that would result in the fewest or least significant impacts shall be selected and impacts shall be mitigated.

ESH areas are important to preserve, particularly in the coastal rural area of Hollister Ranch, which contains vast tracts of undeveloped lands that allow for wildlife movement and biotic exchange across vegetation communities and watersheds. Not only did the County not determine whether the native vegetation within the project site constitutes ESH, the County also did not require that the subject development avoid significant disruption of habitat values in ESH by ensuring development would avoid ESH and

¹ Reflects \$33,000 fee (effective January 2020) as adjusted in 2021 for inflation; U.S. Bureau of Labor Statistics CPI Inflation Calculator

provide an adequate buffer from ESH. Additionally, the County did not require the applicant to analyze and implement alternatives to avoid ESH and provide maximum ESH buffer and such analysis is not included in the CDP findings. Further, Gaviota Coast Plan Policy NS-12 and LUP Policies 9-35 and 9-36 require development to be sited and designed to protect oak trees and areas with significant amounts of native vegetation. However, the County's findings did not analyze alternatives to avoid or minimize the impacts of the accessory development through alternative siting locations or designs.

In summary, the County did not condition the subject permit to require the in-lieu fee consistent with LUP Policy 2-15 and Gaviota Coast Plan Development Standard REC-3. Therefore, the County's approval of the subject development is inconsistent with the certified LCP. Additionally, development of the subject project will impact native woodland habitat and will not provide the required buffer from riparian and woodland habitats. The County failed to analyze other feasible locations or design alternatives to avoid or minimize impacts to those habitats pursuant to LUP Policies 9-35 and 9-36 and Gaviota Coast Plan Policies NS-2, NS-4, and NS-12. Therefore, staff recommends that the Commission determine that a substantial issue exists with respect to the grounds raised by Commissioners Bochco and Padilla in the subject appeal, because there are questions as to whether the permit approved by Santa Barbara County is consistent with the public access, recreational, ESH and native vegetation policies and provisions of the County's certified LCP and the public access policies of the Coastal Act.

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EXHIBITS

- [Exhibit 1 Vicinity Map](#)
- [Exhibit 2 Parcel Map](#)
- [Exhibit 3 Site Plan](#)
- [Exhibit 4 Impacts to Biological Resources](#)
- [Exhibit 5 Final Local Action Notice](#)
- [Exhibit 6 Appeal Form](#)

I. APPEAL JURISDICTION AND PROCEDURES

A. APPEAL PROCEDURES

The Coastal Act provides that after certification of a local government's Local Coastal Program (LCP), the 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 Section 30603(a)). Any developments that constitute major public works or major energy facilities may also be appealed to the Commission (Coastal Act Section 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 first public road and the sea.

2. Grounds for Appeal

The available grounds for an appeal of a local government approval of development are limited to an allegation that the development does not conform to the standards set forth in the certified LCP or the public access policies set forth in the Coastal Act (Coastal Act Section 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 apply 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 and recreation policies of the Coastal Act (Coastal Act Section 30604(b) & (c)). If a de novo hearing is held, testimony may be taken from all interested persons.

B. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL

On May 17, 2021 the County of Santa Barbara Zoning Administrator approved Coastal Development Permit No. 19CDH-00000-00035 with conditions. The Zoning Administrator'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 June 7, 2021 ([Exhibit 5](#)). The Commissioner's ten working day appeal period for this action began on June 7, 2021 and concluded at 5 p.m. on June 21, 2021.

An appeal of the County's action was filed by Commissioners Bochco and Padilla on June 15, 2021, during the appeal period ([Exhibit 6](#)). Commission staff immediately notified the County, the applicant, and interested parties that were listed on the appeal form of the appeal and requested that the County provide its administrative record for the permit. The administrative record was received on June 17, 2021.

