

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

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY OF SANTA BARBARA

FEB 08 2019

Darrel E. Parker, Executive Officer
BY 
Kary Swan, Deputy Clerk

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
7 COUNTY OF SANTA BARBARA
8 ANACAPA DIVISION
9

10 TOM PAPPAS, et al.,) Case No.: 1417388
11 Plaintiffs,) ORDER AFTER HEARING
12 v.) Date: January 14, 2019
13 STATE COASTAL CONSERVANCY, et al.,) Time: 1:30 a.m.
14 Defendants.) Dept.: 5
15) Judge Colleen K. Sterne
16 GAVIOTA COASTAL TRAIL ALLIANCE,)
17 Defendant Intervenors.)

18 On January 14, 2019, the Court held a hearing in this matter on the motion of intervenor
19 defendant Gaviota Coastal Trial Alliance (GCTA) to set aside the settlement between plaintiff
20 Hollister Ranch Owners' Association and the State Defendants and on the motion of plaintiffs
21 for final approval of the settlement between the plaintiff class and State Defendants. At the
22 conclusion of that hearing, the Court took both motions under submission. In advance of the
23 January 14 hearing, the Court issued a tentative ruling, which is attached hereto as exhibit A and
24 is incorporated herein by this reference. The Court denies both motions for the reasons set forth

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1 in the tentative ruling, which the Court now adopts as its ruling supplemented with the following
2 addendum:

3 Addendum to Tentative Ruling

4 1. As the Court has previously observed, this action is presented in an unusual
5 context leading to unusual procedural issues. To better illustrate how the Court understands this
6 unusual context, it is helpful to compare this action with a hypothetical action brought by a class
7 of the public who wish to establish their respective rights to use the access rights that are the
8 subject of the Offer to Dedicate (OTD). The hypothetical class would seek declaratory or other
9 relief to state that the owners of the underlying property over which the access rights are claimed
10 do not have the right to prevent the public's use of the access rights. One possible resolution of
11 that hypothetical action could be that the attorneys acting on behalf of the plaintiff class of the
12 public reach the same settlement with the underlying property owners as was reached here
13 between the owners' association and the State Defendants. In order to effect that settlement, the
14 plaintiff public class would have to seek court approval of their settlement, applying the
15 standards already discussed in the Court's ruling attached hereto. The principal question would
16 be whether that settlement is fair to those concerned, i.e., the class of the public seeking to use
17 and vindicate the public access rights. There is no question that a member of the public class
18 could properly object to the settlement as unfair. Indeed, the purpose of providing class notice is
19 to make such objections possible.

20 2. This action is different in form from the hypothetical public class action in several
21 respects. Here, the plaintiffs are a class of owners of the underlying property, individual owners,
22 and an owners' association. The plaintiff class seeks the opposite result of that posited in
23 hypothetical case, namely, to declare that the State and public have no rights by the OTD. Unlike
24 the hypothetical case, the plaintiffs here did not reach a settlement with the public as a class, but

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1 with the State acting in a representative capacity with respect to the interest of the public in those
2 access rights.

3 3. At the hearing on these motions, counsel for the plaintiff-owner class argued that
4 the court should not consider the interest of the public and should only consider the interest of
5 the plaintiff-owner class in determining whether the settlement is fair for purposes of court
6 approval. As a comparison between this action and the above-described hypothetical action
7 quickly demonstrates, the specific public interest is the same in both cases. The effect of the
8 settlement would, as asserted by the owners of the underlying property, be the same in both cases
9 in concluding that there are no rights under the OTD. In the hypothetical case, it is plainly proper
10 for members of the public class to assert their objections as to the fairness of this settlement by
11 the extinguishment of specific property interests in which the public has an interest. The
12 plaintiff-owner class in this case argues that the interest of the public is irrelevant because the
13 fairness issue depends only on the fairness to them, the owners, in their position as a plaintiff
14 class. This argument elevates form above substance: consideration of the specific public interest
15 at issue here does not depend upon the form of this action as a class action by an owner class
16 against the State rather than a public class against owners. The Court made a determination not
17 to elevate form over substance when it granted GCTA's motion to intervene. The Court's ruling
18 here reflects this approach to this action.

