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F17b

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Staff: M Kubran - V
Staff Report: 5/19/22
Hearing Date: 6/10/22

STAFF REPORT: APPEAL COURT REMAND DE NOVO REVIEW

Appeal 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.

Staff Recommendation: Approval with Conditions

STAFF NOTE

On May 9, 2019, the Commission denied the application for a coastal development permit ("CDP") de novo, and revised findings for denial of the application were adopted by the Commission on September 13, 2019. Among other findings, the Commission found that the proposed project did not include payment of the required fee under Public Resources Code section 30610.8, which together with Section 30610.3, establishes an in lieu fee program to address the lack of public access at Hollister Ranch. The applicant then sued the Commission over the denial of the project, arguing, in part, that the in lieu fee requirement did not apply to this application because the statute only requires payment of such a fee in connection with initial applications for development on vacant lots, and the subject lot was already developed. Following a trial, the trial court

held that the in-lieu fee is required for the applicant's CDP application. The trial court remanded the matter back to the Commission to consider the subject de novo CDP again and to take action either to approve the permit with a condition to pay the in-lieu fee of \$5,000 (based on the version of Section 30610.8 that was in effect at the time the Commission denied the CDP) or to provide an alternate, valid basis for denial. That ruling was affirmed following the applicant's appeal. *Wall v. California Coastal Commission*, 72 Cal.App.5th 943 (2021).

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission approve the coastal development permit (CDP) application, subject to two (2) special conditions. The motion and resolution for the recommended action are found on page 5.

The proposed project is for construction of a 60 ft. by 16 ft. swimming pool, detached 8 ft. by 12 ft. in-ground spa, and associated equipment on Parcel No. 36 on Hollister Ranch. The parcel contains existing development, including a single-family residence, guesthouse, and barn. The proposed development would be located adjacent to the existing residence and would not result in any biological or visual resource impacts.

Both the Coastal Act and the County of Santa Barbara's certified Local Coastal Program (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. Particularly, the County's certified LCP contains Land Use Plan (LUP) Policy 2-15 and Gaviota Coast Plan Development Standard REC-3, which reference Coastal Act Sections 30610.3 and 30610.8, respectively. Taken together, Coastal Act Sections 30610.3 and 30610.8 impose a public access in-lieu fee, which must be assessed with each permit for development in Hollister Ranch. The statutory provisions were designed to provide owners of lots within certain subdivided areas, including Hollister Ranch, with a way to comply with Coastal Act requirements to protect and provide public access, without having to actually grant public access to/from each individual property. The fees are intended to mitigate the impacts of subdividing and developing the Ranch, and the collected fees are designated to go toward implementing a public access program to the coastline of the Ranch as a whole.

However, the County did not impose the fee in connection with its processing of this application, as required by LUP Policy 2-15 and Gaviota Coast Plan Development Standard REC-3, and the proposed project does not include payment of the fee. Therefore, in order for the proposed project to be consistent with the County's certified LCP and the public access policies and provisions of the Coastal Act, Special Condition 1 is necessary to require proof of payment of the public access in-lieu fee, which, at the time the Commission denied the subject CDP in May 2019, was fixed at \$5,000.

Additionally, Coastal Act Section 30610.8 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. Although the Legislature intended for public access at Hollister Ranch to be provided in an expeditious manner, which has not

occurred, it drafted Sections 30610.3 and 30610.8 to permit development upon payment of an in-lieu fee, rather than requiring actual access prior to granting a CDP. Further, requiring the in-lieu fee for each CDP issued for development at Hollister Ranch will help to provide access by securing funds to acquire easements and provide the means necessary to implement public access to this remote stretch of the coast. Moreover, work to create and implement a current and comprehensive Hollister Ranch Coastal Access Program is currently ongoing, and the in-lieu fees are necessary for implementation of the program.

Finally, the proposed development would involve grading and excavation, which may result in adverse impacts to archaeological resources that may exist on site. Therefore, Special Condition 2 is required to ensure protection of any archaeological resources that may be discovered during construction.

