SANTA BARBARA COUNTY SUPERIOR COURT
1100 Anacapa Street
Santa Barbara, CA 93101

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY OF SANTA BARBARA
SEP 0 6 2016
Darrel E. Parker, Executive Officer
BY _____
Kary Swan, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA BARBARA

ANACAPA DIVISION

TOM PAPPAS, et al.,	Case No.: 1417388
PlaintiffS,	ORDER AFTER HEARING
vs.	Date: August 1, 2016 Time: 9:30 a.m.
STATE COASTAL CONSERVANCY, et al.,	Dept: 5
Defendants.	Judge Colleen K. Sterne

The Motion for Summary Judgment or Summary Adjudication filed by Defendants STATE COASTAL CONSERVANCY, et al.; the Motion for Summary Adjudication filed by Plaintiffs TIM BEHUNIN and PATRICK CONNELLY; and the Motion for Summary Adjudication filed by Plaintiff HOLLISTER RANCH OWNERS' ASSOCIATION were heard on August 1, 2016 by Judge Colleen K. Sterne in Department 5.

Plaintiff HOLLISTER RANCH OWNERS ASSOCIATION was represented by counsel Beth Collins-Burgard, Esq. and Steven Amerikaner, Esq. Plaintiffs TIM BEHUNIN and PATRICK L. CONNELLY, individually and as class representatives, were represented by

counsel Marcus Bird, Esq. Defendants CALIFORNIA COASTAL COMMISSION and CALIFORNIA COASTAL CONSERVANCY were represented by counsel J. Jordan Patterson, Esq.

The court, having considered the record and file in this action, the moving and opposing papers, and hearing argument of counsel, took the matter under submission.

The court has reviewed the arguments made and has considered the additional authority cited by counsel for moving parties, and confirms the tentative ruling as the Order of the court, a copy of which is attached hereto.

Dated: SEP - 6 2016

Colleen K. Sterne, Judge
Santa Barbara County Superior Court

Tom Pappas, etc., et al., v. State of California, et al.,

Case No. 1417388 (Judge Sterne)

Hearing Date: August 1, 2015

Motions:

(1) Motion of Defendants State Coastal Conservancy and California Coastal Commission for Summary Judgment or Alternatively for Summary Adjudication

(2) Motion of Plaintiffs Tim Behunin and Patrick Connelly for Summary Adjudication

(3) Motion of Plaintiff 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:

(1) The motion of defendants for summary judgment or for summary adjudication is denied.

(2) The motions of plaintiffs Tim Behunin and Patrick Connelly for summary adjudication is denied.

(3) The motions of plaintiff The Hollister Ranch Owners' Association for summary adjudication is denied.

Discussion:

These are competing motions for summary judgment or summary adjudication arising out of a dispute over the legal effectiveness of an offer to dedicate rights to public access over land.

The references herein to documents are to the documents filed in connection with the motion then under discussion except as otherwise stated.

(1) Motion of Defendants State Coastal Conservancy and California Coastal Commission

Background:

(A) 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' Reply Separate Statement [DRSS], undisputed additional fact 29.) Plaintiff Tim Behunin, trustee of the Behunin Family Trust, (Behunin) became owner of parcel 103 in 1999. (DRSS, undisputed additional fact 31.) Plaintiff HROA is became the owner of parcel 104 in 1983. (Plaintiffs' Response Separate Statement [PSS], undisputed fact 9.)

(B) Ownership and Development of Parcels

(i) 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). (PSS, undisputed fact 1.) 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. (PSS, undisputed fact 2.) 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 [defendants' exhibits 1-2]; PSS, fact 3 [undisputed on this point].) This restriction was to terminate 20 years from the date of the 1970 Grant Deed. (PSS, undisputed fact 4.)

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. (PSS, undisputed fact 5.) 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 [Defendants' exhibit 50].) (Note: In their separate statement, defendants refer to their exhibits by an exhibit number used in depositions and to Bates numbers. These exhibits can only be located within the lodged documents by reviewing the entire table of the lodged documents (which are in order of the lodged documents) to find a reference to a corresponding exhibit number and Bates page number (which are not in sequential order). The table of lodged documents is not descriptive of the specific documents beyond the exhibit and Bates numbers. To facilitate location of the documents, references herein to defendants' exhibits is to the tab in the lodged documents in which the document can be found. It is unclear why the exhibits are lodged rather than filed; also, many, if not all or most, of the documents lodged by defendants appear to be included in plaintiffs' filed exhibits.)

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. (DRSS, undisputed additional fact 4.) At no time since 1968 has the YMCA owned a fee simple interest in parcels 101, 103, 104, 105, 106, 107, 110, 111, 119, 120, 121, 122, or 123. (DRSS, undisputed additional fact 12.)