19 4. As the attached ruling explains, the determination of the fairness of the Class
20 Settlement for purposes of final court approval is factually and legally interdependent with a
21 determination of the validity and effectiveness of the HROA Settlement. As discussed in the
22 ruling in the context of GCTA's motion, the pleadings have not kept up with the issues being
23 litigated by the parties. Plaintiffs' operative complaint does not plead settlement as a separate
24 basis for determining the OTD rights in their favor (because, obviously enough, the settlement
25 had not yet been agreed when the complaint was filed). Notwithstanding the absence of express

1 pleadings, the validity and effectiveness of the HROA Settlement has been placed squarely at
2 issue by all of the parties in the two motions resolved by this ruling.

3 5. As a result of the discussion of counsel at the hearing on January 14, the Court
4 finds that it would be beneficial to the orderly disposition of this matter to have the issue of the
5 HROA Settlement validity and effectiveness formally pleaded. A formal pleading provides the
6 structure and procedural tools for the Court to address this issue most effectively. On its own
7 motion, the Court grants GCTA leave to file a cross-complaint the effect of which is to place at
8 issue their claims related to the HROA Settlement previously raised in their motion to set aside
9 the HROA Settlement. (See Code Civ. Proc., § 428.50, subd. (c) [“Leave may be granted in the
10 interest of justice at any time during the course of the action.”].) Such cross-complaint shall be
11 filed and served on or before February 22, 2019. All procedural and other objections of the other
12 parties to the cross-complaint are reserved and may be asserted in the parties’ respective
13 responses to the cross-complaint. All responses to the cross-complaint shall be filed and served
14 no later than 10 court days following service of the cross-complaint, extended, if appropriate, as
15 provided in the Code of Civil Procedure based upon the manner of service. The court also will
16 set a case management conference for March 18, 2019 at 8:30 a.m. in Dept. 5 to address the
17 timing and manner of moving this case forward.

18 6. The court emphasizes that the purpose of the filing of the cross-complaint is to
19 facilitate the prompt disposition of the settlement issue. There are substantial arguments
20 presented on both sides of this issue by the parties. As the court stated in the attached ruling, the
21 disposition of this settlement issue, one way or the other, will be an important step toward the
22 complete disposition of this action.

23 Dated: February 8, 2019

24 
25 _____
Colleen K. Sterne, Judge
Superior Court of the State of California
County of Santa Barbara

Tom Pappas, et al., v. State Coastal Conservancy, et al. (Judge Sterne)

Case No. 1417388

Hearing Date: January 14, 2019

- MATTERS:**
- (1) Motion to Set Aside Settlement
 - (2) Motion for Final 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

For Intervenor Defendant Gaviota Coastal Trail Alliance: Ellison Folk, Rica V. Garcia, Shute, Mihaly & Weinberger LLP; Marc S. Chytilo, Ana Citrin, Law Office of Marc Chytilo, APC; Todd T. Cardiff

TENTATIVE RULING:

- (1) The motion of intervenor defendant Gaviota Coastal Trial Alliance to set aside settlement is denied.
- (2) The motion of plaintiff for final approval of the settlement between the plaintiff class and defendants (other than the intervenor defendant) is denied.

Background:

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 original parties reached a conditional settlement of this action (the Settlement). 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 expansion of the Hollister Ranch Managed Access Program, providing certain controlled access for primary and secondary school children and for approved non-profit groups. As discussed below, the Settlement consists of two components: a settlement as between HROA and the State Defendants and a settlement as between the plaintiff class and the State Defendants.

EXHIBIT A

On May 21, 2018, the court granted preliminary approval of the class action Settlement. In granting preliminary approval, the court noted the unusual procedural posture of this matter in 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. A traditional class notice would have been provided only to the settlement class of property owners. The court noted that although the public interest in the public access ostensibly granted by the offer of dedication is represented by the State Defendants, the Settlement abandons disputed rights of public access without having first provided notice to the public. The court determined that notice to the public was appropriate, but cautioned 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 without first becoming a party to the action, ordinarily by obtaining leave of court to intervene in the action.

