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 Oct 28, 2013 9:30

Nature of Proceedings: Case Management Conference; Demurrer; Motion Preliminary Approval of Class Action Settlement

Santa Barbara County Superior Court
Civil Law & Motion
Judge Colleen K. Sterne, Department 5

October 28, 2013

Case: Tom Pappas, etc., et al., v. State of California, et al.,
Case No. 1417388

Matters: (1) Motion of Plaintiffs for Preliminary Approval of Class Action Settlement with Defendant County of Santa Barbara
(2) Demurrer of State Defendants to Complaint

Tentative Ruling:

(1) As set forth herein, the motion of plaintiffs for preliminary approval of their settlement with defendant County of Santa Barbara and conditional class certification for settlement purposes only is granted.
(2) For the reasons and on the grounds set forth herein, the demurrer of defendants State of California, State Coastal Conservancy, and California Coastal Commission is sustained with leave to amend as to all causes of action of plaintiffs' complaint. Plaintiffs shall file and serve their first amended complaint and petition on or before November 12, 2013.

Discussion:

This is a class action complaint asserting that rights to public access to beach and coastal areas that were the subject of a recorded dedication is invalid. Before the court now are a

demurrer of the State of California, the State Coastal Conservancy and the California Coastal Commission challenging the sufficiency of the complaint and a motion for preliminary approval of a class action settlement with the County of Santa Barbara. (Note: This complaint includes both civil claims and a petition for writ of mandate. Although all plaintiffs are both plaintiffs and petitioners, for convenience in writing, plaintiffs will be referred to simply as "plaintiffs" and defendants will be referred to simply as "defendants" rather than as "defendants and respondents.") The subject of the dispute raised in plaintiffs' complaint is real property located on or near the California coast near Gaviota State Beach in Santa Barbara County.

(1) Plaintiffs' Complaint

The named plaintiffs in this action—Tom Pappas, Tim Behunin, and Patrick L. Connelly—are owners of parcels of real property within the Hollister Ranch. (Complaint, ¶¶ 4-6.) Plaintiff Hollister Ranch Cooperative ("Cooperative") holds various property rights within the Hollister Ranch, including grazing rights and beach use. (Complaint, ¶ 9.) Plaintiff Hollister Ranch Owners' Association ("HROA") is also an owner of real property within the Hollister Ranch, including two beach parcels (the "beach parcels") the rights to which are at issue in this action. (Complaint, ¶¶ 10-11.)

Not a party to this action is the owner of "Parcel 136." (Complaint, ¶ 33.) Parcel 136, as discussed below, including the rights granted and appurtenant thereto, is at the heart of this dispute. The unnamed, putative class members in this action are all of the owners of a fee interest in property in the Hollister Ranch other than Cooperative and HROA and excluding the owner of Parcel 136. (Ibid.)

The Hollister Ranch consists of approximately 14,500 acres of land which has been an operating cattle ranch for over 100 years. (Complaint, ¶ 21.) In 1970, the Hollister Ranch was subdivided into 135 parcels, each approximately 100 acres. (Ibid.) Of the 135 parcels, 132 are privately owned by the putative plaintiff class. (Ibid.)

The HROA beach parcels comprise 8.5 miles of coastline bounded by the Southern Pacific Railroad Right of Way and the Mean High Tide Line. (Complaint, ¶ 22.) Under the HROA Covenants, Conditions and Restrictions ("CC&Rs"), the HROA beach parcels are common area and each putative class member has a non-exclusive right to use them for beach recreational use. (Ibid.)

The Hollister Ranch is served by a network of private ranch roads, including the main road (Rancho Real) which commences at the Ranch's eastern boundary and connects to the road that passes through Gaviota State Park to Highway 101. (Complaint, ¶ 23.) Rancho Real is the main east-west thoroughfare traversing the Hollister Ranch. (Ibid.) A number of ranch roads branch off of Rancho Real and extend northerly into the foothills, including Cuarta Canyon Road. (Ibid.) The owner of each parcel over which the roads pass owns the underlying fee. (Ibid.) Each putative class member owns a non-exclusive easement over all of the ranch roads and a right to enforce the CC&R restrictions on the use of the common areas and the uses on private parcels. (Ibid.) The exclusive use of the common area is reserved equally to all owners and guests, subject to the Hollister Ranch Rules and other limitations set forth in the CC&Rs. (Ibid.) Cooperative holds a right to use the roads and the common areas under a lease and license agreement with the HROA. (Ibid.) Under the CC&Rs, the Ranch roads are also common areas and each putative class member holds a non-exclusive easement to use the ranch roads for ingress and egress. (Ibid.)

Nine of the putative class members, including Behunin and Connelly, own parcels over

which Rancho Real is located, which are referred to as Parcels 103, 105, 106, 107, 119, 120, 121, 122 and 123 (collectively, the "beachfront parcels"). (Complaint, ¶ 24.)

(A) A Note About Real Property Descriptions

As discussed below, the core dispute here relates to rights in real property in and to various parcels. Plaintiffs' complaint provides a less than bare-bones description of the parcels at issue. For example, plaintiff Pappas is the owner of Parcel 77, which is described in the complaint as "Parcel 77 of Parcel Map of the Hollister Ranch Phase II, in the County of Santa Barbara, State of California, as shown on Map recorded in Book 9, Pages 9 through 17, inclusive, of Parcel Maps, in the Office of the County Recorder of Said County." (Complaint, ¶ 4.) No parcel maps are attached to the complaint; plaintiffs do not even identify which page of the parcel maps depicts a particular parcel. It is virtually impossible from the language of the complaint to determine how the parcels relate to one another.

