



Honorable Das Williams
Santa Barbara County Board of Supervisors
c/o Clerk of the Board
105 East Anapamu Street, Fourth Floor
Santa Barbara, CA 93101

October 11, 2018

Re: Santa Barbara County Local Coastal Program (LCP) Amendment No. LCP-4-STB-18-039-1-Part B (Gaviota Coast Plan)

Dear Chair Williams and Honorable Members of the Board:

The Hollister Ranch Owners' Association has reviewed the Santa Barbara County Local Coastal Program (LCP) Amendment No. LCP-4-STB-18-039-1-Part B (Gaviota Coast Plan) that was approved by the California Coastal Commission on August 18, 2018. After almost nine years of careful review, consideration and public debate, it was disappointing that the Coastal Commission chose not to incorporate many of the meaningful and relevant amendments proposed by the Board of Supervisors and County staff that reflected community concerns.

That said, we appreciate the County's advocacy for a number of significant issues that land owners on the Gaviota Coast brought to your attention. In particular, a more reasonable definition of historical agriculture, local discretion in requiring biological studies, discretion on environmentally sensitive area set-backs and the recognition of the environmental benefits of regenerative agriculture. We were also pleased to see that the County was able to secure more reasonable policies and clarifications regarding fuel management and ESH, principal permitted uses, prescriptive easements and elimination of the proposed Economically Viable Use Determination requirement. These are significant issues on the Gaviota Coast that will have long term impacts.

We appreciate the County's understanding of these issues and the efforts to modify the Coastal Commission's inflexible, and potentially harmful regulations. We agree that ESH areas and natural resources should be protected to the maximum extent feasible. The County recognizes that evidence in the field indicates that sometimes a buffer of less than the stated set-backs is appropriate. We regret that the Coastal Commission was not willing to acknowledge this and other important protections in its adopted regulations.

It is clear to us that the County is unable to achieve further agreement or concessions from the Coastal Commission on remaining outstanding issues.

However, there is one issue where we feel the County should hold the line. At its August meeting, the Coastal Commission proposed changes to Dev Std REC-3 related to in lieu fees for development on the Hollister Ranch. We sent the attached letter to the Coastal Commission and copies to the County Planning Director and County Counsel objecting to this language and providing legislative history and documentation showing clearly that it violates Sections 30610.3 and 30610.8 of the California Public Resources Code.

Subsequently, the Coastal Commission supported last minute amendments to AB 2534 at the close of the legislative session attempting, among other things, to create a legislative foundation for its new “interpretation” of the in lieu fee statutes. The Governor vetoed this bill.

Nevertheless, the Commission is recommending that the County adopt these changes now as part of the Gaviota Coast Plan. We have previously asked that the County not include in the Plan any references to the Hollister Ranch in lieu fee for precisely the reasons that are present here. The in lieu fee is found in a statute and has been collected for many years despite its absence from any local plans and ordinances.

Embedding a fee that already required under the Coastal Act into our local Gaviota Coast Plan risks creating inconsistencies between state and the local regulation. This is evidenced by AB 2534 and the Gaviota Coast Plan process. The State may decide to amend Public Resources Code section 30610.8 and increase the Hollister Ranch in lieu fee for example, or change the way the fee is charged. AB 2534 was amended and on the Governor’s desk *in less than a week*. No amendment to our local Gaviota Coast Plan could be done so quickly. Thus, the County risks creating significant inconsistencies between the local Gaviota Coast Plan and the Coastal Act if it adopts redundant regulation into our local plan.

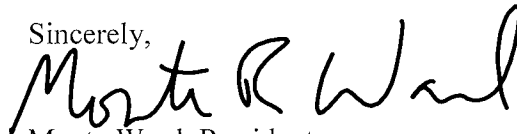
Alternatively, if the new in lieu fee policy proposed in Dev Std REC-3 is not redundant, then by insisting that the in lieu fee be included in the Gaviota Coast Plan, the Commission is attempting to get the County to legislate policy it could not get enacted in Sacramento. The Commission is now claiming that Public Resources Code sections 30610.3 and 30610.8 always required the in lieu fee to be charged for each permit issued at Hollister Ranch, but the legislative history and the actions by both the Coastal Commission and the County belie that interpretation. If Sections 30610.3 and 30610.8 were clear, then AB 2534 would not have attempted to modify the language. For example, Section 30610.3(e)’s proposed language would have deleted “on any vacant lot”. If the existing statutes clearly required the fee for each permit (versus the first permit issued for on vacant lot in a designated subdivision), the County and the Coastal Commission would have acted differently over the last 30 years, especially since the Legislature mandated the Conservancy to “utilize their authority provided under law to implement, as expeditiously as possible, the public access policies and provisions of [the Coastal Act] at the Hollister Ranch...” (See Public Resources Code § 30610.8.)

The County should take care not to put itself at risk adopting policy that is inconsistent with State law. First, the Commission is seeking to shift the in lieu fee policy from state legislation to locally-adopted ordinances and plans, thus subjecting the County to liability and litigation expense if the fee is successfully challenged in court. Second, it is attempting to substantially increase the in lieu fee (from \$5000 per parcel to \$5000 per permit, with no limit as to the number of \$5000 fees could be paid by the owner of a parcel), thereby ignoring the compromise that was struck in 1982 when the in lieu fee amount was set by the legislature.

The magnitude of the liability exposure the County is facing should not be underestimated. In 1987, five years after the in lieu fee was set at \$5000 per parcel, the U.S. Supreme Court told the California Coastal Commission that it lacked the legal authority to impose a public access condition on a coastal development permit in the absence of a "nexus" between the development and the need for public access (*Nollan v. California Coastal Commission*, __ U.S. __ 1987). It makes no difference whether the unlawful condition requires the applicant to give up real property or money. Under this well-established precedent, the in lieu fee is plainly unconstitutional, and there is no reason that the County should put itself in "the firing line" on this issue.

The Hollister Ranch thanks the Board of Supervisors and staff for their response to concerns expressed by the citizens of the Gaviota Coast, your efforts to modify the Coastal Commissions' adopted LCP to reflect conditions on the ground, and your efforts to preserve and protect the Gaviota Coast.

Sincerely,

A handwritten signature in black ink that reads "Monte R Ward". The signature is written in a cursive style with a large, prominent "M" and "W".