The court approved a notice to the public requiring a member of the public wishing to intervene to file and serve a motion to intervene no later than July 23, 2018.

In response to the notice to the public, Gaviota Coastal Trail Alliance (GCTA) filed a motion to intervene in order to oppose final approval of the Settlement and otherwise to participate in the action as a defendant. The motion was opposed by plaintiffs Hollister Ranch Owners' Association and The Hollister Ranch Cooperative (collectively, HROA). On August 27, 2018, the court granted GCTA's motion to intervene. GCTA's answer in intervention was filed on September 7, 2018. GCTA filed its first amended answer in intervention (FAA) on October 9, 2018.

The FAA alleges that GCTA is an alliance of organizations committed to effectuating both a continuous coastal trail from Gaviota State Park to Jalama Beach County Park and appropriate vertical access to beaches at Hollister Ranch. (FAA, ¶ 1.) Members of GCTA organizations include residents of Santa Barbara County who currently use and enjoy the ocean and beaches of Santa Barbara County for recreational purposes and who are excluded from accessing Hollister Ranch's beaches by virtue of physical barriers. (FAA, ¶ 2.) The Settlement would adversely affect members of GCTA by extinguishing public rights to access the beach at Hollister Ranch. (*Ibid.*) Most members of GCTA lack the physical ability or financial resources necessary to access the Hollister Ranch beach via the ocean as provided in the Settlement and member organization are unlikely to be considered for the non-profit access program because of their respective constituencies. (*Ibid.*) GCTA intervened as a defendant in defense of the contested offer to dedicate public access accepted by the State Coastal Conservancy by Certificate of Acceptance recorded on April 26, 2013. (*Ibid.*) The FAA admits or denies the various allegations of plaintiffs' second amended complaint (SAC). (FAA, ¶¶ 3-133.) The FAA also asserts eleven affirmative defenses.

There are two interrelated motions now pending before the court. The first motion is the motion of plaintiffs for final approval of the class action settlement. This motion is supported by the State Defendants and opposed by GCTA. This motion is also subject to an objection by a member of the settlement class. The second motion is the motion of GCTA to set aside the separate settlement as between HROA and the State Defendants as made without compliance with proper procedures. This motion is opposed by the plaintiffs and the State Defendants.

Analysis:

In order to focus upon the particular issues raised by the parties in these motions, it is useful to review the nature of the pleadings and hence the claims made by the parties which are the subject of the Settlement. The operative complaint is the second amended complaint (SAC), filed on March 11, 2014. The SAC asserts 13 causes of action brought by a class of plaintiff owners of real property within the Hollister Ranch and by the HROA, all of whom own real property interests subject to the disputed easements.

The geography and history of the parcels at issue have previously been explained by the court in considerable detail in the context of the prior motions for summary adjudication. For purposes of this discussion, it is sufficient to note that the disputed easement rights originate from conditions imposed in 1980 in connection with a coastal development permit issued for the development of property previously owned by the Young Men's Christian Association (YMCA). (SAC, ¶ 3.) The conditions included that the YMCA make an irrevocable offer to dedicate (OTD) easements for public access relating to coastal access and use and to a coastal trail over property within Hollister Ranch. (SAC, ¶¶ 55, 99.) The OTD was later accepted by the State Defendants. (SAC, ¶¶ 77-81.)

In the SAC, plaintiffs, among other things, seek to quiet title and declare that the OTD and the rights purportedly dedicated by it are invalid. The State Defendants filed an answer denying plaintiffs' claims and asserting affirmative defenses. GCTA, as indicated above, has intervened as a defendant also denying plaintiffs' claims and asserting affirmative defenses. No defendant has asserted affirmative claims against plaintiffs. The SAC was filed before the Settlement that is now before the court was entered into and hence the SAC does not allege any facts specific to the Settlement. The SAC does, however, assert that the OTD is invalid and that no rights were validly dedicated by the OTD. In this context, the Settlement has become an additional claim by plaintiffs why no rights exist in the State Defendants for the benefit of the public under the OTD.