In support of their demurrer, defendants and respondents State of California, California Coastal Conservancy, and California Coastal Commission (collectively, the "State Defendants") request judicial notice of certain documents. The State Defendants' first request for judicial notice includes no maps; the second request for judicial notice includes one assessor's map in which one of the beach parcels is highlighted. While this provides some additional information, it still leaves the parties' arguments assuming too much familiarity with the lands at issue. From the text of the arguments of the parties, it is extremely difficult to determine how the parcels and easements relate to one another.

There are two further complications to understanding how the rights and parcels relate to one another. The first complication is that there are two independent systems for identifying parcels. The "Parcel Maps" are surveyors' maps and identify the parcels by parcel numbers such as "Parcel 136." The "Assessor's Maps" are parcel maps used by the County Assessor and identify parcels by "Assessor's Parcel Numbers," such as "83-700-32." Thus, the same parcel may have two different identification numbers which have no connection to one another.

The second complication is that the legal descriptions for easements, quoted selectively by plaintiffs in exhibits to the complaint, and more thoroughly in the documents for which the State Defendants request judicial notice, are described in metes and bounds only, such as: "Commencing at the United States Coast and Geodetic Triangulation Station 'Anita 2'; thence south 89°27'27" east 7573.01 feet to the United States Coast and Geodetic Triangulation Station 'Horse Shoe' said United States Coast and Geodetic Triangulation Station being shown on map filed in Book 41, Pages 32 to 44, inclusive of Miscellaneous Maps, in the Office of the County Recorder of Said County …." (Complaint, exhibit D.)

The court is constrained in its analysis here by the facts alleged and judicially noticed. Both parties' arguments would be more effective and more helpful to the court if made with suitable maps and clear references.

(B) Coastal Permit and Offer To Dedicate

In 1980, Parcel 136 (also known as Assessor's Parcel Number ["APN"] 83-700-32) was owned by YMCA of Metropolitan Los Angeles ("YMCA"). (State Defendants' First Request for Judicial Notice ["DRJN1"], exhibits A, B.) On October 24, 1980, the California Coastal Commission ("Commission") granted YMCA coastal development permit no. 309-05 for the construction of a YMCA camp and outdoor education facility. (Ibid.) Issuance of the permit was conditioned upon approval and recordation of an irrevocable offer to dedicate

easements in favor of the People of the State of California. (Ibid.)

An irrevocable offer to dedicate and covenant running with the land (the "OTD") was recorded in the real estate records of Santa Barbara County on April 28, 1982, in satisfaction of the condition for issuance of the coastal development permit. (RJN1, exhibit C.) The OTD offered to dedicate to the People of California an easement in perpetuity for the purposes of public access and public recreational use for: (1) beach lateral access, (2) blufftop access trail, and (3) Rancho Real Road vertical access. (Ibid.) The OTD is stated to be irrevocable for a period of 21 years measured forward from ten years following the date of recordation and to be binding upon the owner, assigns or successors in interest to the property. (Ibid.)

"The People of the State of California may accept this offer through the County of Santa Barbara, or through a public agency or a private association acceptable to the Executive Director of the Commission or its successor in interest." (DRJN1, exhibit C.) "Acceptance of the offer is subject to a covenant which runs with the land, providing that the first offeree to accept the easement may not abandon it but must instead offer the easement to other public agencies or private associations acceptable to the Executive Director of the Commission for the duration of the term of the original offer to dedicate. The grant of easement once made shall run with the land and shall be binding on the owners, their heirs, and assigns." (Ibid.)

The coastal development permit was issued on May 7, 1982. (RJN1, exhibit B.)

On April 9, 2013, defendant County of Santa Barbara ("County") adopted a resolution by which it declined to accept the access easement and disclaimed any interest in them. (Complaint, ¶ 31.)

On April 26, 2013, the State Coastal Conservancy ("Conservancy") recorded a certificate of acceptance ("Certificate") accepting the offer set forth in the OTD by the State of California by and through the Conservancy. (Complaint, ¶ 27; DRJN1, exhibit F.) (Note: The Conservancy is referred to in the complaint as the California Coastal Conservancy.) Plaintiffs did not consent to the recording of the Certificate. (Complaint, ¶ 29.)

(C) Plaintiffs' Claims

On May 31, 2013, plaintiffs filed their complaint asserting eight causes of action: (1) quiet title; (2) declaratory and injunctive relief (that the Certificate did not give defendants any right to use plaintiffs' properties); (3) petition for writ of mandate (to set aside the Certificate); (4) temporary physical taking of property without compensation; (5) declaratory relief (as to scope of rights to use if defendants have any rights of use); (6) declaratory relief (that the continued claim by defendants constitutes a physical taking); (7) petition for writ of mandate (to require State Defendants to elect to either keep the Certificate in place or to set aside the Certificate); and (8) physical taking of property without compensation.

Plaintiffs' complaint asserts all causes of action against the State Defendants. Plaintiffs' complaint asserts causes of action against defendant County only as to the first (quiet title), second (declaratory and injunctive relief) and fifth (declaratory relief) causes of action.

