

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 v. County of Santa Barbara**

**Case No:** 1417388

**Hearing Date:** Mon May 21, 2018 9:30

**Nature of Proceedings:** Motion Approval/Preliminary Approval of Class Action

*Tom Pappas, et al., v. State Coastal Conservancy, et al., Case No. 1417388 (Judge Sterne)*

**Hearing Date:** May 21, 2018

**Motion:**

Motion for Preliminary Approval of Class Action Settlement

**Attorneys:**

*For Plaintiffs The Hollister Ranch Cooperative and the Hollister Ranch Owners' Association:* Steven A. Amerikaner, Beth Collins, Hillary H. Steenberge, Brownstein Hyatt Farber Schreck, LLP

*For Plaintiffs Tim Behunin, Trustee of the Behunin Family Trust, Carolyn Pappas, Patrick L. Connelly, individually and on behalf of the Plaintiff Classes:* Marcus S. Bird, Hollister & Brace

*For Defendants California Coastal Commission and State Coastal Conservancy:* Xavier Becerra, Jamee Jordan Patterson, Office of the California Attorney General

*For Defendant Rancho Cuarta:* Joseph Liebman

**Tentative Ruling:**

After consideration of the evidence and arguments of the parties, and subject to the qualifications herein, the court grants preliminary approval of the class action settlement in this matter. Counsel are to appear for the hearing on this matter and are to be prepared to discuss the matters identified herein, including specifically, the text and timing of the additional public notice and the scheduling of the hearing for final approval of the settlement.

In this class action, plaintiffs seek to quiet title as to easements and other asserted rights of access and use within and across private property known as the Hollister Ranch. Plaintiffs assert that the public access easements are unenforceable and provide no rights of access or use. Defendants California Coastal Commission and State Coastal Conservancy (State Defendants) have opposed the claims of plaintiffs supporting the validity of the asserted public access rights.

The parties have reached a conditional settlement of this action. In very general terms, the settlement provides that the State Defendants abandon any claim to rights pursuant to the underlying offer to dedicate upon which the State Defendants have based their claims for public access rights. In exchange, plaintiffs grant a license for public access to certain beach areas, accessible only by the ocean and subject to various restrictions, and the establishment of the Hollister Ranch Managed Access Program, providing certain controlled access for primary and secondary school children and for approved non-profit groups. Plaintiffs now move for preliminary approval of this class action settlement. The State Defendants have filed a statement in support of the motion and the settlement.

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).)

The court has previously stated that, understanding the positions of the parties, the litigation risks, and the interests involved, the settlement is within the range of reasonableness for preliminary approval. On April 16, 2018, the court then raised an issue as to the type of notice that should be given. The court noted that unlike a traditional class action, this is a class action by the owners of the underlying real property interests to quiet title and declare unenforceable the property interests set forth in the offer of dedication giving rise to the claim for public access. Notice of the settlement is currently sought to be provided only to the settlement class of property owners. The public interest in the public access ostensibly granted by the offer of dedication is represented by the State Defendants. The settlement provides access to a certain part of the beach area by overland access for a limited class of persons and by ocean access with various limitations. Because the settlement abandons disputed rights of public access, the court raised the issue of whether, and to what extent, notice must, or should, be provided to the affected public. The court requested the parties to address this issue in further briefing.

The parties responded to the court's request for further briefing. All of the parties have asserted that public notice beyond notice to the plaintiff class of Hollister Ranch owners is legally unnecessary. All of the parties have also asserted, in varying degrees, that further public notice is unwarranted because the public interest is represented by the State Defendants and because notice to the non-party public would potentially be disruptive to finalizing the settlement.

The court agrees with the parties that further public notice is not legally necessary. (See Rules of Court, rule 3.769(f).) The court also notes that the public, as neither a member of the plaintiff class nor a party to the action, is not permitted to participate in this action simply by voicing an opinion as to the merits of the action or as to the wisdom of the settlement. In order to participate in the action to object to this settlement, a member of the public must first become a party to the action, ordinarily by obtaining leave of court to intervene in the action. (See *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 267.)

The court has no reason to believe that the State Defendants do not adequately represent the public interest in this action. Nonetheless, the court is concerned that the procedural posture of this case has limited knowledge of this action by the public, and more specifically knowledge of the settlement terms, so that affected members of the public would not have sufficient knowledge of the existence of this action and settlement to exercise rights to request intervention should any affected member of the public want to do so. The court finds a more prudent course is to provide generalized public notice so that anyone who would otherwise intend to request intervention may do so prior to final approval of the settlement. The court does not know if any member of the public would seek to do so. By providing additional notice the court does not imply that leave to intervene would be granted simply if requested; a person moving for leave to intervene would in all cases be required to make a legally sufficient showing that intervention would be appropriate under all of the circumstances.

The State Defendants responded to the court's request for briefing regarding the nature of the notice by suggesting that published notice using the procedures for service by publication would be appropriate. (See Code Civ. Proc., § 415.50.) The court agrees that such notice would be sufficient for the purposes here intended by the court that an official notice of this proposed settlement be provided to the public. The parties have not addressed the issue of the text of the public notice. The parties will be required to address this issue at the hearing of this motion. The court suggests, subject to further discussion and without intending to preempt any alternative, that the text track the notice to be provided to the plaintiff class with appropriate changes indicating that a member of the public may not object or otherwise participate in the final settlement hearing without seeking and obtaining from the court leave to intervene and that the notice set a date by which any such motion must be filed with the court and served on the parties (as, for example, two or three weeks prior to the final settlement hearing). If no timely motions are filed, then the final settlement hearing may go forward in the ordinary course; if any motion to intervene is filed, the court can address the merits of the motion(s) at that time.

By providing additional notice, the court does not imply that the court has any unstated reservations concerning the fairness of the settlement as a compromise of

starkly disputed positions. The court will grant preliminary approval of the settlement as provided in the moving papers, with the additional condition that public notice of the settlement as indicated above be published in the manner of service of summons by publication with sufficient time for any motion to intervene to be filed by the deadline stated.

The parties are to appear for the hearing on this motion and are to be prepared to discuss timing and obligations of the parties to provide notice and to set a hearing on final approval of the settlement.

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