THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

TENTATIVE RULING

Judge Colleen Sterne
Department 5 SB-Anacapa
1100 Anacapa Street P.O. Box 21107 Santa Barbara, CA 93121-1107

CIVIL LAW & MOTION

Tom Pappas et al vs State of California et al	
Case No:	1417388
Hearing Date:	Mon Apr 13, 2015 9:30

Nature of Proceedings: Case Management Conference; Motion Summary Adjudication

Case: *Tom Pappas, etc., et al., v. State of California, et al.*,]

Case No. 1417388 (Judge Sterne)

Hearing Date: April 13, 2015

Motion: Motion of Plaintiffs Tim Behunin, Patrick Connelly, and The Hollister Ranch Owners' Association for Summary Adjudication

Attorneys:

For Plaintiffs and Petitioners The Hollister Ranch Cooperative, and The Hollister Ranch Owners' Association: Steven A. Amerikaner, Barry B. Langberg, Beth Collins-Burgard, Brownstein Hyatt Farber Schreck, LLP

For Plaintiffs and Petitioners Tim Behunin, trustee of the Behunin

Family Trust, and Patrick L. Connelly, individually and all others similarly situated: Marcus S. Bird, Hollister & Brace

For Defendants and Respondents State of California, State Coastal Conservancy, and California Coastal Commission: Kamala D. Harris, Jamee Jordan Patterson, Office of the California Attorney General

Tentative Ruling:

For the reasons set forth herein, the motion of plaintiffs Tim Behunin, Patrick Connelly, and The Hollister Ranch Owners' Association for summary adjudication is denied in its entirety.

Discussion:

This is a motion for summary adjudication by certain plaintiffs arising out of a dispute over the legal effectiveness of an offer to dedicate rights to public access over land.

(1) Geography

Plaintiffs' exhibit 25 is map of the affected parcels overlain with the easements here at issue. There is no dispute among the parties that exhibit 25 shows the approximate locations of the parcels and described easements. As such, exhibit 25, and its key, exhibit 26, are helpful references in understanding the geography underlying this dispute.

Exhibit 25 shows the YMCA parcel (number 136, APN 083-700-032) located inland, and shows easements (the Cuarta Canyon Road Easement, the 20 foot Access Easement, and the 10 foot Footpath Easement) which lead from the YMCA parcel across parcel numbers 111 (APN 083-700-007), 110 (APN 083-700-006), 101 (APN 083-700-019), 105 (APN 083-700-001), and 103 (APN 083-690-021) to the beach parcel (number 104, APN 083-690-022) of plaintiff Hollister Ranch Owners' Association (HROA). The map shows the beach parcel overlain with the 3880 foot Beach Easement, the Exclusive Recreational Easement and the railroad right-of-way. The map shows the Blufftop Trial Easement Area and the Rancho Real Road Easement as inland (north) of the railroad right-of-way and across parcel numbers 103, 105, 106, 107, 119, 120, 121, 122 and 123.

Plaintiff Patrick L. Connelly became the owner of parcel 105 in 1988. (Defendants' Response to Plaintiffs' Separate Statement [DSS], undisputed fact 49.) Plaintiff Tim Behunin, trustee of the Behunin Family Trust, (Behunin) became owner of parcel 103 in 1999. (DSS, undisputed fact 6.) Plaintiff HROA is became the owner of parcel 104 in 1983. (Plaintiffs' exhibit 4.)

(2) Ownership and Development of Parcels

(a) 1970 Grants

On June 3, 1970, Rancho Santa Barbara granted by corporation grant deed (1970 Grant Deed) to Young Men's Christian Association of Metropolitan Los Angeles (YMCA) a fee interest in parcel 136 (the YMCA parcel). (DSS, undisputed fact 7.) The 1970 Grant Deed also conveyed to YMCA nonexclusive easements over Cuarta Canyon Road, the 20 foot Access Easement and the 3880 foot beach easement. (*Ibid.*) The 1970 Grant Deed states that the YMCA parcel was to be used "only as a resident camp and conference center and other recreational uses" and "may be occupied by not more than two hundred fifty (250) persons including campers, staff and guests." (1970 Grant Deed [plaintiffs' exhibit 15, p. 6].) This restriction was to terminate 20 years from the date of the 1970 Grant Deed. (*Ibid.*)