Plaintiffs' claims are asserted both individually by the named plaintiffs and on behalf of a putative class of all owners of a fee interest in property in the Hollister Ranch. (Complaint, ¶ 33.) Plaintiffs also assert claims on behalf of a subclass, defined as every member of the class who purchased an interest in the Hollister Ranch without actual or constructive

knowledge of defendants' claims of right. (Complaint, ¶ 34.)

As discussed below, plaintiffs assert that the Certificate is ineffective to create any right in defendants for reasons including that there is uncertainty in the text of the recorded documents, that the offeror of the OTD and Certificate ever owned fee title to parcels over which easements appear to have been granted, and that the use as set forth in the OTD and Certificate would violate the CC&Rs. (Complaint, ¶¶ 45-53.) Plaintiffs also contend that the recordation of the Certificate is inconsistent with the adoption of the "in-lieu" fee program for the Hollister Ranch (Pub. Res. Code, §§ 30610.3, 30610.8) and thus the Certificate is ineffective to create any rights in the property. (Complaint, ¶¶ 61-62.)

Plaintiffs further contend that the acceptance by the Conservancy and the acknowledgement of acceptability by the Commission were made without notice to plaintiffs and without public hearings and therefore should be set aside. (Complaint, ¶ 75-79.)

To the extent that the Certificates do create rights in defendants, plaintiffs request declarations as to the scope of those rights and declarations and other remedies that the creation of rights is a taking for which plaintiffs are entitled to just compensation.

(2) Present Issues

On July 19, 2013, the State Defendants filed their demurrer to the complaint. The State Defendants argue that plaintiffs have not adequately alleged their causes of action, that the gist of plaintiffs' complaint is to challenge the validity of the Commission's 1980 issuance of the coastal development permit which challenge is now time-barred under any legal theory, that any claim that the OTD is inconsistent with the CC&Rs is time barred, that plaintiffs have failed to name an indispensible party, and that the Commission and the State of California are not proper parties to some or all causes of action. As discussed below, plaintiffs oppose the demurrer.

On July 22, 2013, County filed its answer in which County "disclaims any interest or estate in the public access easements, denominated 'access easements' at issue in the Complaint." (County Answer, p. 2.)

On September 24, 2013, plaintiffs filed their motion for preliminary approval of a class action settlement with County. The motion seeks preliminary approval of the settlement with County and conditional class certification for purposes of this settlement only. State Defendants disagree with plaintiffs' characterization of the underlying dispute, but do not object to or oppose this motion.

Analysis:

Preliminary Approval of Class Settlement

"Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion." (Rules of Court, rule 3.769(c).) "The court may make an order approving or denying certification of a provisional settlement class after the preliminary settlement hearing." (Rules of Court, rule 3.769(d).)

The purpose of the preliminary approval hearing is to determine whether the settlement is within the range of reasonableness for preliminary approval and to approve or deny

certification of a provisional settlement class. A full inquiry into the fairness of the proposed settlement occurs at the final approval hearing. (Rules of Court, rule 3.769, subd. (g).)

(A) Reasonableness of Settlement

"'[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action requires court approval.' [Citations.] The court must determine the settlement is fair, adequate, and reasonable. [Citations.] The purpose of the requirement is 'the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties.' [Citation.]" (Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1800-1801, internal quotation marks omitted.)

"[The court] should consider relevant factors, such as the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. [Citation.] The list of factors is not exhaustive and should be tailored to each case. Due regard should be given to what is otherwise a private consensual agreement between the parties. The inquiry 'must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.' [Citation.] 'Ultimately, the [trial] court's determination is nothing more than "an amalgam of delicate balancing, gross approximations and rough justice." [Citation.]' [Citation.]" (Dunk v. Ford Motor Co., supra, 48 Cal.App.4th 1794, 1801.)

The settlement reached between plaintiffs and County is straightforward. County stipulates to a judgment quieting title in which County is declared to have no right, title or interest in any easement for public access or public recreation described in the OTD or in the Certificate. (Amerikaner decl., exhibit A, § 3.2.) In exchange, plaintiffs waive, release and settle all of their claims against County, including any claims for attorney's fees. (Id., §§ 1.16, 3.1, 3.2.) The settlement effects the disclaimer of rights already adopted by County and set forth in its Answer. By this settlement, plaintiffs achieve the entirety of the result they seek from County; County gives up nothing it had not already disclaimed and has no liability for attorney's fees or costs.

The settlement does not affect the dispute between the State Defendants and plaintiffs (either individually or as a putative class) in any way. The underlying access rights are asserted by Conservancy as the party accepting the OTD. Thus, approval of the settlement cannot adversely affect the public rights asserted by the State Defendants. The settlement is within the range of reasonableness for preliminary approval.

(B) Class Certification for Settlement Purposes

"[C]onditional class certification for settlement purposes has been treated no less seriously than certification for litigation purposes. [Citation.] Thus, it has been said regarding federal procedure that '[b]efore certification is proper for any purpose—settlement, litigation, or otherwise—a court must ensure that the requirements [for maintaining a class action under the Federal Rules of Civil Procedure] have been met.' [Citation.] One well-regarded commentator has stated that '[a]ctions in which courts certify classes as settlement classes must generally meet the same requirements for certification that litigation classes must meet.' [Citation.]" (Hernandez v. Vitamin Shoppe Industries Inc. (2009) 174

Cal.App.4th 1441, 1458.)