Monte Ward, President
Hollister Ranch Owners' Association

1 GEORGE DEUKMEJIAN, Attorney General
 N. GREGORY TAYLOR,
 2 Assistant Attorney General
 PETER H. KAUFMAN,
 3 Deputy Attorney General
 3580 Wilshire Boulevard
 4 Los Angeles, California 90010
 Telephone: (213) 736-2130
 5
 6 Attorneys for Respondents

FILED
 JUN 27 1980
 BY S. J. [unclear]

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 FOR THE COUNTY OF LOS ANGELES

11	ALVIN AND SYLVIA REMMENGA,)	NO. C 300-657
12	DOUGLAS WHITE, DENNIS DEACON,)	
13	and JAMES BARTLETT, JR.,)	NOTICE OF REQUEST FOR
14)	TAKING OF JUDICIAL NOTICE
15	Petitioners,)	AND MEMORANDUM OF POINTS
16)	AND AUTHORITIES IN
17	v.)	SUPPORT THEREOF
18	CALIFORNIA COASTAL COMMISSION)	Date: June 24, 1980
19	and SOUTH CENTRAL COASTAL)	Dept: 88
20	REGIONAL COMMISSION,)	Time: 9:00 A.M.
21)	
22	Respondents.)	

23 TO PETITIONERS HEREIN AND TO THEIR ATTORNEYS OF RECORD:

24 NOTICE IS HEREBY GIVEN that on June 24, 1980 at
 25 9:00 a.m. or as soon thereafter as the matter can be heard
 26 in Department 88 of the above entitled court respondents will
 27 request the court to take judicial notice of the following
 documents:

1. The January 24, 1980 Resolution of the California Coastal Commission attached

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hereto and incorporated by reference herein as Exhibit A;

2. Senate Bill 175 attached hereto and incorporated herein as Exhibit B;

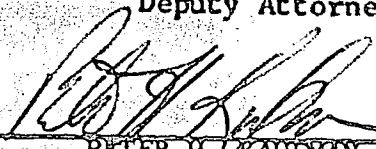
3. Senate legislative analysis on Assembly Bill 643 attached hereto and incorporated by reference herein as Exhibit C.

Said request is made under section 452 of the Evidence Code in that such documents constitute: (a) official acts of the executive and legislative departments of California; (b) facts and propositions that are of such common knowledge that they cannot reasonably be the subject of dispute; and (c) facts and propositions that are not reasonably subject to dispute and are capable of immediate accurate determination by resort to sources of reasonably undisputable accuracy.

Said request will be based on this notice of request, the attached exhibits and memorandum of points and authorities, such supplemental information as may be filed subsequently herein and oral and documentary evidence that may be presented on the hearing of said request.

DATED: *June 18, 1980*

GEORGE DEUKMEJIAN, Attorney General
N. GREGORY TAYLOR,
Assistant Attorney General
PETER H. KAUFMAN,
Deputy Attorney General

By: 
PETER H. KAUFMAN

Attorneys for Respondents

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 Section 452 of the Evidence Code provides as follows:

3 "Judicial notice may be taken of the following
4 matters to the extent that they are not embraced
5 within Section 451:

6 a. The decisional, constitutional, and statutory
7 law of any state of the United States and the
8 resolutions and private acts of the Congress
9 of the United States and of the Legislature
10 of this state.

11 b. Regulations and legislative enactments issued
12 by or under the authority of the United States
13 or any public entity in the United States.

14 c. Official acts of the legislative, executive,
15 and judicial departments of the United States
16 and of any state of the United States.

17 d. Records and (1) any court of this state or (2)
18 any court of record of the United States or
19 of any state of the United States.

20 e. Rules of court of (1) any court of this state
21 or (2) any court of record of the United
22 States or of any state of the United States.

23 f. The law of an organization of nations and of
24 foreign nations and public entities in foreign
25 nations.

26 g. Facts and propositions that are of such common
27 knowledge within the territorial jurisdiction

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of the court that they cannot reasonably be the subject of dispute.

h. Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy."

In the present case, defendants and respondents are asking this court to take judicial notice pursuant to this section of a bill introduced in the Legislature, an officially adopted resolution of an administrative agency of the State and a bill analysis prepared by the staff of the Legislature.

The legislative history of an act of the Legislature has always been considered a proper subject of judicial review. Pacific Employer Insurance Co. v. Carpenter (1935) 10 Cal.App.2d 592; People v. Sterting Refinery Co. (1927) 86 Cal.App. 558; People v. Pagne (1924) 69 Cal.App. 94.

Likewise the official acts of governmental agencies are judicially noticeable Robbins v. Sonoma County Flood Control and Water Conservation District (1956) 138 Cal.App. 26 291; Contractor Safety Association v. California Comp. Ins. Co. (1957) 48 Cal. 2d 71.

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1 For these reasons it is therefore respectfully
2 requested that this Court take judicial notice of the documents
3 attached as Exhibits A, B and C herein.

4 Respectfully submitted,

5 GEORGE DEUKMEJIAN, Attorney General
6 N. GREGORY TAYLOR,
7 Assistant Attorney General
8 PETER H. KAUFMAN,
9 Deputy Attorney General

10 By: 

11 PETER H. KAUFMAN

12 Attorneys for Respondents
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Adopted
1-24-80

To: State Commission
From: Janet Tull, Director, Permit Appeals
Subject: Hollister Ranch Designation

Background

In July of 1979 the Commission granted permits for residential development within Hollister Ranch, a locked gate community along the Santa Barbara coast. In approving these projects, the Commission found that the permits could not be issued and development could not commence until public access to the currently inaccessible shoreline within the Ranch was guaranteed. The Accessways in question are owned by the Homeowners Association and not the individual property owners within the Ranch. Subsequent to the Commission action, the Coastal Act was amended to allow for use of a purchase and in-lieu fee program to make it easier for applicants in communities such as Hollister Ranch where the accessways are owned by a Homeowners Association to comply with the public access provisions of the Coastal Act (Exhibit 1). The following resolution is proposed for Commission adoption, to identify the Hollister Ranch as an existing subdivision meeting the requirements of Section 30610.3(a) for inclusion in this program.

Staff Recommendation

The staff recommends that the Commission adopt the following resolutions:

Whereas, the Hollister Ranch is an existing subdivision with less than 75% of the existing lots developed; and

Whereas, the public is currently precluded from obtaining access to the 2 1/2 miles of shoreline within the borders of the Ranch; and

Whereas, the Commission has found that development within the Ranch could only be found consistent with the access policies if public access to and along the shoreline consistent with the access program adopted in Appeal No. 101-79 et. sec. is assured; and

Whereas, the individual lot owners do not have the legal authority by themselves to comply with public access conditions necessary to bring the project into conformity with Sections 30210-30212 of the Coastal Act; and

Whereas, the Hollister Ranch Homeowners Association, of which the individual property owners are members, holds the legal authority,

Therefore, the Commission finds that the Hollister Ranch meets the criteria of Public Resources Code Section 30610.3(a) and that the public access policies of the Coastal Act shall be met in Hollister Ranch through the mechanisms provided for in Section 30610.3 et. sec. of the Coastal Act.