On June 25, 1970, Rancho Santa Barbara also granted to YMCA (1970 Grant of Easement) appurtenant easements to the YMCA parcel as an exclusive beach easement and the 10 foot Footpath Easement. (DSS, undisputed fact 8.) These easements are within the area known as Hollister Ranch. (*Ibid.*) The Exclusive Beach Easement is expressly for "beach recreational activities and restroom and shelter facilities." (1970 Grant of Easement [plaintiffs' exhibit 5, p. 25].)

The easements granted in the 1970 Grant Deed and the 1970 Grant of Easement are easements appurtenant to the YMCA parcel and create no in-gross easements. (DSS, undisputed fact 10.) Neither the 1970 Grant Deed nor the 1970 Grant of Easement conveyed any easement to the YMCA described as a "Blufftop Access Trail," "bluff top lateral access trail," or an area "southerly of Rancho Real Road" and "northerly of the rail road right of way." (DSS, undisputed fact 9.)

(b) Hollister Ranch Subdivision

In 1971, Hollister Ranch was subdivided and a Declaration of Restrictions, Covenants and Conditions (CC&Rs) created for the Hollister Ranch parcels. (Plaintiffs' exhibit 30.) Phase I of the subdivision expressly excepted the YMCA parcel from the subdivision and CC&Rs. (Plaintiffs' exhibit 30, p. 30.) Phase II of the subdivision created the beach parcel, parcel 104, for beach recreation. (Plaintiffs' exhibit 31, pp. 4.2, 4.5, 4.7.) Ownership of parcel 104 was retained at this time by the subdivider, MGIC Equities Corporation (MGIC). (Plaintiffs' exhibit 4.) These parcels became subject to the CC&Rs in January 1972. (Plaintiffs' exhibit 31, p. 1.) Phase II also created common roads over which all parcel owners share easements. (Plaintiffs' exhibit 31; DSS, undisputed fact 1.)

The CC&Rs provide that the "use of any Common Area shall be subject to such easements and rights of way reserved therefrom at the time of the conveyance thereof by Grantor or the Association ...." (Plaintiffs' exhibit 30, § 2.04(b).) The CC&Rs restrict the use of common area to 12 persons/owners per parcel. (Plaintiffs' exhibit 30, § 6.02.)

(c) 1980 Development Permit

In 1980, the YMCA sought to obtain a coastal development permit to develop a camp and outdoor educational center on the YMCA parcel and beach. (DSS, undisputed fact 12.) The project was to provide a facility for up to 150 persons, including 47,728 square feet of building coverage and 26,580 of deck on the beach and inland parcels. (Plaintiffs' exhibit 5, p. 69, ¶ 3.) Neither Behunin, Connelly, HROA, nor their predecessors were applicants in the coastal development permit sought by the YMCA. (DSS, undisputed fact 13.) At the time the YMCA made this application, parcel 104 (beach parcel) was owned by MGIC. (Plaintiffs' Reply Separate Statement [PRSS], undisputed fact 61; plaintiffs' exhibit 4.)

In October 1980, the South Central Coast Regional Commission (Regional Commission) approved the issuance of Coastal Development Permit No. 309-05 (Permit 309-05) subject to conditions. (DSS, fact 14 [undisputed as to this point].) Permit 309-05 provides:

"Prior to the issuance of the permit, the applicant shall submit for the review and approval of the Executive Director of the Commission, a document suitable for recordation such as (an irrevocable offer to dedicate easements that can only be accepted after 1990) or some other legally binding agreement acceptable to the Executive Director, guaranteeing public access will be provided in accordance with the terms of this condition." (Plaintiffs' exhibit 24, p. 3.)