(1) Settlement Components

There are two separate settlement agreements that are involved in the Settlement. As characterized by plaintiffs' counsel in the motion for preliminary approval: "On December 8, 2018, HROA and Defendants entered into a settlement agreement whereby, in exchange for a release of liability from the HROA, the maintenance and expansion of specified aspects of the Hollister Ranch Managed Access Program, and the grant of a limited license over Parcel 104 by the HROA, the State agreed to disavow and disclaim any right, title, or interest, if any, it has arising out of the OTD or Certificate [of Acceptance (Certificate)] and consented to the entry of a Judgment Quieting Title, and to take all steps legally necessary to fully and finally extinguish the OTD and Certificate, including the recordation of an extinguishment or quitclaim deed. Likewise, Rancho Cuarta disavowed and disclaimed any right, title, or interest whatsoever in or to any easements for public access or public recreation in Plaintiffs' property purportedly offered in the OTD or purportedly accepted under the Certificate." (Bird decl., dated Mar. 9, 2018, ¶ 5.) "On March 9, 2018, the Class Representatives, as individuals and class representatives, and the Cooperative entered into a Conditional Settlement Agreement ("Conditional Agreement") whereby the State will execute a Quitclaim and Extinguishment of the Offer to Dedicate as to all Plaintiffs' properties, and the Settling Plaintiffs agree to release Defendants from all claims that arise out of or are based on (i) the subject matters of the Action; or (ii) related to the events, allegations, facts, acts, omissions, or transactions referred to in the Complaint, or any subsequent pleading or amended complaint in the Action." (*Id.*, ¶ 6.) "The Conditional Agreement in conjunction with the Prior Settlement constitutes a global settlement resolving all claims of all parties to the Action." (*Id.*, ¶ 7.) (For clarity in this discussion, the court will refer to the December 8, 2018, settlement agreement as the "HROA Settlement" and to the March 9, 2018, conditional settlement agreement as the "Class Settlement.")

The HROA Settlement includes the following provisions:

"The State disavows, abandons, extinguishes, cancels, and disclaims any right, title, or interest whatsoever in or to Parcels 1 through 136 of the Hollister Ranch associated with or described in the [OTD] or the [Certificate]. The State agrees that the Hollister Ranch Managed Access Program and License constitute complete compliance with special condition 1 of Coastal Development Permit number 309-05." (Bird decl., dated Mar. 9, 2018, exhibit 1 [HROA Settlement], ¶ 3.1.)

"Within five days of the date on which the Final Judgment disposing of this action in its entirety becomes Final (as defined in Section 1.10), the State shall also execute and deliver to Plaintiff's Counsel the attached Quitclaim and Extinguishment of the Offer to Dedicate and Acceptance attached as Exhibit 3." (HROA Settlement, ¶ 2.4.)

"Plaintiff will provide Opportunities for members of the public to enter Hollister

Ranch through the Hollister Ranch Managed Access Program. The Hollister Ranch Managed Access Program will consist of two elements: (1) Tidepool School Program for K-12th grade children and (2) Non-Profit Access Program." (HROA Settlement, ¶ 4.1) "Tidepool School Program: Starting in 2018 and continuing in perpetuity (subject to the limits of the Automatic Termination in Section 4.7), Plaintiff commits to provide at least 24 Opportunities annually for access to Hollister Ranch for the Tidepool School Program." (HROA Settlement, ¶ 4.2.) "Non-Profit Access Program: Starting in 2019 and continuing in perpetuity (subject to the limits of the Automatic Termination in Section 4.7), Plaintiff commits to provide at least seven Opportunities annually for access to Hollister Ranch under the Non-Profit Access Program (in addition to the Tidepool School Program Opportunities). Within five years of the Effective Date and subject to Sections 4.5 and 4.6 below, Stipulating Parties commit to increase the Opportunities for Non-Profit Awareness Program in a phased manner to a total of 20 Opportunities per year, at least seven of which will be scheduled for weekend days. Plaintiff will host Approved Non-Profit Groups on beaches with appropriate facilities and features." (HROA Settlement, ¶ 4.3.)