(ii) 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. (PSS, undisputed fact 6.) The YMCA parcel was not part of the Hollister Ranch as subdivided. (PSS, undisputed fact 8.) The subdivider owned parcel 104 (the beach parcel) until its successor, MGIC Equities Corporation (MGIC), conveyed parcel 104 to HROA by corporation grant deed recorded on January 3, 1983. (PSS, undisputed fact 10.) 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 ...." (PSS, undisputed fact 11.) The CC&Rs state that "the use of any Common Area by the Owner or Owners of any parcel, shall be limited to the use thereof to no more than twelve (12) persons" and that "the total number of guests allowed on The Hollister Ranch at any one time or day shall not exceed twenty (20) persons for any one parcel." (Plaintiffs' exhibit 30, § 6.02; PSS, fact 12.)

(iii) 1980 Development Permit

In 1980, the YMCA filed an application for a coastal development permit to develop a camp and outdoor educational center on the YMCA parcel and beach. (PSS, undisputed fact 13.) 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. (PSS, undisputed fact 14.) The YMCA estimated the cost of the proposed development was $2.7 million and stated the "camp will provide quasi-public use under qualified supervision of an area located on nine miles of beach not now accessible to the

public." (PSS, undisputed fact 15.) At the time the YMCA made the application for a coast permit, MGIC owned parcel 104 and four other beachfront parcels. (PSS, undisputed fact 17.) Neither Behunin, Connelly, HROA, nor their predecessors were applicants in the coastal development permit sought by the YMCA. (DRSS, undisputed additional fact 6.)

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. (PSS, undisputed fact 18.) 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." (PSS, undisputed fact 19.)

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." (PSS, undisputed fact 20.) This access is limited by other conditions as well. (PSS, undisputed fact 21.)

HROA and certain other Hollister Ranch owners participated in the hearings for issuance of Permit 309-05. (PSS, fact 22 [undisputed on this point]; Defendants' exhibit 22.) HROA attorney testified that the issue of public access to the YMCA's beach easement should be incorporated into the general public access for the entire ranch as it was part of the ranch. (PSS, fact 23 [undisputed on this point]; Defendants' exhibit 23.)

Following approval of Permit 309-05 by the Regional Commission, HROA appealed the decision to the California Coastal Commission (Commission). (PSS, undisputed fact 24.) Grounds for this appeal included objections to public access. (PSS, undisputed fact 25.) The Commission denied the appeal finding it raised no substantial issue. (PSS, undisputed fact 26.) HROA requested reconsideration of the denial of the appeal, to which the Commission responded that reconsideration was unavailable. (PSS, undisputed facts 27.) 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. (PSS, undisputed fact 28.)

In December 1980, the YMCA signed the permit acknowledging receipt of Permit 309-05 and understanding its contents. (PSS, undisputed fact 29.)

(iv) 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. (PSS, undisputed fact 30.)

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. (PSS, undisputed fact 31.)

The YMCA was the only owner of the "subject property" as defined in the OTD that is listed in the OTD and that signed the OTD. (PSS, undisputed fact 32.) The OTD does not offer to dedicate the YMCA parcel or any fee parcel to the public. (PSS, undisputed fact 33.)

On May 7, 1982, YMCA signed Permit 309-05 acknowledging receipt and agreeing to abide by all terms and conditions. (PSS, undisputed fact 34.) The OTD was never signed by Behunin, Connelly, or their predecessors in interest or agreed to comply with the terms of Permit 309-05. (DRSS, undisputed additional facts 7, 15.)

The YMCA is the only "owner" of the "subject property" listed on the OTD. (DRSS, undisputed additional fact 16.) The OTD was never recorded or indexed in Behunin or Connelly's chain of title; the OTD was only recorded into the chain of title of the YMCA Parcel. (DRSS, undisputed additional fact 17.)

In 1982, the Commission determined that the YMCA satisfied its conditions of approval and allowed the YMCA to begin construction. (DRSS, undisputed additional fact 20.) The YMCA performed development on the camp project on the YMCA parcel during its ownership of the YMCA Parcel. (PSS, fact 35 [undisputed on this point].) YMCA stated but did not complete construction. (DRSS, undisputed additional fact 24.) No construction was proposed, permitted, or occurred under Permit 309-05 on Behunin's or Connelly's property. (DRSS, undisputed additional facts 9 [undisputed except as to rights to use under grant deed], 25.) No construction pursuant to Permit 309-05 occurred on the Exclusive Beach Easement. (DRSS, undisputed additional fact 26.)

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. (PSS, undisputed fact 36.)

