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November 20, 2012

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BY FEDERAL EXPRESS

Ms. Hope Schmeltzer
General Counsel
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

RE: Hollister Ranch; Request to Extinguish Offer to Dedicate

Dear Ms. Schmeltzer:

We represent a number of individual owners of property in Hollister Ranch, and the Hollister Ranch Owners Association. The purpose of this letter is to request that the Executive Director of the California Coastal Commission authorize the extinguishment of an Offer to Dedicate recorded in 1982. The basis for this request is our belief that the Offer to Dedicate, even if accepted, would not convey any property interest to the people of the State of California.

To facilitate your review of this matter, I have taken the liberty of attaching to this letter two documents which substantiate our description of the pertinent facts. We would be pleased to provide additional information if that would be helpful to you.

It is my hope that we can have a meeting to discuss these issues once your office has reviewed this material and the cited legal authorities.

Factual Background

General Information About Hollister Ranch and Its Natural Resources. Hollister Ranch consists of approximately 14,500 acres of land along the California coast in Santa Barbara County. It has been operated as a working cattle ranch for over 100 years.

Hollister Ranch is recognized as the *situs* of significant natural resources. A recent report summarized these resources as follows:

"Hollister Ranch is located in a unique area at a major marine biogeographical boundary that separates cool temperate marine species to the north and warm temperate species to the south. Sharp biogeographical boundaries such as this are relatively rare worldwide and present unique research opportunities into the biology and physics of marine biogeographic boundaries, the mechanisms of larval transport and dispersal across these boundaries, ecosystem dynamics and, importantly, the effects of global climate change on the structure and function of coastal ecosystems.

"The biological resources of the Hollister Ranch are in excellent ecological condition due to decades of limited access and good stewardship practices by the current and former owners of these lands. The availability of this relatively pristine protected coastline is contrasted against

the other areas of southern California that have become ecologically degraded over the past few decades as a result of direct human activities (e.g., trampling, collecting, harvesting, and disruptions to nesting, mating, and pupping activities).

"Hollister Ranch is easily accessed by researchers from two major universities at Santa Barbara and Santa Cruz with strong, internationally recognized research and educational programs in marine sciences. Access is provided through the Hollister Ranch Access Management Program." Tenera Environmental Services, *Managed Access on Hollister Ranch for Scientific Studies and Educational Activities*, August 2000, at 73-74.

In 1970, Hollister Ranch was subdivided by MGIC Equities Corporation ["MGIC"] into 133 parcels, each approximately 100 acres, and sold to individual owners. Two additional parcels consisting of 8.5 miles of coastline between the Southern Pacific Railroad Right of Way and the Mean High Tide Line were conveyed to the Hollister Ranch Owners Association ("Association"). These two parcels are commonly referred to as Parcel 49 (APN 83-670-018) and Parcel 104 (APNs 83-680-034 and 83-690-022).

The Association takes seriously its responsibility to protect the ranch's natural resources. In 1978, it formed the Natural Resources Committee, which became the Hollister Ranch Conservancy in 1989-90, for the purpose of protection and enhancement of the natural resources and environment of the Ranch. As described in the Tenera Environmental Services Report (cited above):

"Hollister Ranch Conservancy members are involved in many conservation, preservation and education activities for owners regarding issues and aspects of the natural resources. For example, the Conservancy advises owners on ranching and farming practices, and in consultation with the Design Committee, on the use of native and non-invasive plants for landscaping. The HRC organizes field trips for Ranch landowners to increase their awareness of the Ranch environment such as the geological and botanical resources; the rare, endangered and interesting species of plants, animals and birds; the important riparian communities and the marine resources of the Shoreline Preserve

"The HRC works with various research groups from several of the University of California campuses and other college and universities on a variety of projects ranging from marine, terrestrial and wetland ecology studies to geology studies. Several projects are multiple-year, continuing studies. Various local schools and special interest groups organize field trips through the HRC to see those aspects of the ranchlands that are of interest to them. . . .

"A significant accomplishment of the HRC was the establishment of a 2.2 mile long shoreline preserve area at Alegria Beach. The Hollister Ranch Shoreline Preserve (also referred to as the Alegria Shoreline Preserve) was established to preserve and protect the integrity of an intact, healthy, rocky intertidal ecosystem. Included in the preserve are two wetland areas at the mouths of small streams, a stand of giant *Coreopsis* (coastal bush daisy) on the coastal bluffs, and a geologic section containing fossilized cetacean bones." *Id.*, at 6-8.