However, “it is well established that trial courts should use different standards to determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases. [Citation.] The reason for this is that no trial is anticipated in a settlement class case, so the case management issues inherent in the ascertainable class determination need not be confronted.” (Global Minerals & Metals Corp. v. Superior Court (2003) 113 Cal.App.4th 836, 859.)

“Code of Civil Procedure section 382 authorizes class action suits in California ‘when the question is one of a common or general interest … or when the parties are numerous, and it is impracticable to bring them all before the court.’ [Citation.] The requirements for class certification are well established: there must be questions of law or fact common to the class that are substantially similar and predominate over the questions affecting the individual members; the claims of the representatives must be typical of the claims or defenses of the class; and the class representatives must be able to fairly and adequately protect the interests of the class. [Citations.]” (Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 237-238.)

The proposed class is defined as “Each and every owner of a fee interest at Hollister Ranch who held that interest during the pendency of the above-captioned litigation with the exception of the Individual Plaintiffs and the owners of Parcel 136.” (Amerikaner decl., ¶ 9.) This definition of a class is easily ascertainable from the real estate records. This class is numerous because there are over 130 legal parcels in the Hollister Ranch and, in many cases, parcels are owned by more than one person, making the class total over 670 in number. (Amerikaner decl., ¶¶ 11.) It is impractical to bring all members of the class into court on an individual basis.

There is also a well-defined community of interest of this class with respect to the issues raised in the complaint. The law and facts relating to plaintiffs’ claims as against County are essentially identical to each other’s and to the claims asserted by the proposed class representatives. (E.g., Amerikaner decl., ¶ 12.) In the context of this settlement, there are no questions affecting members individually that are not resolved by the common questions. Common questions clearly predominate. The claims of the individual plaintiffs, as class representatives, are typical of the claims of the class.

The individual plaintiffs, Pappas, Behunin, and Connelly, have interests that are, at least in the context of the settlement, identically aligned with all other class members. (Amerikaner decl., ¶ 14.) The individual plaintiffs, as class representatives, are thus able to fairly and adequately protect the interests of the class. Plaintiffs’ counsel, Steven A. Amerikaner, has the experience and competence to provide adequate representation of the class. (See Amerikaner decl., ¶ 13 & exhibit B.)

Based on the foregoing, the court will conditionally certify the class defined above for purposes of this settlement only. The court will approve the proposed class notice and the proposed schedule of events relating to final approval of this class. The exact dates are to be discussed at the hearing of this motion. The court appoints plaintiffs’ counsel as class counsel for purposes of this settlement only.

Demurrer

“We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may

be judicially noticed. [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.]" (Evans v. City of Berkeley (2006) 38 Cal.4th 1, 6, internal quotation marks omitted.)

(A) Request for Judicial Notice

In support of their demurrer, the State Defendants request that the court take judicial notice of: (DRJN1, exhibit A) the coastal development permit no. 309-05, granted October 24, 1980; (DRJN1, exhibit B) the coastal development permit no. 309-05, issued on May 7, 1982; (DRJN1, exhibit C) the OTD, recorded April 28, 2013; (DRJN1, exhibit D) a letter, dated October 26, 1998, from attorney Steven Amerikaner of Hatch & Parent to the Commission regarding coastal development permit no. 309-05; (DRJN1, exhibit E) a letter, dated October 8, 1999, from Ralph Faust, Chief Counsel, to Amerikaner regarding coastal development permit no. 309-05; (DRJN1, exhibit F) the Certificate, recorded April 26, 2013.

RJN1 exhibits A and B are the permits issued by the Commission and are proper subjects of judicial notice as official acts. (Evid. Code, § 452, subd. (c); cf. No Oil v. City of L.A. (1987) 196 Cal.App.3d 223, 246, fn. 20.) DRJN1 exhibits C and F are proper subjects of judicial notice as recorded documents. (Evid. Code, § 452, subd. (h); Poseidon Development, Inc. v. Woodland Lane Estates, LLC (2007) 152 Cal.App.4th 1106, 1117.) Judicial notice will be granted as to exhibit F. DRJN1 exhibit C is subject to a qualification discussed below with plaintiffs' request for judicial notice.

DRJN1 exhibits D and E are correspondence to and from counsel for plaintiffs and for the Commission regarding permit no. 309-05. Insofar as these documents are part of the Commission's file, the court will grant the request for judicial notice. (Fowler v. Howell (1996) 42 Cal.App.4th 1746, 1749.) However, as with all of these documents, judicial notice extends only to contents of the documents and not to the truth of any matter stated therein. (Sosinsky v. Grant (1992) 6 Cal.App.4th 1548, 1569.)

In reply, State Defendants request that the court additionally take judicial notice of: (Second Request for Judicial Notice ["DRJN2"], exhibit A) excerpts from the CC&Rs; and, (DRJN2, exhibit B) excerpts from the declaration of Alan Martin, in Mahan v. State Public Works Board, et al., Santa Barbara County Superior Court case number 232345. RJN2 exhibit A is part of a recorded document and judicial notice will be granted. DRJN2 exhibit B is asserted to be a court record in another case. Court records are properly the subject of judicial notice. (Evid. Code, § 452, subd. (d)(1).) However, DRJN2 exhibit B is not a certified copy of a court record and is not even a conformed copy of a court document. The document on its face does not show that it was ever filed in a court proceeding and there is no authenticating declaration. The court will deny the request for judicial notice as to DRJN2 exhibit B. (See Evid. Code, § 453, subd. (b).)