(v) Hollister Ranch Access Program

The Commission and Conservancy prepared a Coastal Access Program for Hollister Ranch (Access Program) which the Commission adopted on August 18, 1981. (PSS, undisputed fact 37.) In the 1981 Access Program, the Commission noted that a coastal development permit had been granted to the YMCA for development of camp and conference facilities. (PSS, undisputed fact 39.) The Access Program contemplated a public pedestrian trail through Hollister Ranch. (PSS, fact 40 [undisputed on this point].) The Access Program states:

"The pedestrian trail has been designed to provide continuous lateral access to and along the shoreline. In places where access along the beach is impossible, during all or a significant portion of the year, the trail has been located on upland portions of the Ranch. The proposed trail route takes advantage of existing right of way locations. The majority of the trail alignment is situated within the Rancho Real Road right-of-way or the Texaco pipeline right-of-way. In two locations, the trail must traverse private parcels for short distances in order to connect the Rancho Real portion of the trail with the Texaco easement. In no case is the trail located landward of the Rancho Real right-of-way." (Defendants' exhibit 40; see also PSS, fact 40 & response thereto.)

Where the public pedestrian trail contemplated in the 1981 Access Program runs within the Rancho Real right-of-way, the Access Program contemplates public use for pass and repass in an area of a width equal to the width of the existing road. (PSS, fact 41 [undisputed as to contemplated trail].)

On May 20, 1982, the Commission held a public hearing on the 1981 Access Program in which attorneys for the HROA participated. (PSS, undisputed fact 43.) Counsel for HROA urged the Commission to take note of "whether the terms of these private easements are broad enough to permit their expansion to public use." (PSS, fact 44 [undisputed on this point].) Counsel further stated that "The present easements don't support public access. The YMCA on its own can't increase the burden on the easements. It can't license others to use the easement if that use is not contemplated in the original grant of easement. The question of whether the increased burden is beneficial or not under the law is completely irrelevant if the original grant does not provide that such easement or use is available." (PSS, fact 45 [undisputed on this point].)

The Access Program was amended in 1982 to provide for "a managed access program to provide access ... to the ranch by using the Ranch Road to and along six beaches." (DRSS, undisputed additional fact 108.) The Access Program as amended provides:

"The pedestrian trial has been designed to provide continuous lateral access along the shoreline. In places where access along the beach is impossible during all or a significant portion of the year, the trail provides an alternative method for getting from one portion of the shoreline to another. The trail allows the public to hike to the beaches from the main gate rather than use the shuttle. Finally the trail is important in the larger context of providing one segment in a longer, continuous coastal trail, a concept consistent with the policies of the Commission-approved Santa Barbara County Land Use Plan. The route of this trail will be along the existing Rancho Real road right-of-way. This trail location will cause minimal impacts on agricultural operations and private property and will facilitate supervision by the managing agency." (Defendants' exhibit 46; see also PSS, fact 46 & response thereto.)

The Access Program is a plan for potential public access easements to be acquired in the future by the Conservancy. (DRSS, undisputed additional fact 112.) The Access Program does not create any legal burdens or transfer real property in Hollister Ranch and is not recorded in the County Recorder's Office. (DRSS, undisputed additional facts 99-100.)

(vi) YMCA and Other Parcel Ownership Changes

In 1982, HROA named the YMCA as a defendant in a lawsuit to enjoin construction of the camp planned for the YMCA parcel. (PSS, undisputed fact 47.) The lawsuit was settled with an agreement under which HROA acquired the YMCA parcel. (PSS, fact 48 [undisputed on this point].) The settlement agreement provides for the payment of $600,000, which "constitutes reimbursement to the YMCA for certain physical improvements made to the property including, without limitation, roadways, foundations, fire support improvements, septic systems, a septic leach field, grading already ... completed on the property, as well as to provide reimbursement for the expenditure of engineering, architectural, legal and accounting fees, and other costs and expenses of preparing the site for development ...." (Defendants' exhibit 47; see also PSS, fact 48 & response thereto.)

In January 1983, MGIC granted to HROA title to parcel 104. (PSS, undisputed fact 49.) In December 1983, YMCA granted to HROA title to the YMCA parcel and appurtenant easements. (PSS, undisputed fact 50.)

In July 1986, HROA granted title to the YMCA parcel to Taylor Hackford. (PSS, undisputed fact 51.) 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. (PSS, undisputed fact 52.) 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." (PSS, undisputed fact 53.) HROA also made a guaranty of payment to the YMCA related to Hackford's purchase of the YMCA parcel. (PSS, undisputed fact 55.)