Staff therefore recommends that the Commission approve the proposed development with special conditions and find that the proposed development, as conditioned, is consistent with the applicable policies and provisions of the County's certified LCP and the Coastal Act.

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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 approve Coastal Development Permit No. A-4-STB-18-0074 pursuant to the staff recommendation.

Staff Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve the Permit:

The Commission hereby approves Coastal Development Permit No. A-4-STB-18-0074 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of the Santa Barbara County certified Local Coastal Program and with the access and recreation policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard of Review

After certification of a Local Coastal Program (LCP), Section 30603 of the Coastal Act provides for appeals to the Coastal Commission of a local government's actions on certain types of coastal development permits (including any new development which occurs between the first public road and the sea, such as the proposed project sites). In this case, the proposed development was appealed to the Commission, which found during a public meeting on February 7, 2019, that a substantial issue was raised.

For the Commission's "de novo" review of the application, the standard of review for the proposed development is, in part, the policies and provisions of the County of Santa Barbara Local Coastal Program. In addition, pursuant to Section 30604(c) of the Coastal Act, all proposed development located between the first public road and the sea (such as the project site) including those areas where a certified LCP has been prepared, must also be reviewed for consistency with the public access and recreation policies of the Coastal Act. All Chapter 3 policies of the Coastal Act have been incorporated in their entirety in Santa Barbara County's certified LCP as guiding policies pursuant to Policy 1-1 of the County's Coastal Land Use Plan (LUP).

III. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the applicant or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the applicant to bind all future owners and possessors of the subject property to the terms and conditions.

IV. Special Conditions

1. Hollister Ranch Public Access In-Lieu Fee

Prior to issuance of the coastal development permit, the applicant shall submit evidence, for the review and approval of the Executive Director, that an in-lieu fee of \$5,000 for the subject CDP has been paid to the California Coastal Conservancy consistent with Section 30610.8 of the California Public Resources Code (the version that was in effect in May 2019). A cashier's check shall be submitted to: California Coastal Conservancy, 1515 Clay Street, 10th Floor, Oakland, CA 94612, Attn.: Trish Chapman (510) 286-1015. Proof of payment shall be submitted to the South Central District Office of the California Coastal Commission.

2. Archaeological Monitoring

- A. By acceptance of this permit, the applicant agrees to comply with the following monitoring and testing requirements:
 - (i) Archaeological monitor(s) qualified by the California Office of Historic Preservation (OHP) standards, and a minimum of 1 Native American monitor, including at least one monitor from each tribal entity with documented ancestral ties to the area and that expresses interest in

monitoring, appointed consistent with the standards of the Native American Heritage Commission (NAHC), and the Native American most likely descendent (MLD) when State Law mandates identification of a MLD, shall monitor all project grading, excavation work, site preparation or landscaping activities associated with the approved development. Prior to the commencement and/or re-commencement of any monitoring, the permittee shall notify each archaeological and Native American monitor of the requirements and procedures established by this special condition, including all subsections.

- (ii) The permittee shall provide sufficient archaeological and Native American monitors to assure that all project grading and any other subsurface activity that has any potential to uncover or otherwise disturb cultural deposits is monitored at all times;
- B. If an area of cultural deposits is discovered during the course of the project:
- (i) All construction and subsurface activities that have the potential to uncover or otherwise disturb cultural deposits in the area of the discovery shall cease within 50 feet of the deposit immediately. The applicant shall report all discovered resources as soon as possible, by phone or by email to the Executive Director. The archaeological monitor on-site must contact all affected groups of the Native American Tribe that are not present for on-site monitoring and notify them of the discovery in order to determine the results of subsection C below.
- C. Significance testing may be carried out only if acceptable to the affected Native American Tribe, in accordance with the attached "Cultural Resources Significance Testing Plan Procedures" (**Appendix B**) and in consultation with the Tribe. The Executive Director shall, in writing, determine the adequacy of the Significance Testing Plan and if it can be implemented without further Commission action, provide written authorization to proceed. The Significance Testing Plan results, if applicable, along with the project archaeologist's recommendation as to whether the discovery should be considered significant, and the comments of the Native American monitors and MLD when State Law mandates the identification of a MLD, shall be submitted to the Executive Director for a determination. If the Executive Director determines that the discovery is significant, development shall not recommence, and the permittee shall submit to the Executive Director a Supplementary Archaeological Plan consistent with Appendix B.