II. STAFF RECOMMENDATION FOR SUBSTANTIAL ISSUE

MOTION: *I move that the Commission determine that Appeal No. A-4-STB-21-0040 raises **NO** substantial issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act.*

STAFF RECOMMENDATION TO FIND SUBSTANTIAL ISSUE:

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 by a majority of the Commissioners present. A tied vote results in a finding that a Substantial Issue is raised.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission finds that Appeal No. A-4-STB-21-0040 raises a **Substantial Issue** with respect to the grounds on which the appeal has been filed under

§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

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 117.3-acre parcel (APN 083-700-037) zoned Agriculture II (AG-II-320) that lies approximately one and one-half miles inland from the beach and comprises Hollister Ranch Parcel 130 ([Exhibit 2](#)) in the Gaviota area of Santa Barbara County. The site is developed with a single-family residence, barn, guest house, two small accessory structures, play area, garden, landscaping, and hardscaping. There is also a creek on the property as well as coast live oak woodland and other native habitats. On May 17, 2021, Santa Barbara County approved a CDP for removal of an unpermitted skate ramp, addition of 1,535 sq. ft. to the existing barn, conversion of the existing guesthouse to an accessory structure, construction of a 1,500 sq. ft. pool, construction of a 6,728 sq. ft. tennis court, grading consisting of 500 cu. yds. of cut and 500 cu. yds. of fill, and 1,000 sq. ft. of landscaping ([Exhibit 3](#)).

The existing guesthouse is located on the second floor of the structure that contains the existing barn as well as a workshop with a half bathroom. The subject CDP permitted an expansion of the first floor of the barn and also permitted the conversion of the guesthouse to an accessory structure that includes a half bathroom. Materials in the County's record indicate that an accessory dwelling unit (ADU) would be constructed above the permitted barn expansion and adjacent to the existing guesthouse. However, the County's LCP does not permit a guesthouse and an ADU to be constructed on the same lot. Therefore, County staff has indicated that the bathing facilities within the existing guesthouse would be removed in order to change the designation of that portion of the structure from "guesthouse" to "accessory structure." However, the remodel of the bathroom in the existing guesthouse is not shown on the final plans in the County's record. Additionally, the second floor ADU addition was not analyzed as part of the subject project. County staff confirmed that a proposed ADU is currently being processed under a separate CDP. Although the ADU/barn addition would be part of the same structure, County staff indicated that the second floor addition, which would be designated as an ADU, is being processed separately because the County does not consider ADUs to be discretionary projects and, per the County's LCP, ADUs shall be considered without a hearing but would still require a CDP that is appealable to the Coastal Commission.

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 easements related to public access in order 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 presiding judge did not rule on the merits of the case.

Assembly Bill 643 amended the Coastal Act to add Section 30610.3, which creates an alternative process 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 for an in-lieu fee program pursuant to Section 30610.3. 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 presiding over 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 public 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 called for a phased and monitored approach to opening and managing access to the ranch. It proposed 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 prioritized protection of sensitive habitat areas and acknowledged the property owners' privacy needs. Both agencies jointly adopted the program on August 18, 1981. However, without adequate access to all parcels, the Conservancy could not obtain necessary appraisal data in order to determine the cost of acquiring and developing the public access easements proposed in the program. 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, and to date, implementation of a public access program at Hollister Ranch has not been fulfilled.

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, 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. The in-lieu fee amount remained set at \$5,000 for almost 38 years, but in 2019, as a result of renewed public interest in obtaining access to the Hollister Ranch coastline, the Legislature passed Assembly Bill 1680, which amended Coastal Act Section 30610.8 to raise the in-lieu fee from \$5,000 to \$33,000 per permit, with ongoing, automatic annual adjustments. Assembly Bill 1680 also required the Commission, in consultation with the Coastal Conservancy, the Department of Parks and Recreation, and the State Lands Commission to develop a contemporary public access program by April 1, 2021 and implement the first phase of public access by April 1, 2022. As a result of the COVID-19 health crisis, development of a new Hollister Ranch public access program has been delayed but is currently ongoing, and the program's first draft is expected to be available for public review on October 31, 2021.

On November 7, 2018, 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. In its analysis of the subject project the County used a Mitigated Negative Declaration from 1992 but failed to determine the project's consistency with any of the Gaviota Coast Plan policies and provisions, including Gaviota Coast Plan Development Standard REC-3, which reflects Coastal Act Section 30610.8 and requires payment of a fee for each coastal development permit issued for development in Hollister Ranch.

C. APPELLANT'S CONTENTIONS

The appeal filed by Commissioners Bochco and Padilla is attached as [Exhibit 6](#). The appeal grounds assert that the approved project is not consistent with policies and provisions of Santa Barbara County's certified LCP and the Coastal Act regarding the provision of public access, recreational opportunities, or the protection of environmentally sensitive habitat areas, including Gaviota Coast Plan Development Standard REC-3, Gaviota Coast Plan Policies NS-2 and NS-4, Land Use Plan Policies 1-1, 2-15, 9-35, and 9-36, and Coastal Act Policies 30240, 30610.3, and 30610.8. The contentions of the appeal are discussed and addressed in greater detail below.