The public access required as part of this condition is: (1) "Lateral Access for public passive recreational use along the approximate 3300 foot long shoreline at Hollister Ranch." (2) "Coastal Access Trail" "Lateral access for the public to pass and repass along a coastal trail along the bluff tops specifically transversing YMCA easements ...." (3) "Vertical Access along Rancho Real Road, and across the YMCA Cuarta Canyon/Tunnel Beach access." (Plaintiffs' exhibit 24, pp. 3-4, emphasis omitted.) This access is limited by other conditions as well. (*Ibid.*)

HROA participated in the hearings for issuance of Permit 309-05. (Defendants' Request for Judicial Notice [DRJN], exhibits A, B.) HROA represented in its testimony before the Regional Commission that it "represents the parcel owners in Hollister Ranch." (DRJN, exhibit B, p. 1.) HROA's testimony included: "The issue of public access to the YMCA's beach easement should not be divorced from the issue of public access to the Hollister Ranch generally. After all, the easement is itself a part of the Ranch and in the sub-division, being a portion of parcel 104." (DRJN, exhibit B, p. 4.)

Following approval of Permit 309-05 by the Regional Commission, on November 7, 1980, HROA appealed the decision to the California Coastal Commission (Commission). (DRJN, exhibit C.) Grounds for this appeal included objections to public access. (PRSS, undisputed fact 69.) The Commission denied the appeal finding it raised no substantial issue. (PRSS, undisputed fact 70.) HROA requested reconsideration of the denial of the appeal, to which the Commission responded that reconsideration was unavailable. (PRSS, undisputed facts 71-72.) HROA, plaintiffs, and plaintiffs' predecessors-in-interest did not challenge the Commission decision regarding Permit 309-05 within the 60 day statute of limitations provided by Public Resources Code section 30801. (PRSS, undisputed fact 73.)

In December 1980, the YMCA signed the permit acknowledging receipt of Permit 309-05 and understanding of its contents. (DSS, undisputed fact 15.)

(d) Offer to Dedicate

To satisfy the conditions imposed in Permit 309-05, on March 11, 1982, the YMCA executed an "Irrevocable Offer to Dedicate And Covenant Running With The Land," (OTD) recorded on April 28, 1982. (DSS, undisputed fact 18.)

The OTD provides an irrevocable offer "to dedicate to the People of California an easement in perpetuity for the purposes of public access and public recreational use" of beach access, beach lateral access, beach vertical access and blufftop access trail by the Rancho Real Road Easement, the Cuarta Canyon Road Easement, the 10 foot Footpath Easement, the 3880 foot Beach Easement, and Blufftop Trail Area Easement. (DSS, undisputed facts 22-26; see also plaintiffs' exhibit 25.)

The YMCA is the only owner of the "subject property" as defined in the OTD that is listed in the OTD and that signed the OTD. (DSS, undisputed facts 19, 20.) The OTD does not offer to dedicate the YMCA parcel or any fee parcel to the public. (DSS, undisputed fact 34.)

On May 7, 1982, YMCA signed Permit 309-05 acknowledging receipt and agreeing to abide by all terms and conditions thereof. (DSS, undisputed fact 16.) No owner of any of parcels 101, 103, 104, 105, 106, 107, 110, 111, 119, 120, 121, 122 or 123 signed any document agreeing to abide by the terms of Permit 309-05. (DSS, fact 17 [undisputed that no owner signed any document; it is disputed whether HROA is otherwise bound].)

The YMCA performed development on the camp project during its ownership of the YMCA Parcel. (DSS, undisputed fact 37.)

By its terms, the OTD could not be accepted for 10 years following the date of its recordation, so the OTD could not be accepted before April 1992. (DSS, undisputed fact 39.)

(e) YMCA Parcel Changes Ownership

In 1982, HROA named the YMCA as a defendant in a lawsuit to enjoin construction of the camp planned for the YMCA parcel. (DSS, undisputed fact 35.) The lawsuit was settled with an agreement under which HROA acquired the YMCA parcel. (DSS, undisputed fact 36.)

In January 1983, MGIC granted to HROA title to parcel 104. (Plaintiffs' exhibit 4.)