V. Findings and Declarations

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 application is 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, spa, and associated equipment would be located adjacent to the residence. The swimming pool and spa would be located just south of the existing residence while the equipment would be located on the west side of the residence. The project does not propose the removal of any trees or native vegetation.

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 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, in 1979, before the court issued a decision on the merits, Assembly Bill 643 was passed to amend the Coastal Act, and the passage of the bill allowed the presiding judge to avoid ruling on the merits of the case.

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

Following this designation, staff from the Commission and the Coastal Conservancy worked together to develop an access program for Hollister Ranch. The staff determined that fieldwork would be necessary to accurately evaluate the area's natural

resources and appropriately site the proposed access facilities. This fieldwork required surveying the common areas of the Ranch, as well as nineteen private parcels. The HROA allowed staff to visit the common areas; however, fourteen of the nineteen landowners would not give permission for staff to survey their property. After concluding that a survey of only five of the nineteen private parcels would be inadequate, staff was forced to limit its fieldwork to the common areas of the Ranch.

Nevertheless, Commission and Conservancy staff prepared the Hollister Ranch Coastal Access Program based on the limited data available. The program 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.¹

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. 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. Development within the plan

¹ The in-lieu fee amount remained set at \$5,000 for almost 38 years, but in October 2019, as a result of renewed public interest in obtaining access to the Hollister Ranch coastline, Assembly Bill 1680 was enacted, 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. In part due to the COVID-19 health crisis, development of a new Hollister Ranch public access program has been delayed; however, work to develop the Hollister Ranch public access program remains ongoing.

area also continues to be subject to the policies and provisions of the remainder of the County's LCP.

On November 15, 2018, Santa Barbara County approved the CDP that was the subject of the Commission's original appeal (and which is the subject of this remanded de novo review) but did not require payment of the 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. The County's action of the CDP was appealed by the Commission, and on February 7, 2019, the Commission found that the appeal raised substantial LCP conformance issues and the Commission took jurisdiction over the CDP application for the proposed project.

On May 9, 2019, the Commission denied the application de novo. Among other findings, the Commission found that the proposed project did not include payment of the fee required under Public Resources Code section 30610.8, which together with Section 30610.3, establishes an in lieu fee program to address the lack of public access at Hollister Ranch. The applicant then sued the Commission over the denial of the CDP application. Following a trial, the trial court held that the in-lieu fee is required for the applicant's CDP application. The trial court remanded the matter back to the Commission to consider the subject de novo CDP again and to take action either to approve the permit with a condition to pay the in-lieu fee of \$5,000 (based on the version of Section 30610.8 that was in effect at the time the Commission denied the CDP) or to provide an alternate, valid basis for denial. That ruling was affirmed following the applicant's appeal. Therefore, the CDP that was the subject of the Commission's original de novo appeal hearing on May 9, 2019 is now before the Commission as a remanded de novo appeal.

C. Public Access and Recreation

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, 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 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.

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 30211 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreation 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.

Coastal Act Section 30610.8 (as amended by 2019’s Assembly Bill 1680) 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.

Section 30610.8 of the Coastal Act, as it was in effect as of May 2019, stated as follows:

- (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.

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 over 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 require an in-lieu fee to be assessed with each permit for development in Hollister Ranch. The assessed fees are required in lieu of granting public access to/from each individual property in order to mitigate for the impacts of not providing public access at Hollister Ranch on an individual property basis. The collected fees are designated to go toward implementing a public access program to the coastline of the ranch.