Connelly purchased parcel 105 in fee simple for approximately $400,000 in December 1988. (DRSS, undisputed facts 29-30.) According to Connelly, when Connelly purchased parcel 105, he did not know the State claimed an interest in the property under the OTD. (PSS, additional fact 141; Connelly decl., ¶¶ 10-11.) According to defendants, Connelly's purchase agreement provided notice to him of the defendants' claim of public access rights. (Patterson supp. decl., ¶ 2 & exhibit 2.)

Behunin purchased parcel 103 in fee simple for approximately $900,000 in September 1999. (DRSS, undisputed facts 31, 32 [as to this point].) According to Behunin, before he purchased parcel 103, he had no knowledge of the YMCA permit or the OTD. (PSS, fact 33; Behunin decl., ¶ 4.) Behunin only found out about the OTD when the State accepted the OTD in 2013. (Behunin decl., ¶ 14.) According to defendants, Behunin's title policy provides an express exclusion as to "[e]asements, claims of easement or encumbrances which are not shown by the public records. Note: Affects parcels two and three." (Patterson supp. decl., ¶ 2 & exhibit 1.)

On October 8, 1999, the Commission declined to extinguish the OTD on the stated grounds that 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. (PSS, fact 55 [undisputed on this point].)

On April 2, 2012, the Commission again declined to extinguish the OTD on the stated grounds that 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. (PSS, fact 56 [undisputed on this point].)

On or about April 9, 2013, the County of Santa Barbara disclaimed any claim or property interest in the easements described in the OTD. (PSS, undisputed fact 57.)

On April 18, 2013, defendant State Coastal Conservancy (Conservancy) executed an acceptance of the OTD (Acceptance), which was recorded on April 26, 2013. (PSS, undisputed fact 58.) Rancho Cuarta owned the YMCA parcel at the time of this acceptance. (PSS, undisputed fact 59.) The Acceptance was never recorded or indexed in Behunin or Connelly's chain of title. (DRSS, undisputed additional fact 19.)

(C) This Action

On May 31, 2013, plaintiffs commenced this action. The operative complaint, the second amended complaint (SAC), asserts 13 causes of action: (1) quiet title; (2) cancellation; (3) quiet title; (4) quiet title; (5) declaratory and injunctive relief; (6) petition for writ of mandate; (7) temporary physical taking; (8) quiet title; (9) declaratory relief; (10) declaratory relief; (11) declaratory relief; (12) petition for writ of mandate; and, (13) unconstitutional taking. The court sustained defendants' demurrers to the sixth and twelfth causes of action as set forth in the prior first amended complaint with leave to amend. Plaintiffs retained the title and number of these causes of action in the SAC but otherwise omitted them from the SAC.

On October 29, 2014, pursuant to a settlement approved by the court, judgment was entered against the County of Santa Barbara and in favor of plaintiffs adjudicating that the County of Santa Barbara had no right, title or interest in any of the property or rights at issue in this action. The action is asserted as a putative class action. Except for the limited purposes of this settlement, no class certification motion has been filed or ruled upon.

On December 19, 2014, plaintiffs Behunin, Connelly, and HROA filed their first motion for summary adjudication. These plaintiffs sought summary adjudication of the first (quiet title), second (cancellation), and fifth (declaratory and injunctive relief) causes of action on the grounds that the defendants' claimed rights of access are and were void.

On April 13, 2015, the court denied the moving plaintiffs' motion for summary adjudication. The court found that defendants had met their burden in opposing summary adjudication of showing evidence that the OTD was not void. As discussed below, much of the analysis in the court's April 13 ruling is relevant here and the April 13 ruling is incorporated herein by reference.

In the first of three motions now before the court, defendants move for summary judgment, or alternatively for summary adjudication, on the grounds that the OTD, as accepted, is valid and constitutes an irrevocable license to the public for public access at Hollister Ranch. As discussed below, plaintiffs oppose the motion arguing that the defendants have not met their burden on summary adjudication and that the OTD is void.

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.

"The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In determining whether the papers show that there is no triable issue as to any material fact the court shall consider all of the evidence set forth in the papers, except that to which objections have been made and sustained by the court, and all inferences reasonably deducible from the evidence, except summary judgment may not be granted by the court based on inferences reasonably deducible from the evidence if contradicted by other inferences or evidence that raise a triable issue as to any material fact." (Code Civ. Proc., § 437c, subd. (c).)

"A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if that party contends that the cause of action has no merit or that there is no affirmative defense thereto, or that there is no merit to an affirmative defense as to any cause of action, or both, or that there is no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs. A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (Code Civ. Proc., § 437c, subd. (f)(1).)

"A motion for summary adjudication ... shall proceed in all procedural respects as a motion for summary judgment. However, a party may not move for summary judgment based on issues asserted in a prior motion for summary adjudication and denied by the court unless that party establishes, to the satisfaction of the court, newly discovered facts or circumstances or a change of law supporting the issues reasserted in the summary judgment motion." (Code Civ. Proc., § 437c, subd. (f)(2).)