In December 1983, YMCA granted to HROA title to the YMCA parcel and appurtenant easements. (DSS, undisputed fact 38; plaintiffs' exhibit 5, pp. 32-37.)

In July 1986, HROA granted title to the YMCA parcel to Taylor Hackford. (DSS, undisputed fact 38.) The grant deed reserved to HROA and to its members the YMCA's exclusive easement for

recreational use, restrooms and shelter facilities, and two non-exclusive easements for ingress and egress. (PRSS, undisputed fact 82; Plaintiffs' exhibit 5, pp. 44-45.) The grant deed concluded: "Any easement which heretofore has been or may have been appurtenant to the real property described in this Exhibit 'A' to the Corporation Grant Deed as Parcel One, Parcel Two, Parcel Three, Parcel Four, and Parcel Five, unless expressly granted herein, shall be deemed reserved to Grantor and to Grantor's members and shall not run with said Parcels One, Two, Three, Four and Five." (Plaintiffs' exhibit 5, p. 45.) HROA also made a guaranty of payment to the YMCA related to Hackford's purchase of the YMCA parcel. (PRSS, undisputed fact 85.)

On October 8, 1999, the Commission declined to extinguish the OTD because the YMCA had performed development under the permit, the permit had vested and the permit was binding on HROA as YMCA's successor in interest. (PRSS, undisputed fact 86.)

In 2000, Hackford sold the YMCA parcel to Rancho Cuarta, a California general partnership. (DSS, undisputed fact 40.)

On April 2, 2012, the Commission again declined to extinguish the OTD because the YMCA had performed development under the permit, the permit had vested and the permit was binding on HROA as YMCA's successor in interest. (PRSS, undisputed fact 86.)

On or about April 9, 2013, the County of Santa Barbara disclaimed any claim or property interest in the easements described in the OTD. (DSS, undisputed fact 47.)

On April 18, 2013, defendant State Coastal Conservancy (Conservancy) executed an acceptance of the OTD (Acceptance), which was recorded on April 26, 2013. (DSS, undisputed fact 41.) Rancho Cuarta owned the YMCA parcel at the time of this acceptance. (DSS, undisputed fact 42.)

(3) This Action

On May 31, 2013, plaintiffs commenced this action. The operative complaint, the second amended complaint (SAC), asserts 13 causes of action, of which only the first (quiet title), second (cancellation), and fifth (declaratory and injunctive relief) are relevant to this motion for summary adjudication and only as to plaintiffs Behunin, Connolly, and HROA. (Note: For convenience in writing, Behunin, Connolly and HROA will be collectively referred to as "plaintiffs." The court does not intend this reference to apply to any plaintiff who is not a moving party in this motion.) In each of these causes of action the plaintiffs assert that the recorded OTD and its Acceptance, and hence all rights claimed under these instruments, are void *ab initio*.

Plaintiffs now move for summary adjudication of each of these causes of action on the grounds that only the fee owners of the underlying parcels could grant easements or rights of access over their property, that the purported transfer of appurtenant easements separate from the dominant fee simple estate was void, and that no valid or enforceable easements or rights of access over plaintiffs' respective properties could be created by the Acceptance of the OTD.

Defendants oppose the motion arguing that plaintiffs are bound by the terms and conditions of Permit 309-05, that plaintiffs cannot now challenge the terms of Permit 309-05, that plaintiffs are estopped to deny the validity of the offer, and that the access granted may be construed as an irrevocable license.

Analysis:

"[F]rom commencement to conclusion, the party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) There is no obligation on the opposing party to establish anything by affidavit unless and until the moving party has by affidavit stated facts establishing every element necessary to sustain a judgment in his favor. (*Consumer Cause, Inc. v. Smilecare* (2001) 91 Cal.App.4th 454, 468.)