In 1982, Santa Barbara County's LCP was initially certified and included Policy 2-15, which references the requirement provided by Section 30610.3. However, the LCP did not contain the more detailed requirement provided by Section 30610.8. 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 Gaviota Coast Plan that was certified in 2018. 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 in-lieu fee as required by Coastal Act Section 30610.8, which 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.

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. Therefore, in order for the proposed development to be consistent with the County's certified LCP, the applicant must pay an in-lieu fee prior to issuance of the CDP for the proposed development. At the time the Commission denied the subject CDP in May 2019, the statutory in-lieu fee was fixed at \$5,000. As a result of renewed public interest in obtaining access to the Hollister Ranch coastline, Assembly Bill 1680 was enacted in October 2019, 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. However, the Court of Appeal decision that remanded the subject *de novo* CDP back to the Commission notes that because the increase in the in lieu fee from \$5,000 to \$33,000 (through enactment of Assembly Bill 1680) occurred after the Commission's decision in the original *de novo* appeal, the increased fee is not applicable. *Wall*, 73 Cal. App. 5th at n.5. As such, the Court of Appeal held that the applicant is required to pay \$5,000 as the applicable in lieu fee. Thus, the Commission finds that Special Condition 1 is necessary to require payment of a \$5,000 in-lieu fee 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. 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." 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. 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 consistent with the public access policies and provisions of the Coastal Act and the County's certified LCP.

D. Cultural Resources and Tribal Consultation

The following policies and provisions of the Santa Barbara County LUP provide for the protection of archaeological resources in the coastal zone of Santa Barbara County. In addition, Policy 1-1 of the LUP incorporates the Chapter 3 policies of the Coastal Act as guiding policies of the LCP.

Section 30244 of the Coastal Act states:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

Gaviota Coast Plan Policy CS-1 (Cultural Resources Preservation & Protection) states:

Preserve and protect significant cultural, archaeological and historical resources to the maximum extent feasible.

Gaviota Coast Plan Policy CS-2 (Properties of Concern) states:

Significant cultural resources including historic structures, Rural Historic Landscapes, archaeological sites, Traditional Cultural Properties, and Tribal Cultural Resources shall be protected and preserved to the maximum extent feasible.

Coastal Act Section 30244 and Gaviota Coast Plan Policies CS-1 and CS-2 require archaeological resources to be protected to the maximum extent feasible. Section 30244 specifically requires mitigation measures where development would impact such resources. Hollister Ranch is known for having at least two Chumash village sites, and studies have described how the Ranch area has "one of the longest and most complete records of human occupation yet documented for any small area of the California coast."² While the subject development is located on a developed site, it involves grading and excavation, which can adversely impact potential archaeological resources on site. Therefore, the Commission finds that Special Condition 2 is necessary to ensure protection of any archaeological resources that may be discovered at the site during construction. Special Condition 2 would require all construction activities to cease if cultural deposits were discovered during the course of the project and would also require a qualified cultural resources specialist to analyze the significance of the find. To recommence construction following discovery of cultural deposits, the applicant would be required to submit an archaeological plan for the review and approval of the

² See http://www.hollisterranch.org/bio_res/land_use_history.html

Executive Director, prepared in consultation with appropriate tribal representatives, to determine whether the changes are de minimis in nature and scope, or whether an amendment to this permit is required.

Additionally, per the Commission's Tribal Consultation Policy, staff contacted representatives from Native American Tribes understood to have current and/or historic connections to the project area. These Tribes include the Barbareño/Ventureño Band of Mission Indians, Chumash Council of Bakersfield, Coastal Band of the Chumash Nation, Northern Chumash Tribal Council, San Luis Obispo County Chumash Council, Santa Ynez Band of Chumash Indians, and the Barbareño Band of Chumash Indians. Contact information for these Tribal Representatives was gathered from the Native American Heritage Commission's Native American Contact Lists. At the time of publication of this staff report and recommendation, no concerns had been brought to the attention of Commission staff by representatives of the Tribes that were contacted. Any concerns raised subsequent to the publication of this report will be brought to the attention of the Commission through the development of an addendum to this staff report and recommendation.