“The Hollister Ranch Managed Access Program shall be funded with Coastal Conservancy funds collected through the Hollister Ranch in-lieu fee program and other funding sources that support increased public access to the California coast and to Hollister Ranch. The Coastal Commission and Coastal Conservancy will make good faith efforts to support the funding of the Hollister Ranch Managed Access Program (including Coastal Resources Enhancement Fund (CREF) funding).” (HROA Settlement, ¶ 4.6.)
 “The Plaintiff’s commitment to host a Hollister Ranch Managed Access Program shall automatically terminate if and when any public Entity initiates the condemnation process for any property within Hollister Ranch for the purposes of obtaining (a) public access or recreational use or (b) facilities associated with public access (Automatic Termination) by filing a condemnation action in court.” (HROA Settlement, ¶ 4.7.)

“ ‘Approved Non-Profit Group’ means a non-profit or not-for-profit entity that provides outdoor educational and recreational experiences, which has been vetted and approved by both Plaintiff and the Coastal Conservancy for participation in the Hollister Ranch Access Program. The Plaintiff and the Coastal Conservancy will consider the following factors when evaluating a potential Approved Non-Profit Group: proof of tax exemption or not for profit status, formal legal structure (e.g. not for-profit corporation or public entity), operational track record, financial responsibility, proof of adequate insurance coverage (as approved by Plaintiff and Equivalent to at least \$1,000,000 in liability in 2017), a mission to provide services to individuals such as the disabled, children, or underserved populations who would benefit from therapeutic, recreational, and/or educational experiences at the coast, and history of successful and close management/supervision of similar activities. The Plaintiff and the Coastal Conservancy will collaborate to notify and recruit a broad range of potential groups to apply for participation in the Non-Profit Access Program. Both the Plaintiff and the Coastal Conservancy have the power to disapprove a group, for any reason, at any time.” (HROA Settlement, ¶ 1.3.)

“Prior to the Effective Date, the HROA, the Coastal Commission and the Coastal Conservancy shall execute the License Agreement for public access to the: Beach Area (as defined in the License Agreement), which is attached hereto as Exhibit 2. This Settlement Agreement is expressly contingent upon execution of the attached License Agreement by the HROA, the Coastal Commission, and the Coastal Conservancy.” (HROA Settlement, ¶ 2.1)

The License Agreement identified in HROA Settlement paragraph 2.1 (License Agreement) includes the following provisions:

The “License Area” is defined as portion of the Beach Parcel. (License Agreement, recital 7 & exhibit C.)

“Licensor [HROA] grants to Licensees [State Defendants] a non-exclusive license (License), pursuant to the terms of this Agreement and the Use Restrictions (defined below) contained herein, for passive recreational use of the License Area (and for no other purpose). Passive recreational use means activities normally associated with beach use (e.g. walking, swimming, jogging, sunbathing, and surfing), and does not include any uses prohibited by other provisions of this License.” (License Agreement, ¶ 1.)

“The following restrictions shall apply to the use of the License Area under this License by Licensees (Use Restrictions).

“(i) Licensees may access the License Area from the ocean only. Licensees shall not be permitted to access or enter any other portion of the Ranch to reach the License Area.

“(ii) Licensees may access and use the License Area only between the hours of sunrise and sunset

“(iii) No overnight camping shall be permitted in the License Area.

“(iv) No commercial activities shall be permitted on the License Area

“(v) No fires, smoking, fireworks, barbecues, flammable liquids, weapons, glass containers, shooting, hunting, or cooking shall be permitted on the License Area.

“(vi) No use of unmanned flying devices, including, but not limited to drones, shall be permitted on the License Area.

“(vii) No urination, defecation, or nudity shall be permitted on the License Area.

“(viii) No objects shall be removed from the License Area, including but not limited to sand, shells, habitat resources or species, and archaeological and cultural resources.

“(ix) No alcohol shall be permitted on the License Area.