"A defendant ... has met his or her burden of showing that a cause of action has no merit if that party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to that cause of action. Once the defendant ... has met that burden, the burden shifts to the plaintiff ... to show that a triable issue of one or more material facts exists as to that cause of action or a defense

thereto." (Code Civ. Proc., § 437c, subd. (p)(2).) As discussed below, these shifting burdens are complicated in this action largely premised upon quiet title actions.

(A) Judicial Notice

In support of their motion, defendants request that the court take judicial notice of the documents lodged in support of the motion. "Any request for judicial notice must be made in a separate document listing the specific items for which notice is requested and must comply with rule 3.1306(c)." (Rules of Court, rule 3.1113(*l*).) The request for judicial notice does not list any specific items, but instead states that: "All documents were 1) provided and relied upon by Plaintiffs in connection with depositions Plaintiffs conducted of the Commission's current staff person Linda Locklin who is manager of the Commission's coastal access program or former Commission staff person James Johnson who was the permit analyst for the Young Men's Christian Association's coastal development permit at issue in this case, 2) provided by the Hollister Ranch Owners' Association in response to defendants' discovery demands, 3) as to the Declaration of Restrictions, relied upon by Plaintiffs in support of their prior Motion for Summary Adjudication or 4) the operative pleading in this case, to wit, the Verified Second Amended Complaint. The documents are either of such common knowledge among the parties that they cannot reasonably be the subject of dispute or are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (Defendants' Requests for Judicial Notice, at pp. 1-2.)

The lodged documents, as noted above, consist of 59 tabbed items identified, with the exception of the SAC, in their exhibit list only by the deposition in which the document appeared, its exhibit number in that deposition, and the Bates numbers applied by the parties in discovery. There is no index or discussion as to which lodged document number applies to which exhibit; there is no index or discussion as to which of the four categories of documents argued by defendants any particular document fits. If this were only a couple of documents, the failure to list specific items could be overlooked. With approximately two and one half inches of documents, however, the failure to follow the requirements of the rules places an unreasonable burden on the court to figure out what is what. Moreover, defendants point to no authority for the proposition that a court may take judicial notice of a document merely because it was provided by a party in discovery. The request for judicial notice is denied as presented. Nonetheless, the court will, as appropriate, consider the lodged documents as evidence in support of the motion.

In opposition to the motion, plaintiffs request that the court take judicial notice of specifically identified exhibits. The exhibits are either recorded documents (exhibits 2, 3, 5 (pages as noted), 15, 30, 57, 58, 70), court records (exhibits 16, 50-52, 61), or documents reflecting official acts of the Commission or other government entity (exhibits 23, 24, 29, 31, 44, 46-49, 60, 62-64, 69). The court will grant these requests for judicial notice. Judicial notice does not extend to the truth of factual statements set forth in any of these documents. (*Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1117.)

(B) Blufftop Trail Area Easement

The State defendants' argument in favor of the validity of rights is essentially that the dedication of public access rights, however denominated, by YMCA over all of the affected parcels is a dedication of a portion of property rights that, at the time of the dedication, YMCA held by virtue of its ownership of the YMCA parcel. If YMCA had the right to use the property, then the public through the dedication has the right to use the property. A necessary premise of this argument is that YMCA had all of the rights it dedicated.

An analytically convenient place to start is with the portion of the OTD that addresses the Blufftop Trail Area Easement. The Blufftop Trail Area Easement is described in the OTD as: "To the extent of owner's legal and equitable interests in lands southerly of Rancho Real Road ... and northerly of the railroad right of way ..., owners hereby grant a right of public access to pass and repass along a blufftop access trail. ... The exact location of the lateral access trail shall be designated in a coastal trail plan for Hollister Ranch."

The Access Program proposes a trail route that is different in significant aspects than the Blufftop Trial Area Easement described in the OTD. The Access Program notes that the trail is situated within the Rancho Real Road right of way or the Texaco pipeline right of way, but in two locations traverses private parcels for short distances. As quoted above, the Blufftop Trail Area Easement is southerly of Rancho Real Road, a different area than described in the Access Program. Insofar as the Access Program situates the trail at least for short distances outside of the Rancho Real Road right of way or the Texaco pipeline right of way, it appears that the trial as thus situated would fall within the Blufftop Trail Area Easement as southerly of the Rancho Real Road right of way and northerly of the railroad right of way.