D. ANALYSIS OF SUBSTANTIAL ISSUE

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for an appeal is whether a substantial issue exists with respect to the grounds raised by the appellant relative to the locally-approved project's conformity to the policies contained in the certified LCP or the public access policies of the Coastal Act. In this case, the appellant cited both the public access policies of the Coastal Act and the policies contained in the certified City of Santa Barbara LCP as grounds for appeal.

The Coastal Act requires that the Commission shall hear an appeal unless no substantial issue exists with respect to the grounds on which the appeal was filed under Section 30603. (§30625(b)(2).) Section 13115(c) of the Commission's regulations provides that the Commission may consider various factors when determining if a local action raises a significant issue, including but not limited to 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 and, where applicable, the public access and recreation provisions of the Coastal Act;
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 local coastal program; and
5. Whether the appeal raises only local issue as opposed to those of regional or statewide significance.

The Commission may, but need not, assign a particular weight to a factor. In this case, the Commission determines that the appeal raises substantial issue with regards to the grounds on which the appeal has been filed, as discussed below.

1. Public Access and Recreation

The appellants assert that the project, as approved by the County, does not conform to the public access and recreation policies and provisions of both the Coastal Act and the County's LCP.

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.

Coastal Act Section 30210 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

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public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Coastal Act Section 30211 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.

Coastal Act Section 30212 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) agriculture would be adversely affected. 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.

Coastal Act Section 30220 states:

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

Coastal Act Section 30221 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.

Coastal Act Section 30223 states:

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

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.

Coastal Act Section 30610.3 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 31000), 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.

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.

Coastal Act Section 30610.8 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 thirty-three thousand dollars (\$33,000) for each permit, adjusted annually for inflation pursuant to the consumer price index. 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) The State Coastal Conservancy and the State Lands Commission shall use their full authority provided under law to implement, as expeditiously as possible, the public access policies and provisions of this division at the Hollister Ranch in the County of Santa Barbara.

Coastal Act Section 30610.81 states:

- (a) (1) To ensure public access to Hollister Ranch in the County of Santa Barbara, the commission shall, in collaboration with the State Coastal Conservancy, the Department of Parks and Recreation, and the State Lands Commission, by April 1, 2021, develop a contemporary public access program for Hollister Ranch that will replace the existing coastal access program for Hollister Ranch that the commission adopted in 1982.
- (2) The public access program for Hollister Ranch shall be informed by a public outreach and stakeholder engagement process and shall include, at a minimum, all of the following:
 - (A) A list of public access options to the state-owned tidelands at Hollister Ranch. Each option shall, at a minimum, include options for public access by land and shall include a description of the scope of access as well as an assessment of implementation costs and ongoing operation.
 - (B) A description of the physical environment at Hollister Ranch, including the shoreline, beach areas, coastal and marine habitat, existing land uses, and cultural and historical resources.
 - (C) A description of the current level of public access to the state-owned tidelands at Hollister Ranch.
 - (D) Educational and scientific research opportunities along the Hollister Ranch coast associated with the natural, cultural, and historical resources.
 - (E) Provisions to protect and preserve sensitive natural, cultural, and historical resources.
- (3) In addition to the components required by paragraph (2), the public access program shall include all of the following:
 - (A) A summary of permits needed to implement the program.
 - (B) An implementation strategy.
 - (C) A program that implements specified portions of the program providing land access that includes a first phase of public access to the beach by land controlled by the Hollister Ranch Owners Association. On or before April 1, 2022, the State Coastal Conservancy shall fully implement the first phase of the public access to the beach. Implementation of this

subparagraph is subject to appropriation of funding to provide for the specified land access.

(4) An action by a private person or entity to impede, delay, or otherwise obstruct the implementation of the public access pursuant to subparagraph (C) of paragraph (3) or other provisions of the public access program constitutes a violation of the public access provisions of this division.

(b) The commission, the State Coastal Conservancy, the Department of Parks and Recreation, and the State Lands Commission, or their designated representatives, shall have access to the common areas within Hollister Ranch in order to evaluate resources and determine appropriate public access opportunities and to fulfill implementation of the public access program identified in this section.