SEC. 20114.

(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 such an area do not have the legal authority to comply with such public access requirements as a condition of securing a coastal development permit, for the reasons that some other person or persons has such legal authority, the commission shall implement such 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 such an area has been identified, the commission shall, after appropriate public hearings about a specific public access program for such area and shall request that the State Coastal Conservancy, established pursuant to Division 21 (commencing with Section 31000), implement such program. Such 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 such public access program.

(c) There is, in the General Fund, the Coastal Access Account. The State Coastal Conservancy shall be authorized to expend funds when appropriated from the Coastal Access Account for the purchase of lands 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 such public access program may be provided as a grant to the State Coastal Conservancy for its administrative costs 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 organization authorized to perform such 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 such 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 the 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

Exhibit 1

1972 (Former Division 18 (commencing with Section 47031)) 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 such 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 30 days of the adoption of the specific public access program by the commission pursuant to subdivision (b). Such appraisal shall be deemed suitable for all purposes of the Property Acquisition Law (Part 11 (commencing with Section 15350 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 in such an area may pay the "in lieu" public access fee at any time after public acquisition in order to avoid payment of the carrying cost factor.

(g) The provision of this section may be applied within any portion of the unincorporated area in the County of Sonoma, commonly known as the Sea Ranch.

SEC. 30610.4.

Upon establishment of an acquisition cost pursuant to subdivision (f) of Section 30610.3 the commission shall review the area in question to determine if all or some portion of such area meets the criteria specified in subdivision (b) of Section 30610.1 for areas within which no coastal development permit will be required from the regional commission or the commission for construction of single-family residences. Notwithstanding paragraph (1) of subdivision (c) of Section 30610.1, lots other than those immediately adjacent to any beach or to the mean high tide line where there is no beach can be included in such an exclusion area. If the commission determines an area designated pursuant to subdivision (b) of Section 30610.3 meets such criteria, the area shall be designated as one wherein no coastal development permit from the regional commission or the commission shall be required for the construction of single-family residences.

(h) Prior to the commencement of construction of any single-family residence within an area designated pursuant to this section, a certificate of exemption must be obtained pursuant to Section 30610.2 and the appropriate "in lieu" public access fee shall be paid. (Added by Cal. Stats. 1979, Ch. 919.)

SEC. 30610.5.

Urban land areas shall, pursuant to the provisions of this section, be excluded from the permit provisions of this chapter.

Exhibit 1

Introduced by Senator Cusanovich

January 8, 1979

An act to amend Sections 30010 and 30105 of the Public Resources Code, relating to coastal resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 175, as introduced, Cusanovich. Coastal resources: private property: development.

Existing law contains a legislative declaration that the California Coastal Act of 1976 is not intended and shall not be construed to allow the grant or denial of a permit in a manner which will take or damage private property for public use, without payment of just compensation. It also defines "development" for purposes of the act.

This bill would provide that the owner of private property shall not be required to dedicate such property for public use as a condition to the granting of any permit, unless just compensation has been paid. It would also provide that "development" does not include the construction of a single family detached residence as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 30010 of the Public Resources
- 2 Code is amended to read:
- 3 30010. The Legislature hereby finds and declares that
- 4 this division is not intended, and shall not be construed
- 5 as authorizing the regional commission, the commission,
- 6 port governing body, or local government acting
- 7 pursuant to this division to exercise their power to grant
- 8 or deny a permit in a manner which will take or damage

EXHIBIT B

1 private property, for public use, without the payment of
2 just compensation therefor. This section is not intended
3 to increase or decrease the rights of any owner of
4 property under the Constitution of the State of California
5 or the United States.

6 *The owner of private property shall not be required to*
7 *dedicate such property for public use, either in fee, in the*
8 *form of the granting of an easement, or otherwise, as a*
9 *condition to the granting of any permit, unless just*
10 *compensation has been paid.*

11 SEC. 2. Section 30106 of the Public Resources Code is
12 amended to read:

13 30106. "Development" means, on land, in or under
14 water, the placement or erection of any solid material or
15 structure; discharge or disposal of any dredged material
16 or of any gaseous, liquid, solid, or thermal waste; grading,
17 removing, dredging, mining, or extraction of any
18 materials; change in the density or intensity of use of
19 land, including, but not limited to, subdivision pursuant
20 to the Subdivision Map Act (commencing with Section
21 65410 of the Government Code), and any other division
22 of land, including lot splits, except where the land
23 division is brought about in connection with the purchase
24 of such land by a public agency for public recreational
25 use; change in the intensity of use of water, or of access
26 thereto; construction, reconstruction, demolition, or
27 alteration of the size of any structure, including any
28 facility of any private, public, or municipal utility; and the
29 removal or harvesting of major vegetation other than for
30 agricultural purposes, kelp harvesting, and timber
31 operations which are in accordance with a timber
32 harvesting plan submitted pursuant to the provisions of
33 the Z'berg-Nejedly Forest Practice Act of 1973
34 (commencing with Section 4511).

35 *"Development" does not include the construction of a*
36 *single family detached residence, not built in conjunction*
37 *with any other single family residence, on a legally*
38 *subdivided lot or parcel.*

39 As used in this section, "structure" includes, but is not
40 limited to, any building, road, pipe, flume, conduit,

1. siphon, aqueduct, telephone line, and electrical power
2. transmission and distribution line.

SENATE COMMITTEE ON NATURAL RESOURCES AND WILDLIFE
AB 643 (Calvo)
as amended in the Senate
August 20, 1979

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RE: COASTAL RESOURCES: DEVELOPMENT PERMITS, ETC.

SUMMARY:

This bill would make substantial changes in the California Coastal Act of 1976 relating to coastal commission voting procedures, exemption of some single-family residences from coastal development permit requirements, provision of public access, and development controls in general.

The bill contains provisions of various Assembly bills that were incorporated by action of the Assembly Resources, Land Use, and Energy Committee.

Each major issue addressed in the bill is separately analyzed below. References are to sections of the Public Resources Code amended or added by the bill.

BACKGROUND AND ANALYSIS:

(1) Voting Procedures (Sec. 30315)

Existing law requires action by a majority of the total appointed membership of the California Coastal Commission and the 6 regional commissions. In response to complaints of hardship on permit applicants caused by low attendance by some commissioners, SB 1555 (Nejedly) was enacted last year to provide for the appointment of alternate state and regional commissioners. According to representatives of the Coastal Commission, this arrangement has worked well in individual instances (particularly with respect to local officials who have schedules that frequently conflict with commission duties), but a sufficient number of commissioners have not yet availed themselves of this arrangement in order to assess its overall effectiveness in expediting business before the commissions.