Plaintiffs seek, among other things, to quiet title as to the Blufftop Trail Area Easement. (SAC, ¶¶ 113-118.) Assuming without deciding that YMCA could properly dedicate public access rights across the Rancho Real Road by virtue of YMCA's access rights at the time of the OTD, defendants do not

provide evidence that YMCA had access rights across the Blufftop Trail Area Easement, which are defined in the OTD as southerly of the Rancho Real Road right of way, that is, not across the Rancho Real Road right of way. The 1970 grants do not identify access rights for the Blufftop Trail Area Easement.

(C) Summary Adjudication Limitations

"A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (Code Civ. Proc., § 437c, subd. (f)(1).) Moreover, summary adjudication is proper for a defendant only where the defendant establishes that the cause of action has no merit. (*Ibid.*) There is a procedure for summary adjudication of issues without resolving the entirety of a cause of action, but such procedure requires a stipulation of the parties and a court order. (Code Civ. Proc., § 437c, subd. (t).) No such stipulation and order is present here, so summary adjudication is subject to the requirement that a complete disposition of the cause of action is necessary for the motion to be granted.

Actions for quiet title, like actions for declaratory relief, are not well suited to disposition by summary adjudication where, like here, the rights are complex and interrelated. "'The object of the action is to finally settle and determine, as between the parties, all conflicting claims to the property in controversy, and to decree to each such interest or estate therein as he may be entitled to.' [Citation.]" (*Newman v. Cornelius* (1970) 3 Cal.App.3d 279, 284 [quiet title decree deficient in failing to resolve all claims of the parties].)

As to plaintiffs' first cause of action, which seeks to quiet title as to all conflicting claims, defendants have not met their initial burden on summary adjudication because defendants have not shown that they are entitled to judgment in their favor as to the entirety of that cause of action. Summary adjudication as to the first cause of action will therefore be denied.

The second cause of action is for cancellation of the OTD and Acceptance on the same grounds as asserted in the first cause of action to quiet title. The third cause of action is to quiet title as to certain parcel owners, but based upon a different theory, namely, that some plaintiffs are bona fide purchasers to whom the OTD and Acceptance assertedly would not apply. (Note: As discussed below with respect to the plaintiffs' motions, there are triable issues of fact which independently preclude summary adjudication of the third cause of action.) The fourth cause of action is to quiet title as to the same property and parties, but limited to the issue as to whether the OTD and Acceptance can affect easements not included in the OTD or the Acceptance. The fifth cause of action is for declaratory and injunctive relief that defendants have no property interest in the plaintiffs' properties. The eighth cause of action is to quiet title on the grounds of uncertainty relating to the OTD and Acceptance. The ninth cause of action is for declaratory relief as to the scope of interests created by the Acceptance.

The second, third, fourth, fifth, eighth, and ninth causes of action are all to the same effect as the first cause of action, seeking to quiet title, to cancel the OTD and Acceptance, and to declare property rights which are all inextricably intertwined and which will necessarily be adjudicated in resolving the first cause of action to quiet title to settle all competing claims of the parties as to property rights in all affected parcels. "'The declaratory relief statute should not be used for the purpose of anticipating and determining an issue which can be determined in the main action. The object of the statute is to afford a new form of relief where needed and not to furnish a litigant with a second cause of action for the determination of identical issues.' [Citations.] (*Hood v. Superior Court* (1995) 33 Cal.App.4th 319, 324.) The purpose of the quiet title action is comparable, intending to completely settle competing claims as to the same properties among the same parties. The piecemeal approach of the SAC in asserting separate causes that subdivide the quiet title claim of the first cause of action by issues defeats the purpose of the summary adjudication limitations of Code of Civil Procedure section 437c. The motion for summary adjudication is accordingly denied as to these causes of action. (Note: As discussed below with respect to the plaintiffs' motions, there are also triable issues of fact which independently preclude summary adjudication of the third cause of action.)

The remaining causes of action relating to takings are derivative of the above causes of action. Because summary adjudication cannot be had resolving the entirety of the claim of rights among the parties in the causes of action regarding their respective property rights, summary adjudication of the entirety of the causes of action relating to takings as to those claims of rights also cannot be had.

Accordingly, the court will deny defendants' motion for summary judgment or alternatively for summary adjudication in its entirety.

(2) Motions of Plaintiffs

Background:

Plaintiff HROA and plaintiffs Tim Behunin and Patrick L. Connelly (Individual Plaintiffs) move for summary adjudication of defendants' second through tenth affirmative defenses, of Behunin's third cause of action, and of plaintiffs' fourth cause of action.

The above discussion of facts is not significantly different than the facts as presented in the context of the defendants' motion. However, because these are different motions, the following statement of facts is presented keyed to the evidence presented in the context of these motions.