(1) Judicial Notice

In support of their motion for summary adjudication, plaintiffs request that the court take judicial notice of recorded deeds and easements (exhibits 1-4, 5[pp. 24-47, 117-127], 15), the recorded OTD and Acceptance (exhibit 5, pp. 49-115), the complaint in *The Hollister Ranch Owners Association, et al., v. Young Men's Christian Association, etc., et al.*, Santa Barbara County Superior Court case number 141700 (exhibit 16); the recorded HROA CC&Rs (exhibit 30), and two recorded notices of annexation of territory (exhibits 31, 32). These are all recorded documents or court records subject to judicial notice. (Evid. Code, § 452, subds. (d)(1), (h); *Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1117.) There is no opposition to these requests for judicial notice and they are granted.

In opposition to the motion for summary adjudication, defendants request that the court take judicial notice of documents in the Commission's official files with respect to Permit 309-05: (exhibit A) a letter dated October 23, 1980, from HROA to the Regional Commission; (exhibit B) a transcript of testimony of HROA before the Regional Commission; (exhibit C) the appeal of HROA of the permit decision of the Regional Commission; (exhibit D) a letter dated November 4, 1980, to the Commission regarding the appeal; (exhibit E) a letter dated December 22, 1980, from James P. Gadzeki to the Commission; (exhibit F) a letter of January 2, 1981 (misdated 1980), from Commission staff to Gadzeki; (exhibit G) a letter dated October 8, 1999, from Commission staff to Steven Amerikaner; (exhibit H) a letter dated April 2, 2013, from Commission staff to Amerikaner; (exhibit I) a map showing a portion of the Hollister Ranch indicating ownership of parcels at the time the application for Permit 309-05 was submitted; and (exhibit J) a list of owners of Hollister Ranch parcels submitted in connection with the permit application and used for purposes of notice or permit proceedings.

Plaintiffs do not object to judicial notice as to exhibits A through G. Plaintiffs object to exhibits I and J because these documents are not authenticated and not admissible to prove the facts shown in the documents.

"[W]hen a court takes judicial notice of official acts or public records, it does not also judicially notice "'the truth of all matters stated therein." [Citations.] "[T]he taking of judicial notice of the

official acts of a governmental entity does not in and of itself require acceptance of the truth of factual matters which might be deduced therefrom, since in many instances what is being noticed, and thereby established, is no more than the existence of such acts and not, without supporting evidence, what might factually be associated with or flow therefrom." [Citation.]' [Citation.] The Supreme Court has clarified these standards as follows: 'When judicial notice is taken of a document, however, the truthfulness and proper interpretation of the document are disputable. [Citation.]' [Citation.]" (*Aquila, Inc. v. Superior Court* (2007) 148 Cal.App.4th 556, 569.)

Defendants have presented evidence, not factually disputed, that exhibits A through J are all documents from the Commission's files in connection with the consideration of the application for Permit 309-05. (Reed decl., ¶¶ 1, 3.) The court may thus take judicial notice of the existence of the documents in the Commission's files as documents filed in connection with the consideration of the application for Permit 309-05. (Evid. Code, § 452, subd. (c).) Judicial notice is granted as to these documents to that extent.

Because judicial notice does not extend to the truth of the contents of the document, in order for statements in the documents to be admissible for their truth, the statements must be admissible as evidence. "The hearsay rule applies to statements contained in judicially noticed documents, and precludes consideration of those statements for their truth unless an independent hearsay exception exists." (*North Beverly Park Homeowners Association v. Bisno* (2007) 147 Cal.App.4th 762, 778.) Considered as evidence, the factual statements in exhibit I as to who actually owned the parcels appears as hearsay of the person who annotated the map. Plaintiffs' objection to consideration of these factual statements in exhibit I is sustained.

Exhibit J is a list of owners used for purposes of notice or permit proceedings. (Reed decl., p. 3.) Exhibit J is inadmissible hearsay to the extent it is used to prove that a person listed is an actual owner of the parcel with whom the parcel is identified in exhibit J. Plaintiffs' objection to exhibit J is sustained to this extent. Exhibit J is admissible to show what list of persons was used by the Commission for purposes of notice or permit proceedings. Plaintiffs' objection to exhibit J is overruled to this extent.