Thus, the Commission finds the proposed development, as conditioned, is consistent with the archaeological resources policies of the Coastal Act and the County's certified LCP.

E. 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 consistency with the County's certified LCP 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 consistent with the applicable policies of the certified LCP and Coastal Act. Feasible mitigation measures, which will minimize all adverse environmental effects, have been required as special conditions.

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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.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

Certified Santa Barbara County Local Coastal Plan, Gaviota Coast Plan, and Coastal Zoning Ordinance; Santa Barbara County Planning and Development Memorandum dated November 8, 2018 (No. 18CDH-00000-00021) and attachments thereto; Santa Barbara County Notice of Final Action for Coastal Development Permits 18CDH-00000-00021.

APPENDIX B – CULTURAL RESOURCES SIGNIFICANCE TESTING PLAN PROCEDURES

- A. An applicant seeking to recommence construction following discovery of cultural deposits shall submit a Significance Testing Plan for the review and approval of the Executive Director (email to SouthCentralCoast@coastal.ca.gov and reference CDP number). The Significance Testing Plan shall identify the testing measures that will be undertaken to determine whether the cultural deposits are significant. The Significance Testing Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), and the Most Likely Descendent (MLD) when State Law mandates identification of a MLD. The Executive Director shall make a determination regarding the adequacy of the Significance Testing Plan within 10 working days of receipt. If the Executive Director does not make such a determination within the prescribed time, the plan shall be deemed approved and implementation may proceed.
1. If the Executive Director approves the Significance Testing Plan and determines that the Significance Testing Plan's recommended testing measures are de minimis in nature and scope, the significance testing may commence after the Executive Director informs the permittee of that determination.
 2. If the Executive Director approves the Significance Testing Plan but determines that the changes therein are not de minimis, significance testing may not recommence until after an amendment to this permit is approved by the Commission.
 3. Once the measures identified in the significance testing plan are undertaken, the permittee shall submit the results of the significance testing to the Executive Director for review and approval. The results shall be accompanied by the project archaeologist's recommendation as to whether the findings are significant. The project archaeologist's recommendation shall be made in consultation with the Native American monitors and the MLD when State Law mandates identification of a MLD. The Executive Director shall make the determination as to whether the deposits are significant based on the information available to the Executive Director. If the deposits are found to be significant, the permittee shall prepare and submit to the Executive Director a Supplementary Archaeological Plan in accordance with subsection B of this appendix and all other relevant subsections. If the deposits are found to be not significant, then the permittee may recommence grading in accordance with any measures outlined in the significance testing program.
- B. An applicant seeking to recommence construction following a determination by the Executive Director that the cultural deposits discovered are significant shall submit a Supplementary Archaeological Plan for the review and approval of the Executive Director. The Supplementary Archaeological Plan shall be prepared by

the project archaeologist(s), in consultation with the Native American monitor(s), the Most Likely Descendent (MLD) when State Law mandates identification of a MLD, as well as others identified in the special condition. The Supplementary Archaeological Plan shall identify proposed investigation and mitigation measures. The range of investigation and mitigation measures considered shall not be constrained by the approved development plan. Mitigation measures considered may range from in-situ preservation to recovery and/or relocation. A good faith effort shall be made to avoid impacts to cultural resources through methods such as, but not limited to, project redesign, capping, and placing cultural resource areas in open space. In order to protect cultural resources, any further development may only be undertaken consistent with the provisions of an approved Supplementary Archaeological Plan.

1. If the Executive Director approves the Supplementary Archaeological Plan and determines that the Supplementary Archaeological Plan's recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, construction may recommence after the Executive Director informs the permittee of that determination.
2. If the Executive Director approves the Supplementary Archaeological Plan but determines that the changes therein are not de minimis, construction may not recommence until after an amendment to this permit is approved by the Commission.