“(x) No littering shall be permitted on the License Area.

“(xi) No animals shall be permitted on the License Area except as provided by law, such as leashed service or guide dogs.

“(xii) Licensees shall respect and not disturb any natural resources, sensitive habitats, and scientific study areas.

“(xiii) Licensees shall not be permitted to use or part motorized vehicles, horse, bicycles, boats, water craft, or similar items on the License Area, provided that Licensees may temporarily park or use surfboards, paddleboards, kayaks not to exceed 16 feet in length and soft bottomed boats not to exceed 12 feet in length to access the License Area.

“(xiv) Licensees must comply with all State, Federal, and Local statutes, regulations and ordinances.” (License Agreement, ¶ 2.)

“The Conservancy and Licensor shall share in maintenance costs associated with Licensee’s use of the License Area.” (License Agreement, ¶ 10.)

“Prior to the opening of the License Area for public use, Licensor and the State shall prepare and implement a Fencing and Sign plan. This Fencing and Sign plan, which must be approved by the Commission and Licensor, shall describe proposed development on or near the License Area that will facilitate safe and appropriate use by the public and protect private property. This development will include fencing to prevent trespass and signage detailing Use Restrictions, demarcation of boundaries of the License Area, warning about the location of sensitive natural resources, and warning about unsafe conditions.” (License Agreement, ¶ 12.)

“This License shall automatically terminate if and when any public entity initiates the condemnation process for any property within the Ranch for the purposes of obtaining (a) public access or recreational use or (b) facilities associated with public access (Automatic Termination) by filing a condemnation action in court. ... With the exception of an Automatic Termination as provided in this Section 13, this License shall be irrevocable.” (License Agreement, ¶ 13.)

As discussed below, there is a difference in characterization as to the relationship and effectiveness of the HROA Settlement relative to the Class Settlement. The HROA Settlement defines the following terms:

“ ‘Effective Date’ means the date on which the Court enters the Stipulated Judgment attached as Exhibit 1.” (HROA Settlement, ¶ 1.8.)

“ ‘Final’ means the latest of: (i) the expiration of the time to appeal, or otherwise seek review of the relevant order or judgment as to which no appeal or review shall be pending; (ii) the final affirmance of the relevant order or judgment on appeal and the expiration of the time for a petition to review the affirmance of the relevant order or judgment on appeal, or if such petition is granted, the final affirmance of the relevant order or judgment following review pursuant to that grant; (iii) the final dismissal of any appeal from the relevant order or judgment or the final resolution of any proceeding to review any appeal from the relevant order or judgment without any material change thereto; or (iv) the date on which all rights to appeal, petition for certiorari, or move for reargument or rehearing as to the relevant order or judgment shall have been waived in writing.” (HROA Settlement, ¶ 1.10.)

The Class Settlement contains a recital identifying the HROA Settlement and generally summarizing its terms. (Bird decl., dated Mar. 9, 2018, exhibit 2 [Class Settlement], recital G.) The Class Settlement includes the following terms:

“ Upon the Effective Date, the Settling Plaintiffs and the Class members, on behalf of themselves and each of their past or present officers, directors, employees, agents, representatives, partners, managers, members, affiliates, parents, subsidiaries, heirs, executors, administrators, successors and assigns, shall fully, finally, completely, and unconditionally release, acquit, discharge, compromise, resolve, settle, and waive all Released Claims against the Released Parties.” (Class Settlement, ¶ 3.1.)

“Upon the Effective Date, Rancho Cuarta, on behalf of itself and each of its past or present officers, directors, employees, agents, representatives, partners, managers, members, affiliates, parents, subsidiaries, heirs, executors, administrators, successors and assigns, shall fully, finally, completely, and unconditionally disavow, abandon, extinguish, cancel and disclaim any interest whatsoever in or to any easements or other interest for public access or public recreation in, to, over, under, or through any property in Hollister Ranch as a result of [the OTD] or [the Certificate.]” (Class Settlement, ¶ 3.3.)