The Alegria Shoreline Preserve is a particularly good example of the benefits of a thoughtful stewardship program. The Hollister Ranch Conservancy is committed to minimizing the risks that poorly managed public access can create for sensitive natural resources, as explained in the Tenera Report:

"Alegria is a very important site in a number of ways. First it is located in the ecological transition area centered on Point Conception. As the northern-most site in the southern ecological province (sites south of Pt. Conception), it provides us with the ability to detect

events that cause movement of cooler northern water south. More importantly, it is our only southern site that has some level of protection from unlimited public access, which is a feature of many of our north of Pt. Conception sites. While the scope of our program does not include an investigation of the effect of public access on intertidal communities, it is clear from other studies that high access is associated with a degradation of intertidal communities." *Id.*, at 22.

Background of the YMCA Offer to Dedicate

Hollister Ranch is served by a network of private ranch roads, including the main road (Rancho Real) which commences at the Ranch's eastern boundary and connects to the road leading to Gaviota State Park. A number of ranch roads branch off of Rancho Real and extend northerly into the foothills. Each parcel owner has an easement over all of the ranch roads, as does the Association. The land underlying these road easements is owned by the parcel owners.

In 1970, the Young Men's Christian Association of Metropolitan Los Angeles ("YMCA") purchased a parcel of land which, at the time, was not within the boundaries of Hollister Ranch (APN 83-700-032). A copy of that deed (along with a concurrently-recorded Grant of Easement) is attached under Tab A. The deed includes six "Parcels." Parcel 1 is the real property acquired in fee by the YMCA. Parcels 2 through 6 (and the separate easement) are a set of easements for ingress and egress over Rancho Real Road and Gaviota State Park Road, an easement to use Cuarta Canyon Road connecting the YMCA fee parcel to Rancho Real Road, and easements over portions of the beach.

The YMCA applied to the Coastal Commission for a Coastal Development Permit to develop a youth camp. On October 24, 1980, the Commission approved Permit No. 309-05 which included a condition requiring the YMCA to record an offer to dedicate.

On April 28, 1982, in compliance with the permit condition, an "Irrevocable Offer to Dedicate and Covenant Running with the Land" (Tab B) was recorded (hereinafter "OTD"). The OTD states that it "offers to dedicate to the People of California an easement in perpetuity for the purposes of public access and public recreational use" on three distinct locations:

1. Beach Lateral Access. The OTD describes this location as "Parcel Five of Exhibit A." The referenced property is not at or near the beach. In fact, "Parcel Five of Exhibit A" is the Gaviota Park Road. Thus, there is an apparent inconsistency between the title of this access easement and the description of the access easement.

There is a supportable argument – based on the rules of construction applicable to grants of real property – that the phrase "Parcel Five of Exhibit A" should be construed in accordance with its plain meaning. Under that interpretation, the OTD does not create a "beach lateral access."

On the other hand, we presume that the Coastal Commission would assert that the phrase "Parcel Five of Exhibit A" in the OTD reflects a drafting error, and it should have been stated as "Parcel Six of Exhibit A." If the Commission's position is accepted, this paragraph of the OTD refers to Parcel 104, a beach parcel currently owned by the Association.¹

¹ This letter is not intended to resolve any issue of OTD interpretation, nor should anything in this letter be construed as an admission concerning the meaning of the OTD. In any event, this issue of OTD interpretation is ancillary to the main point of the letter.

In April 1982, Parcel 104 was owned by the Hollister Ranch subdivider, MGIC. The Association held an easement for recreational purposes. In other words, on the date the OTD was recorded, the YMCA held no ownership interest in Parcel 104.

2. Blufftop Access Trail. The OTD purports to grant an easement for a "blufftop lateral access trail" "to the extent of owner's legal and equitable interests in lands southerly of Rancho Real Road, defined as Parcel Three in Exhibit A, and northerly of the railroad right-of-way bordering Parcel 5."