(2) Easements

The core issue presented by plaintiffs is its argument that the OTD and Acceptance are void *ab initio* in their entirety. Plaintiffs support their contention that the OTD is void based upon general principles of real property law regarding easements.

"A dedication is a voluntary transfer of an interest in land and resembles both a grant and a gift. It is therefore governed by the fundamental principles which control such transactions." (*Carstens v. Cal. Coastal Commission* (1986) 182 Cal.App.3d 277, 285.) The grantee of a deed cannot legally claim more than the deed purports to convey. (*Emeric v. Alvarado* (1891) 90 Cal. 444, 459.) Thus, a property owner can dedicate to the public no greater interest in real property than he or she possesses. (See *Niles v. Los Angeles* (1899) 125 Cal. 572, 575 [dedication at time when prior owner did not have ownership rights to dedicate not considered as affecting rights of subsequent owner]; *Mulch v. Nagle* (1921) 51 Cal.App. 559, 567 [dedication of property cannot be based upon dedication by person who has no interest in the property].)

Here, the OTD expressly offers to dedicate easements for public access. It is undisputed that YMCA, at the time the OTD was executed and recorded, held only a fee interest in the YMCA parcel and did not hold a fee interest in any of the other parcels over which the public access easements are designated. Thus, the undisputed facts presented here show that YMCA had no fee interest in parcels 103 (Behunin), 104 (beach), or 105 (Connelly). YMCA's interest in the other parcels over which the public access easements are designated is its ownership of easements, including easements over parcels 103, 104 and 105, appurtenant to the YMCA parcel.

"The following land burdens, or servitudes upon land, may be attached to other land as incidents or appurtenances, and are then called easements: [¶] ... [¶] 4. The right-of-way." (Civ. Code, § 801, subd. (4).) "A servitude can be created only by one who has a vested estate in the servient tenement." (Civ. Code, § 804.) "An easement is a nonpossessory interest in the land of another that gives its owner the right to use that property. [Citation.] As such, an easement cannot be an estate in real property. [Citation.] An easement may not be imposed upon another easement because only an estate in land may serve as the servient tenement. [Citations.]" (*Carstens v. California Coastal Commission, supra,* 182 Cal.App.3d at p. 287.)

As a matter of real property law, therefore, YMCA could not grant an easement to the public over easements it held appurtenant to the YMCA parcel. "An easement appurtenant to land cannot be severed from the land and transferred separately so as to convert it into an easement in gross ...." (*Westlake v. Silva* (1942) 49 Cal.App.2d 476, 478.) Defendants do not assert that the OTD constitutes an improper attempt to sever the appurtenant easements so as to convert them into easements in gross to the benefit of the public.

Because YMCA could neither grant an easement over its easements to the public nor sever its easements and transfer them to the public, plaintiffs show that the OTD does not have the legal effect of granting access easements to the public over parcels not owned by YMCA at the time of the OTD. Because plaintiffs' causes of action raised in this motion succeed upon such a showing, plaintiffs meet their initial burden on summary adjudication as to those causes of action.

(2) Licenses

Defendants do not argue that, as a matter of real property law, the OTD and Acceptance properly convey easements to the public over parcels not owned by YMCA at the time of the OTD. Defendants instead rely upon several arguments in defense of plaintiffs' claims by which either the OTD can be construed as an irrevocable license or plaintiffs are precluded from challenging the rights granted in the OTD.

"A privilege to use land in the possession of another is a license if, though the use privileged is of such a character that the privilege to make it could be created as an easement, [¶] (a) its creation lacks a formal requirement necessary to the creation of an easement, or [¶] (b) it is created to endure at the will of the possessor of the land subject to the privilege." (Rest., Property § 514.)

"A licensee has express or implied authority from the owner to perform an act or acts upon property. Like an easement, it is an interest in property which is less than an estate. [Citation.] A primary distinction is that a license is normally revocable at will. [Citation.] Although a license

which is not terminable at will is somewhat anomalous [citation], it has been recognized." (*Golden West Baseball Co. v. City of Anaheim* (1994) 25 Cal.App.4th 11, 36; see also Rest.3d Property (Servitudes) § 1.2(4) [defining "easement" to include an irrevocable license to enter and use land in possession of another].)