“Within ten days of the Effective Date, Defendants shall execute and deliver to

Settling Plaintiffs’ counsel the Quitclaim and Extinguishment of the Offer to Dedicate and Certificate of Acceptance attached as Exhibit 7.” (Class Settlement, ¶ 3.4.)

“The Class Representatives and their counsel have concluded that the releases of the Released Claims (defined below) by the Class in exchange for Defendants’ extinguishment of the Offer to Dedicate, and other consideration set forth herein, is fair, reasonable, and adequate, and in the best interest of the members of the proposed Class.” (Class Settlement, recital K.)

(2) Motion to Vacate HROA Settlement

GCTA has filed a motion to set aside the HROA Settlement. GCTA makes various arguments that the HROA Settlement is invalid, including arguments that significant portions of Cuarta Canyon Beach (i.e., the Beach Parcel) is not owned by HROA and is already subject to public ownership and use, that the HROA Settlement adopts a public access program without compliance with the Coastal Act, and that the HROA Settlement purports to dispose of public interests in real property without compliance with law. Plaintiffs dispute these contentions.

Plaintiffs also argue that there is a procedural flaw in this motion. Plaintiffs argue that the HROA Settlement is a private settlement that is not now properly before the court. Plaintiffs point out that GCTA has provided no authority for making a motion to set aside a private settlement, particularly where GCTA has no pleading seeking affirmative relief, i.e., a cross-complaint.

“The case law uniformly treats a settlement agreement as a contract subject to all the normal legal and statutory contractual requirements. ‘A settlement agreement is in the nature of a contract and is therefore governed by the same legal principles applicable to contracts generally. [Citations.] [Citations.]’ (*Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) GCTA’s motion, therefore, is in the nature of a request for an order determining that the HROA Settlement is invalid in the same manner a request for an order determining that a contract is invalid or illegal. This request for an order brings us back to the pleadings and how this request for an order fits within the scope of the pleadings.

As the court ruled in the context of plaintiffs’ demurrer to GCTA’s first amended answer, a party may defend against a claim for affirmative declarative relief and, if successful, obtain a declaration, stated positively, that the plaintiffs do not have some or all of the rights they claim in their complaint. By their complaint, plaintiffs claim a negative: that the State Defendants, and derivatively the public, have no property rights from the OTD. If successful in defending this litigation, defendants, including GCTA, may potentially obtain a declaration identifying what rights the State Defendants possess from the OTD. A new wrinkle in the assertion of these claims is the HROA Settlement, which plaintiffs assert is a separate and independent basis for their claim that the State Defendants have no rights from the OTD having disclaimed those rights in the settlement. (As a matter of pleading, this issue should more properly be raised by a supplemental complaint and supplemental answer. (See *Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 809.) By this motion, GCTA seeks to summarily adjudicate the merits issue of the validity of the HROA Settlement without complying with the requirements of Code of Civil Procedure section 437c. Moreover, insofar as GCTA’s pleadings contain neither a specific affirmative defense relating to the validity of the settlement (again, which would be properly a response to a supplemental complaint) or an affirmative claim to invalidate the HROA Settlement, even a properly made summary adjudication motion would have procedural problems in not resolving a complete claim or defense. (See Code Civ. Proc., § 437c, subd. (f)(1).)

Because there is no legal authority for the court to issue an order determining the merits of the disputed issue of the validity of the HROA Settlement based upon an intervening defendant’s motion, the court will deny GCTA’s motion on this procedural basis.

Nothing in this ruling should be construed by any party as expressing any opinion, one way or the other, on the merits of this dispute. Other procedural aspects of this issue are discussed below.

(2) Fairness of Class Settlement

“A settlement or compromise of an entire class action, or of a cause of action in a class action, or as to a party, requires the approval of the court after hearing.” (Rules of Court, rule 3.769(a).) “Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.” (Rules of Court, rule 3.769(g).)

“The trial court has broad discretion to determine whether a class action settlement is fair. It should consider 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. [Citations.] But the ‘list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case. [Citation.]’ [Citation.] In sum, the trial court must determine that the settlement was not the product of fraud, overreaching or collusion, and that the settlement is fair, reasonable and adequate to all concerned.” (*Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 336-337.)