In opposition to this demurrer, plaintiffs request that the court take judicial notice of: (Plaintiffs' Request for Judicial Notice ["PRJN"], exhibit 1) a request for judicial notice by the California Attorney General in Remmenga, et al., v. California Coastal Commission, et al., Los Angeles County Superior Court case number C300657 ("Remmenga"), filed June 19, 1980; (PRJN, exhibit 2) petitioner Remmenga's petition for writ of mandate and points and authorities in Remmenga, filed October 9, 1979; (PRJN, exhibit 3) petitioner Remmenga's first amended petition for writ of mandate and point and authorities in Remmenga, filed March 24, 1980; (PRJN, exhibit 4) the California Attorney General's memorandum of points and authorities in support of reply in Remmenga, filed June 19, 1980; and (PRJN, exhibit 5) the OTD.

PRJN exhibits 1 through 4 are court records in the Remmenga case. These documents are not certified copies of these records, but are copies which show on their face having been filed in Los Angeles County Superior Court and for which no objection as to authenticity is made. The court will grant the request for judicial notice as to PRJN exhibits 1 through 4. (Evid. Code, § 452, subd., (d)(1).)

PRJN exhibit 5 is slightly different version of the OTD from the DRN1 exhibit C. Neither version is a certified copy of the recorded document. DRJN1 exhibit C is certified by the Commission only as a copy from the Commission's files. DRJN1 exhibit C is substantially more legible than PRJN exhibit 5. PRJN exhibit 5 appears to be a copy of the document as recorded. The differences between these documents are in the order of the pages. Making assessing these documents more difficult, the documents are not internally paginated and neither party has complied with its obligation under Rules of Court, rule 3.1110(c) to consecutively paginate the documents as filed with the court. It is therefore pointless to attempt to specify which pages are out of order except to say that the problem is in the exhibits encompassed within each document. It is sufficient for the purpose of this demurrer to note that both parties agree that all of the pages of the text of the OTD are contained in both DRJN exhibit C and in PRJN exhibit 5. The court will take judicial notice of the contents and recordation of the OTD to the extent that both versions are identical. However, to the extent of the differences and to the extent that those differences have any legal or factual significance, the court cannot determine from the information provided by the parties which version is correct, either in its intent or in the order in which the pages were recorded. To that extent the court denies both parties requests for judicial notice of these exhibits.

(B) Effect of No Challenge to OTD

State Defendants argue in their demurrer that all of plaintiffs' claims are barred by any applicable statute of limitations because these claims are essentially challenges to the Commission's actions in 1980 granting the coastal development permit to YMCA. "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.)

Plaintiffs respond first that the Commission did not have fundamental jurisdiction over plaintiffs. "The rule of exhaustion of administrative remedies does not apply where the subject matter lies outside the administrative agency's jurisdiction." (Buckley v. California Coastal Com. (1998) 68 Cal.App.4th 178, 191.) Plaintiffs concede that the Commission had fundamental jurisdiction over YMCA when YMCA applied to the Commission for the coastal development permit. (Opposition, at p. 10.) Plaintiffs argue, however, that the Commission did not have fundamental jurisdiction over the property rights of plaintiffs whose property and persons were not before the Commission.

The subject of plaintiffs' complaint, however, is the acceptance of the OTD. The OTD was executed by YMCA in satisfaction of the condition required for issuance of the coastal development permit to YMCA. The Commission had fundamental jurisdiction over YMCA and therefore the Commission had fundamental jurisdiction to require YMCA to make the OTD that is the subject of this action. Fundamental jurisdiction is not an issue.

Plaintiffs next argue that this case is not a challenge to a permit condition. Plaintiffs do not challenge State Defendants' principal contention that "[o]nce 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 Com. (1994) 26 Cal.App.4th 516, 525.) Plaintiffs do not allege that a challenge to the permit process was made within the 60-day time period. However, plaintiffs assert that their challenge is to the legal effect of the acceptance of the OTD.

The result of the 60-day statute of limitations having run is that the permit is beyond challenge. Thus, plaintiffs may not in this action assert that the Commission exceeded its authority in requiring the OTD as a condition for the issuance of the permit. (Serra Canyon Co. v. California Coastal Com. (2004) 120 Cal.App.4th 663, 670.)

(C) Quiet Title

Plaintiffs' first cause of action is for quiet title. State Defendants assert that this claim is barred by the statute of limitations regardless of whatever statute might apply. Plaintiffs argue that the statute of limitations accrued only when it recorded the Certificate in 2013.

"A general demurrer based on the statute of limitations is only permissible where the dates alleged in the complaint show that the action is barred by the statute of limitations. [Citation.] The running of the statute must appear 'clearly and affirmatively' from the dates alleged. It is not sufficient that the complaint might be barred. [Citation.] If the dates establishing the running of the statute of limitations do not clearly appear in the complaint, there is no ground for general demurrer. The proper remedy 'is to ascertain the factual basis of the contention through discovery and, if necessary, file a motion for summary judgment ….' [Citation.]" (Roman v. County of Los Angeles (2000) 85 Cal.App.4th 316, 324-325.)