(A) Ownership and Development of Parcels

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). (Defendants' Response to HROA Separate Statement [DRHSS], undisputed fact 1; Defendants' Response to Individual Plaintiffs' Separate Statement [DRISS], undisputed fact 1; Defendants' Response to Plaintiffs' Separate Statement filed in connection with 2015 Motion for Summary Adjudication [2015 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. (DRHSS, undisputed fact 2; DRISS, undisputed fact 2; 2015 DSS, undisputed fact 7.) In 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. (DRHSS, undisputed fact 3; DRISS, undisputed fact 3; 2015 DSS, undisputed fact 8.) 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. (DRHSS, undisputed fact 4; DRISS, undisputed fact 4; 2015 DSS, undisputed fact 10.)

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. (DRHSS, undisputed fact 5; DRISS, undisputed fact 5; 2015 DSS, undisputed fact 12.) At the time the YMCA made this application, parcel 104 (beach parcel) was owned by MGIC. (DRHSS, undisputed fact 7; DRISS, undisputed fact 7; 2015 Plaintiffs' Reply Separate Statement filed in connection with 2015 Motion for Summary Adjudication [PRSS], undisputed fact 61.) None of Behunin, Connelly, HROA, their predecessors, or MGIC was an applicant in the coastal development permit sought by the YMCA. (DRHSS, undisputed facts 6, 8; DRISS, undisputed fact 6-8; 2015 DSS, undisputed fact 13.)

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. (DRHSS, undisputed fact 11; DRISS, undisputed fact 10; 2015 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." (DRHSS, undisputed fact 11; DRISS, undisputed fact 10.)

The October 24, 1980, approval of Permit 309-05 by the Regional Commission was appealed, and the Commission denied the appeal in December 1980. (DRISS, undisputed fact 11; 2105 PRSS, undisputed facts 69-70.)

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. (DRHSS, undisputed fact 15; DRISS, undisputed fact 13; 2015 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. (DRHSS, undisputed facts 18-20; DRISS, undisputed fact 21, 23; 2015 DSS, undisputed facts 22-26.)

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. (DRHSS, undisputed facts 9, 10; DRISS, undisputed fact 9, 10; 2015 DSS, undisputed facts 19, 20.)

The OTD does not offer to dedicate the YMCA parcel or any fee parcel to the public. (DRHSS, undisputed fact 21; DRISS, undisputed fact 22; 2015 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. (DRHSS, undisputed fact 14; DRISS, undisputed fact 18; 2015 DSS, fact 17 [undisputed that no owner signed any document].)

In 1982, the Commission determined that the YMCA satisfied its conditions of approval and allowed the YMCA to begin construction. (DRHSS, undisputed fact 16; DRISS, undisputed fact 20.)

In 1982, HROA named the YMCA as a defendant in a lawsuit to enjoin construction of the camp planned for the YMCA parcel. (DRHSS, undisputed fact 86; DRISS, undisputed fact 27; 2015 DSS, undisputed fact 35.)

YMCA started but did not complete construction under the YMCA permit on the YMCA parcel. (DRHSS, undisputed fact 98; see DRISS, additional facts 113-114 and response thereto; Plaintiffs' exhibit 54.) No construction pursuant to the YMCA permit ever occurred on the Exclusive Beach Easement. (DRHSS, undisputed fact 99.)

On April 18, 2013, defendant State Coastal Conservancy (Conservancy) executed an acceptance of the OTD (Acceptance), which was recorded on April 26, 2013. (DRHSS, undisputed fact 23; DRISS, undisputed fact 41; 2015 DSS, undisputed fact 41.)

(B) Notice Issues

The OTD was never recorded or indexed in Behunin's or Connelly's chain of title. (DRISS, undisputed fact 17.) The Acceptance was never recorded or indexed in Behunin's or Connelly's chain of title. (DRISS, undisputed fact 19.)

According to the Individual Plaintiffs, when Behunin purchased parcel 103, Behunin had no knowledge of any claim by the State that the public had the right to use and access parcel 103. (DRISS, fact 33; Behunin decl., ¶¶ 3-6.) Behunin was aware that that there were appurtenant easements that benefitted HROA and other parcels, including parcel 136. (Behunin decl., ¶ 6.) Behunin did not find out about the OTD until sometime in 2013 when he was advised that defendants had accepted the OTD. (*Ibid.*) According to defendants, when Behunin purchased parcel 103, his title policy expressly excluded easements, claims of easements or encumbrances which are not shown by the public record and affecting "parcels two and three." (Defendants' exhibit 2.)