Without deleting the authority to appoint alternate commissioners, the bill would permit action by a majority of the members of a commission present and constituting a quorum.

(2) Exemption of Single-family Residences (Secs. 30610.1 and 30610.2) A
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With limited exceptions, no development may be undertaken in the coastal zone unless a coastal development permit has been issued by the regional commission. A substantial part of the commissions' business is occupied with permit applications for single-family residences, which are often proposed to be constructed in previously subdivided areas that are already substantially built up. 6
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This bill would exempt construction of a single-family residence on a vacant lot from the requirement to obtain a permit from the coastal commission under the following procedure: The state commission would designate areas which, if developed, would not result in "significant adverse impacts" on specified coastal-related values (e.g., scenery, agricultural lands). Within such areas, any single-family residence would be exempted from the permit requirement if the lot on which it is to be constructed meets criteria relating to distance from the sea, conformance to zoning and safety requirements, road access, and availability of water and sanitation. The local government having jurisdiction over the lot would grant permission to build after determining that the lot meets the criteria.

(3) Other Permit Requirements (Secs. 30604, 30610, 30612, and 30624)

A coastal development permit currently is not required for various classes of development, including improvements to existing single-family residences.

This bill would expand the scope of this exemption to include improvements to any structure other than a public works facility and would add a category of exemption for replacement of any structure other than a public works facility destroyed by natural disaster if the new structure is substantially the same size as the one destroyed (subds. (a) and (f), Sec. 30610).

The bill would add two provisions regarding the basis for denial of a permit. First, it would prohibit denial of a permit on the grounds that a public agency

is planning to acquire the property to be developed (or adjacent property) unless funds for the acquisition are available or can reasonably be expected to become available within a reasonable period of time (subd. (e), Sec. 30604). Second, it would prohibit the state or regional commission from denying a permit for the demolition of the structure unless it finds, by the preponderance of the evidence, that the structure can feasibly be maintained for any economically viable use (Sec. 30612). A
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The bill expands the authority for issuance of a "ministerial permit" by the Commission's executive director to include any development in a city consisting of four or fewer units. In addition, the authority of the state or a regional commission to suspend issuance of a ministerial permit would be restricted by requiring action of one third of the membership, instead of any two commissioners (Sec. 30624).

(4) Public Access (Secs. 30212, 30214, 30610.3, and 30610.4)

One of the policy provisions of the Coastal Act requires the provision of public access in new developments to and along the shore from the nearest public road. Access is commonly provided for incidentally to the issuance of a permit, which may be conditioned on, for example, dedication of a strip of land for an accessway.

This bill would exempt the following types of development from the requirement that access be provided in the course of permitting the development:

- (a) Replacement of a structure that was destroyed by natural disaster and therefore is exempt from permit requirements;
- (b) Reconstruction of a single-family residence that is substantially the same size as the former structure;
- (c) Improvements to any structure that do not significantly increase its size or impede public access; and,

(d) Any repair or maintenance activity that will not affect access along the beach (Sec. 30212). A B

The bill would add new provisions requiring that access requirements be implemented in a manner that takes into account the particular circumstances existing at each accessway, including topography, public carrying capacity, and the need to protect adjacent residences and fragile natural resources. This provision would direct that the public's right to access be "balanced" with private property rights in implementing the Act's access policies (Sec. 30214). 6 4 3

A special problem in providing public access exists in some new residential developments because individual lot owners do not own or effectively control all or part of the lands where the accessway will be located. Lands suitable for an accessway often are owned by a homeowners association and are devoted to the common use of association members. Often the individual owner is required, but is unable in these circumstances, to provide for public access in his community as a condition to the issuance of a permit for development on his lot.

This bill would establish a new mechanism for providing access in areas where individual permit applicants are legally incapable of complying with access requirements. The State Coastal Conservancy would implement a program of acquiring accessways, view easements, and related facilities in such an area and providing for their subsequent management. Each such program would be financed by prorating the cost among the vacant lots in the area, which would be paid in the form of an "in lieu" public access fee, generally when the lot is to be developed. Lots subject to a pre-Proposition 20 vested right would be exempt, and their shares would be paid from the Coastal Access Account, which the bill would establish in the General Fund. Land dedications would be credited against any liability for payment of the "in lieu" fee. The bill would appropriate \$1,000,000 from the Environmental Protection Program Fund for deposit in the Coastal Access Account for this purpose in the 1979-80 fiscal year. The account would be reimbursed as "in lieu" fees are paid (Secs. 30610.3 and 30610.4).

(5) Procedural Matters (Secs. 30333.1, 30335.1, 30621, 30622, and 30627) A B

Generally speaking, under existing law the standard used by the commission in deciding appeals (and other matters) is the policies of the Coastal Act.

The bill would place on the appellant the burden of proof as to whether or not the matter being appealed complies with the Coastal Act (Sec. 30621).

The bill would also require the Coastal Commission to review its procedures and to implement "appropriate revisions to simplify and expedite its proceedings (Sec. 30333.1), to establish a procedure whereby applicants may seek reconsideration of denial of a development permit or any terms or conditions of a permit (Sec. 30627), and to furnish staff to provide advice on procedural matters to applicants (Sec. 30335.1). The bill would expressly authorize the commencement of construction pursuant to a noncontested permit without waiting for expiration of the period for appeals (Sec. 30622).

(6) Miscellaneous Changes (Secs. 30108.6, 30122, and 30806)

Local governments in the coastal zone are preparing local coastal programs (LCPs) which, when certified by the Commission, will serve as the principal mechanism for implementing the Coastal Act. LCPs consist of land use plans, zoning ordinances and maps, and other implementing actions. The meaning of "zoning ordinance" has been the subject of some dispute and could be construed broadly to mean many forms of local land use regulation.

This bill attempts to restrict the meaning of "zoning ordinances" by reference to that term as described in the Government Code (Sec. 30122). As such, zoning ordinances for purposes of the Coastal Act would be limited to regulation of types of land uses (i.e., designation of commercial, industrial, and residential uses), signs and billboards, and density and intensity of land uses, and establishment of parking requirements, building setback lines, and "civic districts." However, reference to the Government Code may not completely resolve the issue as those provisions do

(5) Procedural Matters (Secs. 30333.1, 30335.1, 30621, 30622, and 30627) A
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Generally speaking, under existing law the standard used by the commission in deciding appeals (and other matters) is the policies of the Coastal Act. 6
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The bill would place on the appellant the burden of proof as to whether or not the matter being appealed complies with the Coastal Act (Sec. 30621).