(c) If a public access program deadline required under subdivision (a) is not met for any reason, the commission, in collaboration with the State Coastal Conservancy, the Department of Parks and Recreation, and the State Lands Commission, shall submit a report to the Legislature within 30 days of missing the deadline. The report shall include an explanation for why the public access program has been delayed, a proposed completion date, and any other relevant information pertinent to the completion of the full implementation of the public access program for Hollister Ranch. A report to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.

(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 subdivision (b) of Section 30610.8 before, on, or after January 1, 2020, as well as other moneys received by the State Coastal Conservancy for providing public access at Hollister Ranch from other public or private sources, including nonprofit sources, shall be deposited in the Hollister Ranch Access Management Subaccount, which is hereby created in the State Coastal Conservancy Fund. Moneys in the subaccount, upon appropriation by the Legislature, shall be used for any action necessary to implement the public access program for 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.

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, and 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, and 30223 prioritize a requirement for the provision and enhancement of public recreational opportunities in areas suitable for such uses.

Despite these requirements to maximize public access and public recreational opportunities and provide such as a component of new development, the HROA, property owners of Hollister Ranch, and representatives of the Hollister Ranch subdivision have challenged the Coastal Commission's implementation of a public access program at Hollister Ranch for 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 \$33,000 in-lieu fee, adjusted annually for inflation, 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. 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. Development Standard REC-3 references Coastal Act Section 30610.8 and requires permit applicants to pay the in-lieu fee prior to development for every CDP. In this case, the County of Santa Barbara did not require the applicant to pay the \$33,461.92 in-lieu fee (the \$33,000 fee adjusted for inflation² as required by Coastal Act Section 30610.8), because a \$5,000 fee had previously been paid for approval of existing development on the subject parcel. This is inconsistent with Gaviota Coast Plan Development Standard REC-3 and Coastal Act Section 30610.8, which require payment of the in-lieu fee as a condition of each coastal development permit issued for development at Hollister Ranch.

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 Section 30610.8. 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 requirement to carry out the Access Program or to otherwise provide public access and public recreational opportunities at the ranch has not yet been fulfilled as envisioned in Section 30610.8.

Moreover, Policy 2-15 of the County's certified Land Use Plan 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

² U.S. Bureau of Labor Statistics CPI Inflation Calculator https://www.bls.gov/data/inflation_calculator.htm

Commission finds that access is otherwise provided in a manner consistent with the access policies of the Coastal Act. In the present case, the public access provisions of the Coastal Act and LCP have not been met, because the County did not condition the subject permit to require payment of an in-lieu fee pursuant to Policy 2-15 and Gaviota Coast Plan Development Standard REC-3.

Therefore, the failure of the County to require an in-lieu fee consistent with Policy 2-15 and Gaviota Coast Plan Development Standard REC-3 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. Environmentally Sensitive Habitat Areas

The appellants assert that the project, as approved by the County, fails to conform to the LCP policies and provisions regarding environmentally sensitive habitat (ESH) areas, native woodlands, and native oak trees:

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.

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

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

Coastal Act Section 30240 states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Land Use Plan Policy 9-35 states:

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

Land Use Plan Policy 9-36 states, in relevant part:

When sites are graded or developed, areas with significant amounts of native vegetation shall be preserved. All development shall be sited, designed, and

constructed to minimize impacts of grading, paving, construction of roads or structures, runoff, and erosion on native vegetation...

Gaviota Coast Plan Policy NS-2 (Coastal) states, in relevant part:

Environmentally Sensitive Habitat (ESH) areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas....Non-resource dependent development, including fuel modification and agricultural uses, shall be sited and designed to avoid ESH and ESH buffer areas. If avoidance is infeasible and would preclude reasonable use of a parcel or is a public works project necessary to repair and maintain an existing public road or existing public utility, then the alternative that would result in the fewest or least significant impacts shall be selected and impacts shall be mitigated. Development in areas adjacent to ESH areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Gaviota Coast Plan Policy NS-4 (Coastal) states, in relevant part:

Environmentally sensitive habitat (ESH) means any area in which plant or animal life or their habitats are either (A) rare or (B) especially valuable because of their special nature or role in an ecosystem. The presence and extent of ESH shall be identified on a case-by-case basis based upon site-specific evidence provided by a biological report prepared by a qualified biologist. Although a site-specific analysis will form the basis for ESH determinations, the following types of habitat are considered rare or especially valuable, and therefore ESH, unless a particular habitat area is so small and isolated or degraded that it is no longer sustainable.