"[N]o statute of limitations runs against a plaintiff seeking to quiet title while he is in possession of the property. [Citations.] In many instances one in possession would not know of dormant adverse claims of persons not in possession. [Citation.] Moreover, even if, as here, the party in possession knows of such a potential claimant, there is no reason to put him to the expense and inconvenience of litigation until such a claim is pressed against him." (Muktarian v. Barmby (1965) 63 Cal.2d 558, 560-561, fn. omitted.)

Plaintiffs seek to quiet title as to the effect of the OTD as accepted by the Certificate on a number of grounds. At one of the spectrum of these grounds, plaintiffs argue that in the Hollister Ranch, no individual owner has the legal authority to grant public access easements on the roads and beach because no individual owner owns the fee to all of the property over which those easements must run. (Opposition, at p. 5.) In 1980, the Legislature addressed this issue generally by the enactment of Public Resources Code section 30610.3. Section 30610.3 generally allows the Commission to impose an "in-lieu" public access fee in connection with issuance of a coastal development permit to fund the purchase of property rights for public access in place of dedication of the property itself. In 1982, the Legislature enacted section 30610.8 specific to the Hollister Ranch:

"The Legislature hereby finds and declares that a dispute exists at the Hollister Ranch in Santa Barbara County with respect to the implementation of public access policies of this division and that it is in the interest of the state and the property owners at the Hollister Ranch to resolve this dispute in an expeditious manner. The Legislature further finds and declares that public access should be provided in a timely manner and that in order to achieve this goal, while permitting property owners to commence construction, the provisions of this section are necessary to promote the public's welfare." (Pub. Resources Code, § 30610.8, subd. (a).) "For purposes of Section 30610.3 and with respect to the Hollister Ranch public access program, the in-lieu fee shall be five thousand dollars

($5,000) for each permit. Upon payment by the applicant for a coastal development permit of this in-lieu fee to the State Coastal Conservancy for use in implementing the public access program, the applicant may immediately commence construction if the other conditions of the coastal development permit, if any, have been met. No condition may be added to a coastal development permit that was issued prior to the effective date of this section for any development at the Hollister Ranch." (Pub. Resources Code, § 30610.8, subd. (b).) "It is the intent of the Legislature that the State Coastal Conservancy and the State Public Works Board utilize their authority provided under law to implement, as expeditiously as possible, the public access policies and provisions of this division at the Hollister Ranch in Santa Barbara County." (Pub. Resources Code, § 30610.8, subd. (c).)

Relying upon statements made by the Attorney General, and upon documents submitted, in litigating the Remmenga case, plaintiffs argue that the enactment of section 30610.8 eliminated the legal authority of the Commission to require a dedication of property to meet public access policies with respect to coastal development permits at the Hollister Ranch. Despite this asserted lack of authority, the OTD condition was nonetheless imposed by the Commission after the effective date of section 30610.8. (See Stats. 1982, ch. 43, § 23, p. 128 [urgency statute effective Feb. 17, 1982].)

State Defendants assert that section 30610.8 is not applicable here because Parcel 136 (then owned by the YMCA), which was the parcel seeking the coastal development permit, is not in the Hollister Ranch. (See DRJN2, exhibit B, p. 1192.) Plaintiffs do not allege that Parcel 136 is in the Hollister Ranch. (As discussed above, these descriptions are extremely cumbersome without a map.) Plaintiffs allege that the easement rights claimed in the OTD as accepted by the Certificate are to access rights within Hollister Ranch. State Defendants do not claim otherwise, but note that the coastal development permit was for a parcel outside of the Hollister Ranch.

It is not necessary to determine whether sections 30610.3 or 30610.8 have any direct implication here because any violation of these sections that may have occurred was a matter which could only be challenged within the 60-day window following the Commission's grant of the coastal development permit. As in Serra Canyon Co. v. California Coastal Com., the "current claim derives solely from the Commission's [1980] permit condition, not from the formalities involved in enforcing that condition." (Serra Canyon Co. v. California Coastal Com., supra, 120 Cal.App.4th at p. 670.) Arguing that the rights granted in the OTD and accepted by the Certificate is merely a collateral attack on the final decision of the Commission. (See id.) Such a claim is therefore untimely and barred by any applicable statute of limitation. (See id.)

On the other end of the spectrum, plaintiffs claim that the acceptance by the Certificate is defective because it purports to accept easements that were not included in the OTD, is inconsistent and, as discussed above, is set forth in varying versions. These challenges are challenges to the legal effect of action in 2013 rather than to the validity of actions in 1980 and 1982. At least to the extent that plaintiffs are claiming that the Certificate asserts access and use rights in plaintiffs' properties which exceed the rights set forth in the OTD, such a claim for quiet title would accrue when the Certificate was recorded in 2013 and the Conservancy pressed that claim.

"[A] demurrer cannot rightfully be sustained to part of a cause of action or to a particular type of damage or remedy." (Kong v. City of Hawaiian Gardens Redevelopment Agency (2002) 108 Cal.App.4th 1028, 1047.) As discussed, it is not clearly and affirmatively shown that from the face of the complaint that all of the grounds upon which plaintiffs seek to quiet title are barred by the statute of limitations. State Defendants' demurrer to the first cause of

action on the grounds of the statute of limitations will therefore be overruled.

The court recognizes that there are other grounds raised by plaintiffs for their claims to quiet title. Because of this disposition, the court expresses no opinion as to the application of the statute of limitations to these other grounds.