The bill would also require the Coastal Commission to review its procedures and to implement "appropriate revisions to simplify and expedite its proceedings (Sec. 30333.1), to establish a procedure whereby applicants may seek reconsideration of denial of a development permit or any terms or conditions of a permit (Sec. 30627), and to furnish staff to provide advice on procedural matters to applicants (Sec. 30335.1). The bill would expressly authorize the commencement of construction pursuant to a noncontested permit without waiting for expiration of the period for appeals (Sec. 30622).

(6) Miscellaneous Changes (Secs. 30108.6, 30122, and 30806)

Local governments in the coastal zone are preparing local coastal programs (LCPs) which, when certified by the Commission, will serve as the principal mechanism for implementing the Coastal Act. LCPs consist of land use plans, zoning ordinances and maps, and other implementing actions. The meaning of "zoning ordinance" has been the subject of some dispute and could be construed broadly to mean many forms of local land use regulation.

This bill attempts to restrict the meaning of "zoning ordinances" by reference to that term as described in the Government Code (Sec. 30122). As such, zoning ordinances for purposes of the Coastal Act would be limited to regulation of types of land use (i.e., designation of commercial, industrial, and residential uses), signs and billboards, and density and intensity of land uses, and establishment of parking requirements, building setback lines, and "civic districts." However, reference to the Government Code may not completely resolve the issue as those provisions do

Opposed unless amended:

California Coastal Council
San Diego, County of
Sea Ranch Association
8 letters

A
B
6
4
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8/17/79

DECLARATION OF SERVICE BY MAIL

LASC

Re: Alvin and Sylvia Remmenga, et al. v. California Coastal Commission, etc. No. C 300-657
et al.

I am over 18 years of age, and not a party to the within cause; my business address is 3580 Wilshire Boulevard, Los Angeles, California 90010; I served a copy of the attached

NOTICE OF REQUEST FOR TAKING OF JUDICIAL NOTICE

AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

on each of the following, by placing same in an envelope(s) addressed as follows:

Arthur D. Cohen, Esq.
Ball, Hunt, Hart, Brown & Baerwitz
120 Linden Ave.
Long Beach, CA 90801

Each said envelope was then, on June 19, 1980, sealed and deposited in the United States Mail at Los Angeles, California, the county in which I am employed, with the postage thereon fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 19, 1980, at Los Angeles, California.

Margaret Hanford
Declarant
MARGARET HANFORD

JANUARY 27, 1982

SECTION-BY-SECTION
EXPLANATION OF
PROVISIONS OF AB 321
(PRIOR TO CONFERENCE)

SECTION 1. (PAGE 6, LINE 1) - REVISES THE DEFINITION OF "PRIME AGRICULTURAL LAND" WHICH, UNDER THE COASTAL ACT, MUST BE PROTECTED. THE REVISION REMOVES FROM THE CLASSIFICATION "PRIME", FARMLANDS OF MARGINAL PRODUCTIVITY (I.E., WHICH PRODUCE CROPS WITH A GROSS VALUE OF \$200/YEAR). (AB 1535-NAYLOR)

SECTION 2. (PAGE 6, LINE 6) - MAKES MINOR COASTAL BOUNDARY ADJUSTMENT WITHIN CITY OF SAN CLEMENTE BY ADDING TERRITORY TO COASTAL ZONE. REQUESTED BY SAN CLEMENTE AND ASSEMBLYWOMAN BERGESON.

SECTION 3. (PAGE 7, LINE 2) - CLARIFIES THAT THE COASTAL COMMISSION WHEN RESOLVING CONFLICTS BETWEEN INDIVIDUAL COASTAL ACT MANAGEMENT POLICIES, MUST MAKE FINDINGS WHICH EXPLAIN THE REASONS FOR THEIR CONFLICT RESOLUTION DECISION. (AB 1905-MOORE)

SECTION 4. (PAGE 9, LINE 26) - CLARIFIES THAT SEDIMENT WHICH HAS ACCUMULATED BEHIND FLOOD CONTROL DAMS MAY BE DEPOSITED ALONG THE OCEAN SHORE--WITH APPROPRIATE PERMISSION FROM THE COASTAL COMMISSION. THIS WAS A LOS ANGELES COUNTY REQUEST AND WAS ORIGINALLY INTRODUCED AS AB 1222-LAFOLLETTE.



SECTION 5. (PAGE 11, LINE 27) - CLARIFIES THAT COMMISSION CAN ALLOW DEVELOPMENT OF AGRICULTURAL LAND EITHER WHERE VIABILITY OF AGRICULTURE IS THREATENED BY URBAN ENCROACHMENT OR WHERE URBAN USE IS NECESSARY TO COMPLETE DEVELOPMENT OF EXISTING NEIGHBORHOODS--REQUESTED BY COASTAL COMMISSION.

SECTION 6. (PAGE 12, LINE 16) - SPECIFIES THAT LOCAL GOVERNMENTS MAY ASK THE COMMISSION TO APPROVE AMENDMENTS TO COMMISSION-CERTIFIED LCPs ONLY THREE TIMES PER YEAR. THIS REQUIREMENT IS INTENDED TO REGULARIZE THE COMMISSION'S WORKLOAD AND IS SUPPORTED BY LOCAL GOVERNMENT. (AB 391-FARR)

SECTION 7. (PAGE 13, LINE 9) - AUTHORIZES THE COMMISSION TO RECOMMEND LCP AMENDMENTS TO LOCAL GOVERNMENTS WHICH MAY BE NEEDED TO ACCOMMODATE COASTAL USES OF "GREATER THAN LOCAL IMPORTANCE". COMMISSION'S RECOMMENDATION HAS NO FORCE OR EFFECT UNLESS ADOPTED BY LOCAL GOVERNMENT--REQUESTED BY CEEB AND ORIGINALLY CONTAINED IN SB 985 (HOLMDAHL).

SECTION 8. (PAGE 14, LINE 7) - CLARIFIES THAT FEE OWNER OF PROPERTY NEED NOT BE A CO-APPLICANT FOR A COASTAL DEVELOPMENT SO LONG AS APPLICANT CAN DEMONSTRATE THAT HE/SHE ENTITLEMENT FOR USE OF PROPERTY AND CAN COMPLY WITH ALL CONDITIONS OF PERMIT--REQUESTED BY CEEB AND ORIGINALLY CONTAINED IN SB 985 (HOLMDAHL).