- A. Rare Species or Habitats. Areas with plant or animal life or their habitats included in the following lists and categories are considered "rare" for the purposes of this policy:
- Federal and State listed Rare, Threatened, and Endangered Species.
 - Plants, Animals, and Natural Communities ranked as Global or State G1 or S1 (critically imperiled), G2 or S2 (imperiled), or G3 or S3 (vulnerable to extirpation or extinction).
 - California Fully Protected Species, California Species of Special Concern, and their habitats.
 - California Rare Plant Ranking System plant species designated 1B (rare, threatened, or endangered in California and elsewhere) and 2B (rare, threatened, or endangered in California but more common elsewhere).
 - Federal and State Plants, Animals, and Natural Communities that are candidates for listing.
- B. Especially Valuable Species or Habitats. Areas with plant or animal life or their habitats may be especially valuable because of their "special nature," such as being an unusually pristine example of a habitat type, containing

an unusual mix of species, supporting species at the edge of their range, or containing species with extreme variation. Areas may be especially valuable because of the special “role in the ecosystem,” such as providing habitat for endangered species, protecting water quality, providing essential corridors linking one sensitive habitat to another, or providing critical ecological linkages such as the provision of pollinators or crucial trophic connections. Examples of species or habitat types that are especially valuable include, but are not limited to:

- Unique, rare, or fragile communities which should be preserved to ensure their survival in the future, e.g., dune vegetation, native grasslands;
- Plant community ranges that are of significant scientific interest because of extensions of range, or unusual hybrid, disjunct, and relict species;
- Outstanding representative natural communities that have values ranging from a particularly rich flora and fauna to an unusual diversity of species;
- Areas with outstanding educational values that should be protected for scientific research and educational uses now and in the future, e.g., Gaviota Coast tanoak forests.

Specific biological habitats that are considered environmentally sensitive because they are rare and/or especially valuable because of their special nature or role in an ecosystem shall be protected and preserved through provisions of the ESH Overlay. These include, but are not limited to, the following:

- 1) Native Forests and Woodlands including, but not limited to: madrone forest, tanoak forest, black cottonwood forest, Bishop pine forest, California sycamore woodlands, coast live oak woodland, Valley oak, red willow thickets, and California bay forest;
- 2) Native Chaparral and Coastal Scrub Habitats that are part of a large, contiguous area of native habitat, or rare Native Chaparral, Coastal Bluff Scrub, and Coastal Scrub Habitats, including, but not limited to: Burton Mesa shrubland chaparral, central maritime chaparral, wart leaf Ceanothus chaparral, giant Coreopsis scrub, bush monkeyflower scrub, California brittle bush scrub, sawtooth goldenbush scrub, silver dune lupine-mock heather scrub, lemonade berry scrub, and white sage scrub;
- 3) Native Grassland and rare herbaceous vegetation, including, but not limited to: Dune mats, Western rush marshes, meadow barley patches, giant wildrye grassland, creeping ryegrass turfs, foothill needlegrass grasslands, purple needlegrass grasslands;
- 4) Creeks, Streams, and Coastal Wetlands, including, but not limited to: estuarine, riverine, riparian habitats, and vernal pools;
- 5) Marine mammal haulouts;

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- 6) Monarch butterfly habitat;
- 7) Raptor nesting, roosting, and breeding areas and white-tailed kite foraging areas; and
- 8) Special status species habitats

...

Gaviota Coast Plan Policy NS-12 (Coastal) states, in relevant part:

Existing trees shall be preserved to the maximum extent feasible, prioritizing “protected trees.” Protected trees area defined for the purpose of this policy as mature native or roosting/nesting trees that do not pose a threat to health and safety. Protected trees include, but are not limited to:

- Oak (*Quercus agrifolia*)
- Sycamore (*Platanus racemosa*)
- Willow (*Salix* spp.)

...

All existing “protected trees” shall be protected from damage or removal to the maximum extent feasible....where development encroachments into the protected zone of protected trees result in the loss or worsened health of the trees, mitigation measures shall include, at a minimum, the planting of replacement trees on-site, if suitable area exists on the project site, at a ratio of 10 replacement trees for every one tree removed. Where on-site mitigation is not feasible, the most proximal off-site mitigation shall be required.