It is noteworthy that the OTD specifies that the blufftop access trail can only be used when beach lateral access is restricted due to high tide or storm events. The trail can be no wider than ten feet. The trail location is not described in the OTD; rather, the location was to be "designated in a coastal trail plan for Hollister Ranch." No such "coastal trail plan" exists.

Even though the location of this "blufftop access trail" cannot be ascertained, there is no doubt that the property burdened by this aspect of the OTD consists of nine privately-owned parcels, each of which is adjacent and landward of the railroad right-of-way. In April 1982, the YMCA held no ownership interest in any of those nine parcels.

3. Rancho Real Road Vertical Access. The OTD purports to grant an easement for "operation of a transit system" from Gaviota State Park over Rancho Real Road. This easement purports to end at "Parcel Five," which is actually the Gaviota Park Road.

The use of "Parcel Five" in this grant raises the same question of interpretation as noted above concerning the "Beach Lateral Access." Assuming without so admitting that "Parcel Five" should have been written as "Parcel Six," then this reference is to Parcel 104, a beach parcel owned by the Association.

As noted above, between the eastern boundary of Hollister Ranch and Cuarta Canyon Road, Rancho Real traverses nine separate parcels, each of which fronts on the railroad right-of-way. In April 1982, the YMCA had no ownership interest in any of those nine beachfront parcels.

To summarize: In April 1982, when the YMCA recorded a document purporting to offer to convey to the people of California certain easements, it did not own the property which would have been burdened by those easements.

Two final notes: After the CDP was issued in 1980 and the OTD was recorded in 1982, the YMCA abandoned its project and sold its property. The youth camp was never built. The YMCA parcel was annexed to the Hollister Ranch subdivision in 1986 as part of Phase III of the subdivision.

The CDP and OTD include a number of detailed specifications and prerequisites for the operation of this "transit system," including placing limits on the number of persons in the public transit vehicles. In addition, the CDP and OTD require that a number of planning and environmental studies be accomplished before the "transit system" can be implemented. To the best of our knowledge, no such studies have been undertaken.

Legal Issues

Since the YMCA did not own fee title for the various parcels described in the Offer to Dedicate at the time of recordation or at any time thereafter, acceptance of the Offer to Dedicate would not create valid and enforceable easements with regard to those properties.

A property owner may dedicate to the public no higher interest in real property than he or she possesses. (See *City of Eureka v. McKay & Co.* (1899) 123 Cal. 666, 671 ("[T]he unauthorized act of a person having no interest in the land . . . could not amount even to an offer of dedication.") (citing *Eureka v. Croghan* (1889) 81 Cal. 524); *Niles v. City of Los Angeles* (1899) 125 Cal. 572, 575 (acts by one of two co-owners of property tending to show dedication of portion of property, without co-owner's consent, do not constitute evidence of a dedication binding on a subsequent grantee of both co-owners); see also 10 Cal. Real Est. § 26.2; 26 Cal. Jur. 3d Dedication § 10.) Thus, for example, because an easement is a non-possessory interest in the land of another, an easement holder has no right to grant additional easements therein to third parties or to dedicate the easement for public use. (See *Carstens v. California Coastal Commission* (1986) 182 Cal. App. 3d 277, 287; *Kerr v. Brede* (1960) 180 Cal. App. 2d 149 (easement owner cannot license third persons to use it).)

Accordingly, to the extent that the OTD purported to grant public access rights affecting property that the YMCA did not own (including property for which YMCA held only easement rights), the YMCA's offer to dedicate public access over and across such property cannot create any valid easements.

Request

The facts are clear and not subject to dispute. At the time the YMCA recorded the Offer to Dedicate, it did not own the property over which it purported to convey access easements. The pertinent legal authority is equally clear: under these circumstances, the OTD grantor has no legal right to convey easements, and accepting the OTD would not cause any such easements to spring into existence.

The continued existence of the Offer to Dedicate on the title of the nine privately-owned parcels referenced above, as well as on the parcels owned by the Association, constitutes a cloud on title which is subject to judicial remedy. In order to bring an end to this cloud on title, we respectfully submit that the Offer to Dedicate should be extinguished.

If your analysis reaches the same conclusion, we are prepared to work expeditiously to accomplish the extinguishment of the Offer to Dedicate.

Thank you for your assistance with this matter.

Sincerely,



Steven A. Amerikaner

Enclosures (2)

cc. Hollister Ranch Owners Association