SECTIONS 9 AND 12. (PAGE 14, LINE 23 AND PAGE 21, LINE 11) - CORRECT DRAFTING AMBIGUITIES AND ERRORS WITH RESPECT

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TO THE APPEAL PROCEDURES WHICH ARE TO BE USED AFTER LOCAL LCPs ARE CERTIFIED. THESE PROCEDURES WERE MISDRAFTED IN 1976 BUT BECAUSE THEY HAVE NOT BEEN USED UNTIL LCPs WERE COMPLETED, THE DRAFTING ERRORS WENT UNNOTICED UNTIL NOW. (THESE SECTIONS WERE THE ORIGINAL SUBJECT MATTER OF AB 321.)

SECTION 9.5. (PAGE 15, LINE 34) - PERMITS COMMISSION TO ADJUST BOUNDARY OF "SPECIAL APPEALS AREA" WITHIN WHICH PERMITS CAN BE APPEALED AFTER LCPs ARE CERTIFIED. BOUNDARY ADJUSTMENT WILL BE MADE IN ORDER TO AVOID BISECTING CITY LOTS--REQUESTED BY SAN FRANCISCO.

SECTION 10. (PAGE 16, LINE 15) - EXEMPTS FROM COMMISSION JURISDICTION THE CONVERSION OF APARTMENTS AND CONDOMINIUMS TO "TIME-SHARE" OWNERSHIP. (CONVERSION OF HOTELS AND MOTELS TO "TIME-SHARE" OWNERSHIP WOULD REMAIN SUBJECT TO COMMISSION JURISDICTION)--REQUESTED BY SENATE NATURAL RESOURCES COMMITTEE.

SECTION 10.5. (PAGE 18, LINE 16) - CONTAINS SPECIAL DEVELOPMENT PROVISIONS APPLICABLE TO TWO HOTELS AT MARINA DEL REY IN LOS ANGELES COUNTY. THE PROBLEMS WITH RESPECT TO THIS DEVELOPMENT WERE RESOLVED DURING THE FALL RECESS ON TERMS ACCEPTABLE TO BOTH THE COASTAL COMMISSION AND THE DEVELOPER. THUS, CONFERENCE AMENDMENTS WILL REMOVE THIS SECTION FROM THE BILL.

SECTION 11 AND 13. (PAGE 19, LINE 15 AND PAGE 22, LINE 13) - RESOLVE DISPUTE RE PROPERTY OWNERS CONTRIBUTION TO PUBLIC ACCESS PROGRAM AT HOLLISTER RANCH IN SANTA BARBARA COUNTY. EACH OF THE



100 PROPERTY OWNERS WILL CONTRIBUTE \$5,000 TO THE ACCESS PROGRAM WHEN APPLYING FOR A PERMIT TO DEVELOP HIS/HER PROPERTY (SEC. 11). IN THE MEANTIME, THE COASTAL CONSERVANCY IS LOANED \$500,000 FROM THE AMOUNT OF MONEY RESERVED FOR COASTAL ACCESS PURPOSES UNDER THE 1980 PARK BOND ACT--SO THAT WORK CAN BEGIN IMMEDIATELY ON THE ACCESS PROGRAM. ENTIRE \$500,000 WILL BE REPAYED AS INDIVIDUAL FEES ARE COLLECTED --REQUESTED BY HOLLISTER RANCH PROPERTY OWNERS.

SECTION 11.5. (PAGE 20, LINE 10) - ESTABLISHES A PROCEDURE FOR DETERMINING THE EXTENT OF "PUBLIC TRUST" LANDS FOR WHICH DEVELOPMENT PERMITS WILL NOT BE REQUIRED--REQUESTED BY LEAGUE OF CITIES.

SECTION 11.6. (PAGE 20, LINE 30) - AUTHORIZES COMMISSION TO ESTABLISH PROCEDURES UNDER WHICH EXECUTIVE DIRECTOR MAY WAIVE REQUIREMENT FOR PERMIT FOR "DE MINIMIS" DEVELOPMENTS-- REQUESTED BY COMMISSION.

SECTION 14. (PAGE 23, LINE 23) - EXTENDS DATE FOR MEETING SPECIFIED PLANNING REQUIREMENTS IN MENDOCINO COUNTY-- REQUESTED BY ASSEMBLYMAN BOSCO AND MENDOCINO BOARD OF SUPERVISORS.



SECTION-BY-SECTION
EXPLANATION OF
ENROLLED VERSION OF
AB 321

SECTION 1.

Amendment to Government Code Section 65588 was sought by H&CD to ensure that periodic local reviews of housing elements take into account the "affordable" housing which has been made available through SB 626.

SECTION 2.

Addition of a new article "heading"--viz., Article 10.7--to Div. 1, Title 7 of the Government Code was requested by H&CD to emphasize that requirements of new Section 65590 (added by SB 626) are not part of local housing element requirements which are spelled out in Article 10.6.

SECTION 3.

The various amendments to Government Code Section 65590 do the following:

1. Amendments to subdivision (a) are for purposes of clarification and are nonsubstantive.
2. Amendments to first paragraph of subdivision (b) were requested by H&CD, Coastal Commission and OPR to eliminate potential ambiguity in language of SB 626 re replacement of low and moderate income housing. No substantive change is made in policy of SB 626.

In addition, the phrase "by ordinance" has been struck from subparagraph (4) of paragraph three at the request of the League of Cities to prevent invalidation of local "housing fee" programs which have been established by resolution.
3. The revision of the definition of "demolition" in paragraph (2) of subdivision (g) was requested by both Coastal Commission and League of Cities to ensure that Commission is not required to participate in decision that a structure is a "public nuisance".
4. The addition of new subdivision (k) to Government Code Section 65590 was requested by H&CD to state unequivocally that "affordable housing" requirements of SB 626 were minimum requirements and that a local government could impose additional requirements if it wished and if otherwise authorized by law to do so.

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SECTION 3.5.

The addition of new Section 65590.1 to Government Code and new Section 30600.1 to Public Resources Code (see Section 15.5) resolve the so-called "gap" problem by requiring local governments to apply SB 626 housing requirements to projects which were "in process" on January 1, when SB 626 went into effect.

SECTION 4.

The amendment to Government Code Section 65700 ensures that the provisions of SB 626 apply to charter cities.

SECTION 5.

New Public Resources Code Section 30011 was requested by League of Cities to clarify that Coastal Commission has no oversight responsibility with respect to local governments' implementation of SB 626 requirements.

SECTION 5.1.

The amendments to Section 30113 of the Public Resources Code revise the definition of "prime agricultural land" which, under the Coastal Act, must be protected. The revision removes from the classification "prime", farmlands of marginal productivity (i.e., which produce crops with a gross value of \$200/year).