Gaviota Coast Plan Development Standard NS-2 (Coastal) states, in relevant part:

Buffers shall be provided between ESH and new development to serve transitional habitat and to provide distance and physical barriers to human intrusion. Riparian ESH areas shall have a minimum development area setback buffer of 100 feet from the edge of either side of the top-of-bank of creeks or the edge of riparian vegetation, whichever is further. Wetland ESH areas shall include a minimum development area setback buffer of 100 feet from the edge of the wetland. All other ESH areas shall have a minimum development area setback buffer of 100 feet from the outer edge of the habitat area. Monarch butterfly trees shall include a minimum development area setback buffer of 50 feet from the edge of the tree canopy.

Development shall be required to comply with these buffer zones as part of the proposed development, except where setbacks or buffers would preclude reasonable use of the parcel consistent with applicable law. Appropriate public recreational trails may be allowed within setbacks or buffer areas.

Required buffers may be adjusted upward on a case-by-case basis given site specific evidence provided by a biological report prepared by a qualified biologist.

Where adjusted upward where necessary in order to prevent significant disruption of habitat values, the required minimum buffer shall not preclude reasonable use of a parcel consistent with applicable law. Adjustment of the riparian or stream ESH buffer shall be based on an investigation of the following factors and after consultation with the Department of Fish and Wildlife and Regional Water Quality Control Board. All buffers shall be sufficient to protect the biological productivity and water quality of streams, to avoid significant disruption of habitat values, and to be compatible with the continuance of the habitat area:

- Existing vegetation, soil type and stability of stream and riparian corridors;
- How surface water filters into the ground;
- Slope of the land on either side of the stream;
- Location of the 100 year flood plain boundary; and
- Consistency with adopted Gaviota Coast Plan, Coastal Land Use Plan, and Comprehensive Plan policies.

In all cases listed above, buffer areas on sites within the Coastal Zone may be adjusted downward only in order to avoid precluding reasonable use of property.

...

Coastal Act Section 30107.5 defines environmentally sensitive habitat (ESH) areas as any area in which plant or animal life, or their habitats, are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. This definition is also included in Gaviota Coast Plan Policy NS-4 and Implementation Plan Section 35-58 of the County's certified LCP. Section 30240 of the Coastal Act, as incorporated into the LCP through Land Use Plan (LUP) Policy 1-1, and Gaviota Coast Plan Policy NS-2 require ESH areas to be protected against any significant disruption of habitat values and that new development, including fuel modification, be sited and designed in a manner that avoids ESH and ESH buffer areas. Gaviota Coast Plan Development Standard NS-2 requires 100-foot buffers from the outer edge of ESH areas. Additionally, Gaviota Coast Plan Policy NS-12 requires individual oaks trees that do not meet the definition of ESH to be preserved to the maximum extent feasible and require mitigation where development encroaches into the protected zone of such trees. LUP Policy 9-35 requires oak trees to be protected, because they are particularly sensitive to environmental conditions, and LUP Policy 9-36 requires areas with significant amounts of native vegetation to be preserved and development to be sited, designed, and constructed to minimize impacts on native vegetation from grading, paving, structures, runoff, and erosion.

The subject 117 acre parcel is mostly undeveloped, and thus, contains large areas of native vegetation. Additionally, Agua Caliente Creek, which is identified as ESH in the County's LCP, runs through the property. The biological assessment included in the County's record for the project identified the 100-foot riparian buffer from Agua Caliente Creek and mapped the vegetation and habitats within 200 feet of the project site. A majority of the area surveyed was identified as coast live oak woodland and other native habitats, including riparian habitat and California sycamore woodland. The biological

assessment also identified project impacts, including the required fuel modification for the approved barn addition.