"'[W]here a licensee has entered under a parol license and has expended money, or its equivalent in labor, in the execution of the license, the license becomes irrevocable, the licensee will have a right of entry upon the lands of the licensor for the purpose of maintaining his structures, or, in general, his rights under his license, and the license will continue for so long a time as the nature of it calls for.' The principal basis for this view is the doctrine of equitable estoppel; the license, similar in its essentials to an easement, is declared to be irrevocable to prevent the licensor from perpetrating a fraud upon the licensee." (*Cooke v. Ramponi* (1952) 38 Cal.2d 282, 286-87, citation omitted.)

The primary object in construing the OTD "is to try to give effect to the intent of the grantor." (*Willard v. First Church of Christ, Scientist* (1972) 7 Cal.3d 473, 476.) Context aids in interpreting the OTD. (See Civ. Code, § 1647.)

It is undisputed that, at the time of the OTD, the YMCA's rights as owner of the YMCA parcel and appurtenant easements encompassed rights of way over parcels 103 and 105 and to use the 3880 foot Beach Easement and Exclusive Recreational Easement over parcel 104. By the OTD, the YMCA did not purport to grant to the public any greater use of these easements than the YMCA itself possessed. Put another way, at the time of the OTD, YMCA could have exercised its own rights to allow any member of the public to use these easements to the same extent as set forth in the OTD. (Note: For purposes of this analysis, the court is limiting its discussion to the Cuarta Canyon Road Easement, the 20 foot Access Easement, and the two beach easements. The Blufftop Trial Easement has some different characteristics as noted below which unnecessarily complicate the present discussion.) The grant to the YMCA of the YMCA parcel and appurtenant easement expressly contemplated that YMCA guests at the to-be-developed camp would use the easements for that purpose.

When the YMCA applied to the Commission for Permit 309-05, it sought permission for this use. It is undisputed that HROA opposed the issuance of Permit 309-05 and there is evidence from HROA's opposition to Permit 309-05 that HROA made that opposition on behalf of all owner-members of HROA, including the then-owners of parcels 103 and 105. (Note: As discussed above, defendants have not presented admissible evidence as to each of the owners of these parcels at particular times. However, for purposes of this analysis, it is sufficient that plaintiffs Behunin, Connelly, and HROA are successors-in-interest to the then-owners of parcels 103, 105, and 104, respectively.) The conditions of Permit 309-05 were inherent in the consideration of the permit application and were raised by HROA in that process.

For the reasons discussed above, YMCA could not properly grant easements within its easements to accomplish its intended dedication of public access along these easements. Yet, the OTD clearly intended to dedicate such access rights to the public, notwithstanding its use of the term "easement" as the description of the means by which the rights were granted. Because the OTD lacks the formal requisites necessary to grant easements to the public, an irrevocable license may be implied to effect this clear intent to grant rights where there is evidence of estoppel. Such evidence has been presented by defendants.

It is undisputed that YMCA began development under Permit 309-05 and thus obtained the benefits of the permit which were expressly conditioned upon the OTD and the grant of rights intended to be conveyed to the public by the OTD. The State, through defendants, relied upon the enforceability of the rights granted under the OTD in issuing Permit 309-05. At the same time, the State relied upon the permit appeal process to resolve and put to rest issues as to any technical defects with the OTD.

"The Coastal Act ([Pub. Resources Code,] § 30801) requires that such a challenge be made by filing a writ petition for administrative mandamus within 60 days 'after the decision or action has become final.' [Citations.]" (*Sierra Club v. Department of Parks & Recreation* (2012) 202 Cal.App.4th 735, 741, fn. omitted.) "Once the 60-day statute of limitations has run, the permit issued must be deemed good as against the world." (*Ojavan Investors, Inc. v. California Coastal Commission* (1994) 26 Cal.App.4th 516, 525.) It is undisputed that plaintiffs (or any of their predecessors-in-interest) did not make any challenge within the 60-day period.