SECTION 5.5.

The amendments to Section 30168 of the Public Resources Code make a minor coastal boundary adjustment within City of San Clemente by adding territory to coastal zone. This change was requested by San Clemente.

SECTIONS 6 AND 7.

The amendments to Public Resources Code Sections 30170 and 30171 ensure that property owners will be able to request amendments to the LCP in the unique Carlsbad situation where the Commission prepared and certified an LCP but Carlsbad did not accept it.

SECTION 8.

The amendments to Public Resources Code Section 30200 clarify that the Coastal Commission, when resolving conflicts between individual Coastal Act management policies, must make findings which explain the reasons for their conflict resolution decision.



SECTION 9.

The amendments to Public Resources Code Section 30233 clarify that sediment which has accumulated behind flood control dams may be deposited along the ocean shore--with appropriate permission from the Coastal Commission.

SECTION 10.

The amendments to Public Resources Code Section 30241 clarify that the Commission can allow development of agricultural land either where viability of agriculture is threatened by urban encroachment or where urban use is necessary to complete development of existing neighborhoods.

The amendments also prevent a previous amendment to this Section by SB 584 (Mello) from being "chaptered out".

SECTION 11.

The amendment to Public Resources Code Section 30315 was requested by the Coastal Commission to delete superfluous language.

SECTION 12.

The amendment to Public Resources Code Section 30333 on page 15 clarifies that a majority vote of the entire Commission membership is required to amend Commission regulations.

SECTION 12.5.

The amendments to Public Resources Code Section 30512 were requested by the Coastal Commission to eliminate confusing language relative to whether that Commission should vote to certify or to refuse to certify land use plans. The new language requires that the Commission action be taken on the question of certifying the land use plan. (This represents no substantive changes).

In addition, the amendment to subdivision (c) corrects an erroneous cross-reference.

SECTION 13.

The amendments to Public Resources Code Section 30514 specify that local governments may ask the Commission to approve amendments to Commission-certified LCPs only three times per year. This requirement is intended to regularize the Commission's workload and is supported by local government.

The amendments also make clear that the "substantial issue" test, which is applicable to adoption of LCPs, is not to be applied to LCP amendments.



Finally, the amendments clarify that local governments may request "urgency" amendments to LCPs which may be approved by the Commission's Executive Director.

SECTION 14.

The amendments to Section 30519 authorize the Commission to recommend LCP amendments to local governments which may be needed to accommodate coastal uses of "greater than local importance". Commission's recommendation has no force or effect unless adopted by local government.

SECTION 14.5.

New Public Resources Code Section 30519.1 clarifies the jurisdiction of Coastal Commission and City of Carlsbad until such time as LCP is accepted by City. (Coastal permits must conform to Commission-adopted LCP, exclusive of housing. Housing requirements, as contained in SB 626, will be administered by City of Carlsbad.)

SECTION 15.

The amendments to Public Resources Code Section 30520 clarify ambiguous language in existing law without making any substantive change.

SECTION 15.5.

As indicated above in connection with Section 3.5, new Public Resources Code Section 30600.1 resolves the so-called "gap" problem by requiring local governments to apply SB 626 housing requirements to projects which were "in process" when SB 626 went into effect on January 1, 1982.

SECTION 16.

The amendments to Public Resources Code Section 30600.5, were requested by various individual local governments. The rewrite of subdivision (f) clarifies the requirements of that subdivision without making any substantive change.

SECTION 17.

New Public Resources Code Section 30600.6 fulfills the agreement that authorization would be provided for local governments to impose fees to recover actual costs associated with issuing coastal permits-- until such time as final certification of the LCP occurs. (At the latter date, existing law provides for state reimbursement for new local expenses.)



SECTION 18.

New Public Resources Code Section 3060.5 clarifies that fee owner of property need not be a co-applicant for a coastal development permit so long as applicant can demonstrate that he/she has an entitlement for use of property and can comply with all conditions of coastal permit.

SECTIONS 19 and 27.

The amendments to Public Resources Code Sections 30603 and 30625 correct drafting errors in the original 1976 Coastal Act with respect to the appeal procedures which are to be used after local LCPs are certified. These procedures were misdrafted in 1976 but because they have not been used until LCPs were completed, the drafting errors when unnoticed until now.

SECTION 20.

New Public Resources Code Section 30603.1 permits the Commission to adjust the boundary of the "special appeals area" in San Francisco within which permits can be appealed after LCPs are certified. Boundary adjustment will be made in order to avoid bisecting city lots.

SECTION 21.

The amendments to Public Resources Code Section 30607.2 conform terminology in the statute to that used in practice by the Coastal Commission. (No substantive change).

SECTION 22.

The amendments to Public Resources Code Section 30610 exempt from Commission jurisdiction the conversion of apartments and condominiums to "time-share" ownership. (Conversion of hotels and motels to "time-share" ownership would remain subject to Commission jurisdiction).

SECTIONS 23 and 28.

New Public Resources Code Section 30610.8, together with the addition of Section 2.00J to the 1981 Budget Act, resolve a dispute re the appropriate amount of property owners' contribution to public access program at Hollister Ranch in Santa Barbara County. Each of the 100 property owners will contribute \$5000 to the access program when applying for a permit to develop his/her property (Section 30610.8). In the meantime, the Coastal Conservancy will be loaned \$500,000 from money reserved for coastal access purposes under the 1980 Park Bond Act--so that work can begin immediately on the access program (Budget Act 2.00J). The entire \$500,000 will be repaid as individual fees are collected.



SECTION 24.

New Public Resources Code Section 30613 establishes a procedure for determining the extend of "public trust" lands for which development permits will not be required.

SECTION 25.

The amendments to Public Resources Code Section 30624 were requested by various local governments to delineate more clearly local government vs. Commission responsibilities. This has been done by breaking the section into four separate subdivisions with no substantive change.

SECTION 26.

New Public Resources Code Section 30624.7 authorizes the Commission to establish procedures under which Executive Director may waive the requirement for a coastal permit in the case of "de minimis" developments.

SECTION 27.

(See Section 19)

SECTION 28.

(See Section 23)

SECTION 29.

The amendments to Chapter 1359 of the Statutes of 1980 extend the date for meeting specified planning requirements in Mendocino County.

SECTION 30.

Specifies that local governments will not be entitled to claim State reimbursement on account of the administrative or clarifying changes made by AB 321.

SECTION 31.

Urgency clause.