The Santa Barbara County Fire Department requires the following fuel clearance zones to limit flammable materials and fuel ladders adjacent to structures: 1) 0-30 feet: full clearance of flammable vegetation and 2) 30-100 feet: selective thinning of vegetation and limbing of mature trees to a height of 6 feet. Thus, a total of 100 feet of vegetation clearing or thinning is typically required by the Fire Department. The project's biological assessment showed that the fuel modification for the approved barn addition would extend closer than 100 feet from Agua Caliente Creek ([Exhibit 4](#)). However, the County failed to recognize that the scope of the development here included the required fuel modification. Instead, the County only considered the footprints of the physical structures when it determined that the project did not encroach into the riparian ESH buffer. With the scope of development properly considered to include the required fuel modification, the project would encroach into the 100-foot riparian ESH buffer. In addition to not providing an adequate buffer from riparian habitat, the required fuel modification would also extend into coast live oak woodland and California sycamore woodland, which the County also failed to identify as an adverse impact. Further, the County did not analyze siting and design alternatives that would avoid the expansion of fuel modification on the property, thus avoiding or minimizing disturbance to native habitats and avoiding significant disruption of habitat values in riparian ESH and other types of ESH as required by Gaviota Coast Plan Policy NS-2, Gaviota Coast Plan Development Standard NS-2, and LUP Policy 9-36.

Gaviota Coast Plan Policy NS-4 states that native woodlands, including coast live oak woodland and California sycamore woodland, are habitat types that are rare and/or especially valuable and meet the definition of ESH, unless the habitat area is so small and isolated or degraded that it is no longer sustainable, based on site-specific characteristics and evidence. As stated above, a majority of the 200-foot radius around the project site was mapped as coast live oak woodland and other native habitats, and the site-specific biological assessment showed that the fuel modification for the barn addition would impact native woodlands. Further, the approved pool and tennis court are sited within the critical root zone of several coast live oak trees that are part of a larger coast live oak woodland. In order to ensure consistency with LCP requirements, it is necessary to determine the extent of habitat that meets the definition of ESH and so designate it. While the County determined that the total area of oak woodland impacted by the project would be 0.51 acres, the County did not determine whether or not the impacted area met the definition of ESH pursuant to Policy NS-4.

Gaviota Coast Plan Policy NS-2 states that non-resource dependent uses may only be allowed in ESH and ESH buffer areas if avoidance is infeasible and would preclude reasonable use of a parcel, in which case the alternative that would result in the fewest or least significant impacts shall be selected and impacts shall be mitigated. Additionally, if avoidance of ESH is infeasible, exception to the sensitive resources protection policies of the LCP are only appropriate when is necessary to avoid precluding a reasonable economic use of private property. Although the project findings do not address this exception, it does not appear to be applicable here since the

existing residential and agricultural development on the property affords the property owner a reasonable economic use.

In this case, not only did the County not determine that the native woodland within the project site constitutes ESH, but it also did not require the minimum 100-foot buffer from the outer edge of the habitat areas nor analyze alternatives to avoid impacts to ESH, to provide an adequate ESH buffer, or to protect individual oak trees that are not part of ESH. Even if the County had determined that the native oak woodland on the site did not meet the definition of ESH, Gaviota Coast Plan Policy NS-12 and LUP Policies 9-35 and 9-36 still require development to be sited and designed to protect oak trees and preserve areas with significant amounts of native vegetation. Additionally, there appear to be areas on the property where development could be sited outside the oak trees' critical root zones, but the County did not to analyze alternatives that would avoid or minimize impacts to oak trees or other the native vegetation on site. Therefore, as approved, the project does not comply with the requirements of Gaviota Coast Plan Policies NS-2, NS-4 and NS-12, Gaviota Coast Plan Development Standard NS-2, and LUP Policies 9-35 and 9-36, which require new development to be sited and designed in a manner to protect ESH and native vegetation.

3. Factors Considered in Substantial Issue Analysis

The standard of review for the subject appeal is whether a substantial issue exists with respect to the grounds raised by the appellants relative to the appealable development's conformity to the policies contained in the certified LCP and/or the public access policies of the Coastal Act. In this case, the appellants assert several inconsistencies between the County's approval and the certified policies of the LCP and the public access policies of the Coastal Act.

The Coastal Act requires that the Commission shall hear an appeal unless no substantial issue exists with respect to the grounds on which the appeal was filed under Section 30603. (Section 30625(b)(2).) Section 13115(c) of the Commission's regulations provides that the Commission may consider various factors when determining if a local action raises a significant issue, including but not limited to the following five factors, which are addressed below.

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 Coastal Act and certified LCP. In this case, the County did not condition the subject permit to require the \$33,461.92 in-lieu fee consistent with Policy 2-15 and Gaviota Coast Plan Development Standard REC-3. Instead, the County determined that an in-lieu fee was not required because a \$5,000 fee had been paid when the primary residence on the property was approved. This, however, is inconsistent with Policy 2-15 and Gaviota Coast Plan Development Standard REC-3, which require an in-lieu fee to be paid 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 and public access policies of the Coastal Act and necessarily lacks legal support.