(D) Declaratory Relief and Writ of Mandate

Plaintiffs' second, fifth and sixth causes of action are for declaratory relief. "Any person interested under a written instrument …, or under a contract, or who desires a declaration of his or her rights or duties with respect to another, … may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract." (Code Civ. Proc., § 1060.)

"[T]he period of limitations applicable to ordinary actions at law and suits in equity should be applied in like manner to actions for declaratory relief. Thus, if declaratory relief is sought with reference to an obligation which has been breached and the right to commence an action for 'coercive' relief upon the cause of action arising therefrom is barred by the statute, the right to declaratory relief is likewise barred. On the other hand, if declaratory relief is sought 'before there has been a breach of the obligation in respect to which said declaration is sought,' or within the statutory period after the breach, the right to such relief is not barred by lapse of time. [Citation.] There is no anomaly in the fact that a party may have a right to sue for declaratory relief without setting in motion the statute of limitations. Quiet title actions, forerunners of declaratory actions, may be maintained when an adverse claim to property is asserted, but the period of limitations does not commence to run at that date." (Maguire v. Hibernia S. & L. Soc. (1944) 23 Cal.2d 719, 734.)

Just as with the first cause of action, plaintiffs' declaratory relief causes of action are not based entirely upon grounds that would be barred by the statute of limitations if brought for coercive relief, including quiet title. For that reason, the demurrers to these causes of action on the grounds of the statute of limitations will be overruled.

Additionally, the declaratory relief actions request not just a declaration that the OTD as accepted by the Certificate are invalid, but a declaration of the scope of the rights based upon allegedly confusing and inconsistent language. The scope of the rights covered by the OTD and Certificate is a different question than the underlying validity of the dedication.

The same issue exists with respect to State Defendants' demurrer to the third and seventh causes of action for issuance of writs of mandate. These actions seek to compel the State Defendants to set aside their acceptance of the OTD and alternatively to compel them to elect between maintaining the public access rights or paying just compensation. At least to the extent that the plaintiffs assert that the Certificate claims rights beyond the rights granted by the OTD, State Defendants have not shown that these causes of action are clearly barred by the statute of limitations. Defendants' demurrers to the third and seventh causes of action on the grounds of the statute of limitations will be overruled.

(E) Takings Claims

Plaintiffs' fourth and eighth causes of action are for just compensation based upon the disposition of certain of plaintiffs' other claims. As with plaintiffs' quiet title action, by their incorporation by reference of the allegations of the complaint, these causes of action

include a wide spectrum of bases of their takings claims. However, these claims are different in that these claims are expressly contingent upon findings in favor of the State Defendants in the declaratory relief and other claims. The effect of such findings, should they be made, however, undermines plaintiffs' takings claims.

"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 Com. (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].)

Here, the OTD states that YMCA, then the owner of Parcel 136, grants rights of public access and use. As a grant of rights, the extent of the rights granted by YMCA may not exceed the rights YMCA then held. (Note: There are here alleged no facts that any after-acquired rights change this analysis. (Cf. Civ. Code, § 1106.)) If the expressed conditions of these causes of action are satisfied, that is, if the court determines that YMCA had the right to dedicate the rights set forth in the OTD, then the court necessarily also determines that rights acquired by the public by the dedication are no more extensive than the rights previously held by YMCA. As a result, if a constitutional taking occurred, it occurred by the transfer of these rights at the time of the grant of the OTD. (Serra Canyon Co. v. California Coastal Com., supra, 120 Cal.App.4th 663, 671-672.) Any claim of a constitutional taking to support inverse condemnation would have arisen in 1980 or 1982 and is now barred by any applicable statute of limitations.

As here alleged, there are no facts alleged so that if the court determines that the OTD validly conveyed public access and public use rights in properties in the Hollister Ranch any of the plaintiffs will have been deprived of any property right to which their respective properties were not already subject. Thus, the takings claims, being derivative of actions occurring in 1980 or 1982, are barred by the statute of limitations. Accordingly, the State Defendants' demurrers to the fourth and eighth causes of action will be sustained with leave to amend on that ground.

(F) Parties

State Defendants also demur on the grounds that: (1) plaintiffs have failed to name an indispensible party, (2) the Commission is not a proper party to the quiet title action, and (3) the State of California is not a proper party to this action.

(1) Indispensible Parties

The present owner of Parcel 136 is not a party to this action, either as a named party or as a member of the putative class. (Complaint, ¶ 33.)
State Defendants argue that the present owner of Parcel 136 is an indispensible party or necessary party to this litigation.

"A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his

ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party." (Code Civ. Proc., § 389, subd. (a).)

"If a person as described in paragraph (1) or (2) of subdivision (a) cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed without prejudice, the absent person being thus regarded as indispensable. The factors to be considered by the court include: (1) to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; (2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; (3) whether a judgment rendered in the person's absence will be adequate; (4) whether the plaintiff or cross-complainant will have an adequate remedy if the action is dismissed for nonjoinder." (Code Civ. Proc., § 389, subd. (b).)

"The controlling test for determining whether a person is an indispensable party is, 'Where the plaintiff seeks some type of affirmative relief which, if granted, would injure or affect the interest of a third person not joined, that third person is an indispensable party. [Citation.]' [Citation.] More recently, the same rule is stated, 'A person is an indispensable party if his or her rights must necessarily be affected by the judgment. [Citations.]' [Citation.]" (Save Our Bay, Inc. v. San Diego Unified Port Dist. (1996) 42 Cal.App.4th 686, 692-693.)