August 9, 2018

Beth A. Collins
Attorney at Law
805.882.1419 tel
805.965.4333 fax
bcollins@bhfs.com

Commissioners and Executive Director John Ainsworth
California Coastal Commission
South Central Coast Area
89 South California St., Suite 200
Ventura, CA 93001

RE: Agenda Item F16a, Santa Barbara County Local Coastal Program Amendment No. LCP-4-STB-18-0039-1-Part B, Gaviota Coast Plan

Honorable Commissioners and Executive Director John Ainsworth:

I represent Hollister Ranch Owners' Association and am writing to comment on the proposed changes to Dev Std REC-3 detailed in the Addendum to the Staff Report dated August 7, 2018. Please distribute this to the Commissioners at tomorrow's hearing.

The proposed changes conflict with the Coastal Act, which mandates landowners in Hollister Ranch to pay an in-lieu fee **the first time their vacant lot is developed**. But the proposed modification incorrectly suggests that the fee is owed each time any parcel "in Hollister Ranch" is developed.

This modification violates Sections 30610.3 and 30610.8 of the California Public Resources Code

Section 30610.3 established a procedure for the Commission to designate mostly vacant, pre-Coastal Act subdivisions appropriate for an in-lieu fee program since the individual property owners seeking coastal development permits did not own the property rights needed to grant public access to the beach. (See Pub. Res. Code § 30610.3.)¹ The Coastal Commission did that. It adopted a Resolution in 1980 finding that Hollister Ranch was an "existing subdivision meeting the requirements of Section 30610.3(a)." The Commission found that Hollister Ranch had "less than 75 percent of the existing lots developed" and the "individual lot owners do not have the legal authority by themselves to comply with the public access conditions necessary to bring the project into conformity with Sections 30210-20212 of the Coastal Act." (See Exhibit A to this letter, which is a filing by the Attorney General's office seeking Judicial Notice of the January 24, 1980 Commission Resolution.)

Section 30610.3 states that "Every person receiving a coastal development permit or a certificate of exemption **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." Thus, only those owners developing **vacant lots** must pay the fee.

¹ Section 30610.3(a) provides that "Whenever the commission determines (1) that public access opportunities though an existing subdivided area, which has less than 75 percent of the subdivided lots built upon ... (2) that individual owners of vacant lots in those areas do not have the legal authority to comply with the public access requirements as a condition of securing a coastal development permit for the reason that some other person or persons has the legal authority, the commission shall implement public access requirements as provided in this section."].)

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Santa Barbara, CA 93101-2711
main 805.963.7000

Section 30610.3 goes on to say: "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.**" Thus the total acquisition cost is divided and allocated to each parcel. **Each parcel only pays once.** Section 30610.3 goes on to explain that the fees for any developed parcels shall be paid from the Coastal Access Account. (Section 30610.3 ["The proportion of the 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 ... shall be paid from the Coastal Access Account."].) **Thus, the owners of parcels with existing permits are not required to pay the in-lieu fee.**

The Legislative History of 30610.3, attached to Exhibit A, also supports this conclusion where it provides that "Each such [public access program] would be financed by prorating the cost among vacant lots in the area, which would be paid in the form of an 'in lieu' public access fee, generally when the lot is to be developed. Lots subject to pre-Proposition 20 vested right would be exempt, and their shares paid from the Coastal Access Account..." (See Senate Committee on Natural Resources and Wildlife, AB 643 (Calvo), p. 4.)

The Commission's own Hollister Ranch Access Program reiterates this understanding when it states: "Section 30610.3(e) makes clear that the in-lieu fee is established by dividing the total number of lots in the designated area (i.e. Hollister Ranch) into the 'cost of acquiring' the specified easements." The document goes on to explain why staff proposed in-lieu fee legislation for Hollister Ranch.

Because this figure can only be determined if there is an agreed to sales price, or the figure is determined after condemnation proceedings have been concluded, it is, staff believes, not possible to fix the precise amount of the in-lieu fee even after the Conservancy's appraisal has been completed unless there is an agreement on price with the property owners involved. This results from additional costs associated with eminent domain proceedings, such as, litigation costs. **As a result, staff has proposed clarifying legislation which would enable the Commission and the Conservancy to set a reasonable in-lieu fee** which is based on a rational estimate of what the expected acquisition costs will be in cases where the power of eminent domain will most likely have to be used."

(Adopted Coastal Access Program for Hollister Ranch, August 18, 1981, at 3-4 [emphasis added].)

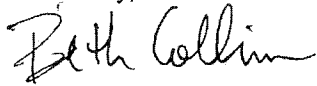
Public Resources Code section 30610.8 was enacted in 1982. It provides that "For the purposes of Section 30610.3 and with respect to Hollister Ranch public access program, the in-lieu fee shall be five thousand dollars (\$5,000) for each permit." Section 30610.8 sets the specific fee amount, but it does not abrogate the language in 30610.3. In fact, it specifically invokes 30610.3. Section 30610.8 simply sets the amount of the Hollister Ranch access fee to \$5,000. It does not change the mechanism and circumstances that apply for payment, which are detailed in 30610.3.

The Legislative History of 30610.8 (attached as Exhibit B) makes that conclusion clear where it explains that the Legislature envisioned collecting \$5,000 from 100 property owners at Hollister Ranch. The Legislature did not expect payment from all 135 parcels whenever they pulled a coastal development permit. Specifically, the Legislative History says: "New Public Resources Code Section 30610.8, together with the addition of Section 2.00J to the 1981 Budget Act, resolve a dispute re the appropriate amount of property owners' contribution to public access program at Hollister Ranch in Santa Barbara County. **Each of the 100 property owners will contribute \$5000 to the access program when applying for a permit to develop his/her property (Section 30610.8).** In the meantime the Coastal Conservancy will be loaned \$500,000 from money reserved for coastal access purposes under the 1980 Park Bond Act—so that work can begin immediately on the access program (Budget Act 2.00J). The entire \$500,000 will be repaid as

individual fees are collected." This makes sense since at the time there were approximately 100 parcels that remained vacant and in the Hollister Ranch subdivision.

The proposed modifications could result in in-lieu fees being collected numerous times from each parcel, as the owner developed a home, an accessory dwelling unit, or a barn or garage. There would be no limit to the number of times that an individual property owner would be subject to the fee. This is clearly not what the Legislature intended when enacting these provisions of the Coastal Act. The Commission should reject these proposed modifications. To do otherwise would be acting beyond its Legislative mandate and likely an unconstitutional taking.

Sincerely,

A handwritten signature in black ink that reads "Beth Collins". The signature is written in a cursive, flowing style.

Beth A. Collins

cc: Ms. Dianne Black; Mr. Michael Ghizzoni

17226970.1