Further, development of the subject project will encroach into the required riparian ESH buffer and will impact native woodland areas. In its approval, the County did not determine 1) whether or not the native woodlands on site are ESH and 2) if there are other feasible locations or design alternatives to avoid or minimize impacts to woodlands and other the native vegetation and to provide the required ESH buffer. The approved project is inconsistent with Gaviota Coast Plan Development Standard NS-2, which requires a minimum 100-foot buffer from the edge of riparian vegetation. Additionally, if the coast live oak woodland and California sycamore woodland on site are determined to be ESH, the County's action to approve the subject development is inconsistent with Gaviota Coast Plan Policy NS-2, which requires development to be sited and designed to avoid ESH, as well as Gaviota Coast Plan Development Standard NS-2, which requires development to provide a 100-foot buffer from the outer edge of ESH. Therefore, there is inadequate factual evidence and legal support that the County's decision to approve the project is consistent with the ESH and native vegetation protection policies of the LCP and Coastal Act (as incorporated in the LCP). For all of these reasons, this factor weighs heavily in favor of finding substantial issue.

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, and the third factor is the significance of coastal resources affected by the decision. The subject project includes construction of a pool and tennis court, which would impact native oak woodland. Additionally, the fuel modification for the 1,535 sq. ft. addition to the existing barn would encroach into the required riparian ESH buffer as well as coast live oak woodland and California sycamore woodland. The extent and scope of development as well as the coastal resources affected by the County's approval are significant because the development will potentially impact ESH areas. These areas, as described in the site-specific biological report included in the County's record, are important to preserve, particularly in the coastal rural area of Hollister Ranch. The site is located in an important biological transition zone, and the Hollister Ranch area contains vast tracts of undeveloped lands, which allow for wildlife corridors and biotic exchange across vegetation communities and watersheds. Additionally, public access to the coastline of Hollister Ranch represents a significant coastal resource, as evidenced by the specific legislation enacted to ensure its provision as well as the specified priority and protections it is given in both the County's LCP and the Coastal Act. Therefore, these factors weigh in favor of finding substantial issue.

The fourth factor is the precedential value of the local government's decision for the future interpretation of its LCP. In this case, the County did not condition the approved permit to require an in-lieu fee specific to the subject permit, which is clearly inconsistent with the provisions of LUP Policy 2-15 and Gaviota Coast Plan Development Standard REC-3. 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. Further, the certified LCP includes policies that require development to avoid ESH areas and protect oak trees as well as require development adjacent to ESH areas to be designed and located in a manner that will avoid adverse impacts to habitat resources, including through measures such as setbacks and buffers. If accessory development, such as this, is not approved consistent with LCP policies, cumulative impacts of accessory development in

Hollister Ranch could result in the degradation of coastal resources over time. Therefore, this factor weighs in favor of finding substantial issue.

The final factor is whether the appeal raises issues 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 addition of Section 30610.81 to the Coastal Act through Assembly Bill 1680 in 2019, which requires the first phase of a contemporary public access program to be implemented by April 1, 2022. Additionally, the County did not identify that the project would impact riparian ESH through the provision of an inadequate buffer and require avoidance of such impacts. Further, it did not make a determination with regards to whether or not the native woodlands on site are ESH and require avoidance of ESH, and provision of the required ESH buffer. Finally, the County did not analyze alternatives to avoid or minimize impacts to ESH, woodlands or other native vegetation. This has regional significance in that approval of projects without such analysis or determinations can result in the incremental loss of native habitat and ESH throughout the County, which may impact the sustainability of those habitats and the species dependent upon those habitats. Thus, this factor weighs in favor of finding substantial issue.

In conclusion, the Commission finds that the factors listed above, taken together, demonstrate that a substantial issue exists 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, and with LCP provisions regarding the protection of ESH areas and native vegetation.

APPENDIX A

Substantive File Documents

Certified Santa Barbara County Local Coastal Plan, Gaviota Coast Plan, and Coastal Zoning Ordinance; Santa Barbara County Zoning Administrator Staff Report, dated April 30, 2021, and attachments thereto; Santa Barbara County Notice of Final Action for Coastal Development Permit 19CDH-00000-00035.