In the recent case of *City of Berkeley v. 1080 Delaware, LLC* (2015) 234 Cal.App.4th 1144, the Court of Appeal reinforced the longstanding rule that the exclusive remedy for challenging improper conditions in a land-use permit is by administrative mandamus. (*Id.* at p. 1150.) In that case, the land-use permit expressly required compliance with a local ordinance several years later held to be preempted and void. (*Id.* at p. 1148.) The Court determined that, notwithstanding that the underlying ordinance was not unenforceable, the landowner's failure to challenge the permit condition by mandamus barred any future challenge to the enforceability of that permit condition. (*Id.* at p. 1150.)

As participants in the permit application process opposing issuance of Permit 309-05 with its required conditions, plaintiffs (by HROA acting for HROA or their predecessors-in-interest) had the opportunity fully to raise any challenges to the permit conditions, including a challenge that YMCA could not grant the rights in the OTD in the technical form presented. By failing timely to challenge the Commission's decision by mandamus, plaintiffs are barred from making such a technical challenge now. Defendants appropriately relied upon this procedural bar to put to rest any such technical defects for the future.

Defendants have therefore met their burden on summary adjudication to present evidence sufficient to establish a defense to plaintiffs' claims, i.e., the construction of the OTD and Acceptance as an irrevocable license effectively granting rights of public access.

(3) Scope of Ruling

Plaintiffs' causes of action subject to this motion for summary adjudication seek adjudication relating to each of the easements contained within the OTD. As discussed above, the court concludes that defendants have met their burden of providing evidence that the OTD may be properly construed as an irrevocable license and hence is not void *ab initio*.

In reaching its decision as to the beach and beach access easements, the court relied upon the fact that at the time the YMCA applied for Permit 309-05 and entered into the OTD, YMCA, by virtue

of its ownership rights in the YMCA parcel and appurtenant easements, had the access rights for itself which it partially granted in the OTD. As to these rights, the court is not persuaded that the clear intent of the OTD should be thwarted by the mere form of the grant employing "rigid feudal standards" where there is evidence that plaintiffs could and should have made a mandamus challenge to the technical insufficiency of the OTD when Permit 309-05 was pending. (See *Willard v. First Church of Christ, Scientist, supra*, 7 Cal.3d at p. 476.) Modern real property arrangements "are so varied that it is increasingly difficult and correspondingly irrelevant to attempt to pigeonhole these relationships as 'leases,' 'easements,' 'licenses,' 'profits,' or some other obscure interest in land devised by the common law in far simpler times. Little practical purpose is served by attempting to build on this system of classification." (*Golden West Baseball Co. v. City of Anaheim, supra*, (1994) 25 Cal.App.4th at p. 36.) Consequently, defendants defeat plaintiffs' motion for summary adjudication based upon the OTD and Acceptance being void in their entirety.

A somewhat different issue exists with respect to the Blufftop Trail Easement Area. Defendants present no evidence in opposition to this motion that, at the time of its ownership of the YMCA parcel, YMCA possessed any rights over the Blufftop Trail Easement Area. Because summary adjudication cannot be granted as to part of a cause of action (Code Civ. Proc., § 437c, subd. (f)(1)), the court does not here resolve the issue of whether defendants have presented sufficient evidence to defend against plaintiffs' claims within their causes of action that the OTD is void to the extent it purports to grant (by whatever label) rights it did not possess.

For the reasons set forth above, plaintiffs' motion for summary adjudication is denied in its entirety.

Please note: As a result of staffing limitations, the court has experienced delays in routing time-sensitive documents, including oppositions and replies, for prompt review. To assist the court in avoiding delays, the court has established a generic email address for courtesy copies of law and motion documents to be electronically sent as PDF attachments. The court strongly encourages the parties to email courtesy copies to the court. Instructions for sending courtesy copies are found on the court's website at: **http://www.sbcourts.org/os/tr/CourtesyLM.pdf**