State Defendants argue that the present owner of Parcel 136 is an indispensible party because this litigation will necessarily determine the scope of the rights of that owner and that, because coastal development permits run with the land and bind successors in interest, a determination favorable to plaintiffs could put the owner in violation of that development permit. Plaintiffs argue that this is a challenge only to the rights over plaintiffs' properties; the owner of Parcel 136 is thus unaffected by the determination of these issues. If the Certificate is found invalid, neither YMCA nor its successors in interest could be found in violation of the permit because the ruling would not be the result of any action by YMCA or its successors.

As discussed above, the rights dedicated by the OTD and accepted by the Certificate are in the nature of a grant by YMCA as the then-owner of Parcel 136. In their claims for quiet title and for declaratory relief, plaintiffs seek to determine the scope of those rights, and, in particular, to obtain a judicial declaration that the dedication of such rights to the public as accepted by the Certificate was invalid. Judgment in favor of plaintiffs will necessarily determine the right of YMCA, as owner of Parcel 136, to dedicate public access and use rights and the scope of those rights.

The owner of Parcel 136 is an indispensible party within the meaning of Code of Civil Procedure section 389, subdivision (a). In an action to quiet title, "the plaintiff shall name as defendants the persons having adverse claims that are of record or known to the plaintiff or reasonably apparent from an inspection of the property." (Code Civ. Proc., § 762.060, subd. (b).) Because the subject public access and use rights are derivative of the rights then-owned by YMCA, YMCA's successor in interest has an adverse claim within the meaning of section 762.060 because the disposition of the quiet title action is intended to determine and potentially limit the scope of the owner of Parcel 136's property rights over plaintiffs' properties. (See Code Civ. Proc., § 760.010, subd. (a) & Cal. Law Revision Com. com. [defining "claim" against property in the broadest possible sense].) Insofar as the effective dedication of such rights also affects the satisfaction of conditions for the coastal development permit issued to the YMCA for Parcel 136 and binding on its successors, the

disposition of this action could have an adverse effect on the present owner of Parcel 136.

This issue is raised by demurrer. (See Code Civ. Proc., § 430.10, subd. (d).) There is now no showing that the present owner of Parcel 136 cannot be made a party to this action. The court will sustain the demurrer of the State Defendants with leave to amend as to plaintiffs' first, second, third, fifth, sixth and seventh causes of action on that ground and order plaintiffs to make the present owner of Parcel 136 a party to this action (see Code Civ. Proc., § 389, subd. (a)).

(2) Commission as Party to Quiet Title

State Defendants also demur on the ground that the Commission is not a proper party to the quiet title claim because the Commission does not assert and cannot assert any claim against the property. State Defendants argue that the Commission is not authorized by the Coastal Act (Pub. Resources Code, §§ 30300-30354) to hold property.

An action to quiet title may be brought "to establish title against adverse claims to real or personal property or any interest therein." (Code Civ. Proc., § 760.020, subd. (a).) "'Claim' includes a legal or equitable right, title, estate, lien, or interest in property or cloud upon title." (Code Civ. Proc., § 760.010, subd. (a).)

"The object of [the quiet title statutes] is to enable the plaintiff, in such action, to dispel whatever may be regarded by third persons, as well as by the defendant, as a cloud upon his title; for even though the defendant makes no adverse claim, third persons may regard plaintiff's title as being subject to an adverse claim by the defendant, which would be a cloud upon plaintiff's title, depreciating its value, and which he would be entitled to have removed by the decree of the court; so that his record title may appear perfect, not only to the defendant, but to all persons whom it may thereafter concern." (Bulwer Consol. Mining Co. v. Standard Consol. Mining Co. (1890) 83 Cal. 589, 608.)

While the Commission may not, and does not, claim any ownership interest in the properties at issue in this action, the Commission has argued persuasively as discussed above, that the subject coastal development permit runs with the land. The claims here are derivative of the obligations under the coastal development permit for Parcel 136. As the party authorizing and enforcing the terms of the coastal development permit, the Commission is a proper party as having a "claim" that, in plaintiffs' allegations, clouds their title. The State Defendants' demurrer will be overruled on this ground.

(3) State of California as a Defendant

State Defendants also demur on the grounds that the State of California is not a proper party to this action. "Each agency or department of the state is established as a separate entity, under various state laws or constitutional provisions." (People ex rel. Lockyer v. Superior Court (2004) 122 Cal.App.4th 1060, 1078.) State Defendants argue that the Commission and the Conservancy are the only state agencies with an interest in this action. Plaintiffs argue that unless the State of California is individually joined as a party to the action, the judgment would not be binding or conclusive on it. (Code Civ. Proc., § 764.070, subd. (a).)

The allegations of the complaint do not state any action or claim based upon the actions of the State of California except as the State of California acts through the Commission and the Conservancy as its agencies. While plaintiffs are correct that failing to name the State of California individually would make judgment not binding on the State in general, the

judgment would be binding upon the Commission and the Conservancy. There is nothing in plaintiffs' complaint which would make a judgment binding upon the State of California as a separate entity either necessary or appropriate. (See State of California v. Superior Court (1974) 12 Cal.3d 237, 255.)

State Defendants' Demurrer on this ground will be sustained with leave to amend.