Connelly's signed purchase agreement for parcel 105 contains the statement that "Buyer is aware that from time to time the California Coastal Commission and the Coastal Conservancy have asserted various claims and demands for public access along the beaches and main road of the Hollister Ranch. While no eminent domain proceedings have been commenced with respect to such public access, Buyer should be aware that the California Coastal Commission has adopted a formal Coastal Access Plan for the Hollister Ranch and that the Conservancy is legally obligated to implement such plan. Buyer should evaluate its purchase of Parcel 105 with these matters in mind." (DRISS, additional undisputed fact 118.) The Access Program was attached to the purchase agreement. (DRISS, additional undisputed fact 119.) The Access program states that a development permit had been granted for development of camp and conference facilities subject to the condition of controlled public access to the beach for 50 persons per day. (DRISS, additional undisputed fact 120.)

(C) Prior Motion for Summary Adjudication

On December 19, 2014, plaintiffs HROA, Behunin, and Connelly filed their first motion for summary adjudication. The first motion sought to adjudicate the first, second, and fifth causes of action for quiet title on the grounds that the OTD and Acceptance were void ab initio and remain void on the grounds that only the fee owners could grant easements or rights of access, that the YMCA could not transfer access rights as a matter of law, and that no enforceable access rights could be created by the OTD and Acceptance. (Notice of Motion, filed Dec. 19, 2014, pp. 2-9.)

On April 13, 2015, the court heard and denied the motion for summary adjudication. The court held that defendants had met their burden in opposing the motion for summary adjudication by showing evidence supporting an irrevocable license for public access. The court also ruled in the context of the motion that, in part in support of plaintiffs' motion and in part in opposition to plaintiffs' motion, that the passing of the 60-day statute of limitations to have challenged Permit 309-05 precluded certain aspects of plaintiffs' challenges to the public access rights set forth in the OTD and Acceptance, but not to the extent argued by defendants.

Analysis:

(A) Evidentiary Matters

Defendants object to a large portion of the declaration of Suzanne Elledge and the entirety of the declaration of Cecily T. Barclay. As presented here as a general objection, the objections are overruled as to relevance and probative value; the court considers the evidence to the extent specifically relevant. No particular testimony is cited in the objection as to opinion testimony. The objection is generally overruled; the court considers the declaration to the extent it presents admissible evidence.

As set forth in their statement of evidentiary objections, plaintiffs object to statements of fact included in defendants' separate statement and to statements of disputes as to facts included in defendants' separate statement. Plaintiffs' objection fails to quote the evidence subject to the objection. (See Rules of Court, rule 3.1354(b)(3).) As phased, the court overrules the evidentiary objections. In resolving these motions, the court relies only on admissible evidence.

(B) Prior Motion for Summary Adjudication

In opposition to the motion, defendants argue that the issues raised in this motion have already been resolved against plaintiffs in the prior motion for summary adjudication. In reply, plaintiffs argue that the motion is procedurally proper because there has been substantial discovery since the prior motion was made.

"[A] party may not move for summary judgment based on issues asserted in a prior motion for summary adjudication and denied by the court unless that party establishes, to the satisfaction of the court, newly discovered facts or circumstances or a change of law supporting the issues reasserted in the summary judgment motion." (Code Civ. Proc., § 437c, subd. (f)(2).)

Subdivision (f)(2) of section 437c limits repeated motions for summary adjudication where issues are asserted in the prior motion unless the court is satisfied that there are newly discovered facts to support the motion. The court finds that plaintiffs, as moving parties, have not established to the satisfaction of the court newly discovered facts or circumstances. The issue raised in the prior motion for summary adjudication was that the OTD was void. As the discussion of the facts above points out, the essential facts are unchanged. Plaintiffs do not establish what facts are new and do not establish how new facts make any difference to the court's prior analysis. The court therefore does not address the motion to the extent of issues raised and resolved in the prior motion for summary adjudication. The court notes that the disposition of issues, either by the prior motion or in these motions, by denial of a summary adjudication motion has no conclusive (or preclusive) effect upon any of the issues at trial.

(C) Triable Issues of Fact

Either as an alternative to the above resolution or in combination with it, the court notes that there are triable issues of fact precluding disposition of the motions.

"In determining whether the papers show that there is no triable issue as to any material fact the court shall consider all of the evidence set forth in the papers, except that to which objections have been made and sustained by the court, and all inferences reasonably deducible from the evidence, except summary judgment may not be granted by the court based on inferences reasonably deducible from the evidence if contradicted by other inferences or evidence that raise a triable issue as to any material fact." (Code Civ. Proc., § 437c, subd. (c).)

The Individual plaintiffs raise the issue as to whether they are good faith purchasers without notice. The evidence presented provides conflicting inferences as to the actual knowledge of the Individual Plaintiffs. There is no dispute that the Individual Plaintiffs knew of the existence of the recorded access easements; there is conflicting evidence and inferences as to whether the Individual Plaintiffs knew or had reason to know about the scope of public access along those easements.

Accordingly, the court will deny the motions for summary adjudication.