“The burden is on the proponent of the settlement to show that it is fair and reasonable. [Citation.] However, there is a presumption of fairness when: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the trial court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” (*Reed v. United Teachers Los Angeles, supra*, 208 Cal.App.4th at p. 337.)

The court does not find that the presumption of fairness applies here for two reasons. First, as discussed below, unresolved issues regarding the effectiveness and effect of the HROA Settlement render the court unable to act intelligently in evaluating the Class Settlement for fairness. Second, while the “percentage of objectors” is small as a mathematical calculation of objections from the settlement class of owners, that factor is so stated because of the typical class action structure in which the rights extinguished by the class action settlement are principally rights of the absent class members. (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129 [“While an agreement reached under these circumstances presumably will be fair to all concerned, particularly when few of the affected class members express objections, in the final analysis it is the court that bears the responsibility to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation.”].) That structure is essentially backwards here and the essence of the factor of “percentage of objections” is not met under the circumstances of this case.

As the court has stated above and on many previous occasions, the interests here are in an unusual procedural posture. The plaintiff class seek a negative declaration, that is, that the State Defendants, and derivatively the public, have no rights from the OTD. The public access rights are asserted in defense by denial of the claims of the plaintiff class. The HROA Settlement and the Class Settlement, taken together, purport to extinguish those rights. Consequently, there is a significant affected interest held by the absent public. The public interest is represented in the first instance by the State Defendants. The public interest is also represented, in a different way, by intervening defendant GCTA. The fact of intervention by GCTA and the interest that GCTA represents in opposing final approval of the Class Settlement constitutes a sufficient showing that the element stated as a “percentage of objectors” is not met: there is substantial opposition on behalf of the absent but affected public interest.

In order to evaluate the fairness of the Class Settlement it is necessary to understand the interrelationship between the Class Settlement and the HROA Settlement. There is a disagreement between the settling parties on this point. HROA asserts that the HROA Settlement is not contingent or dependent upon the court’s approval of the Class Settlement. (HROA Brief, filed Sept. 24, 2018, pp. 31-32.) The State Defendants, on the other hand, assert that the effectuation of the HROA Settlement is contingent upon the court’s approval of the Class Settlement. (State Defendants Brief, filed Sept. 24, 2018, pp. 8-9.) The difference between these positions appears, in general terms, to be that HROA views the provisions in the HROA Settlement regarding finality as merely matters of timing of documentation and that the State Defendants view those provisions as contingencies.

Plaintiffs, the moving parties in this motion for final approval, are emphatic in asserting that the HROA Settlement is independent, valid, effective, and outside the scope of the court's consideration with respect to this motion. As discussed above with respect to GCTA's motion to set aside the HROA Settlement, the court has concluded that the resolution of the merits of the GCTA's arguments regarding the validity of the HROA Settlement are not now properly presented and thus not subject to resolution in the manner requested by GCTA. The presence of unresolved issues as to the effect of the HROA Settlement have meaningful consequences to the disposition of this motion. The Class Settlement contains a requirement to disclaim and quitclaim the State Defendants' interest from the OTD. The HROA Settlement contains the License Agreement and the Hollister Ranch Managed Access Program, as well as an additional, and apparently more robust, agreement to disclaim and quitclaim the State Defendants' interest from the OTD. In other words, the principal benefits of settlement to the State Defendants (without here assessing the nature of these benefits) are already ceded to the State Defendants in the HROA Settlement and are not, according to the plaintiffs, dependent upon the effectiveness of the Class Settlement. Similarly, the State Defendants' agreement to disclaim their interest in the public access rights from the OTD in the HROA Settlement, if independently effective, provides no consideration for the Class Settlement. This forms the basis for plaintiffs' alternative request to dismiss the class claims as moot. (See Motion, filed Aug. 16, 2018, pp. 20-21.)

If, on the other hand, the HROA Settlement were invalid in whole or in part, approval of the Class Settlement would effectively approve the State Defendants' requirement to disclaim the public access interest from the OTD without correspondingly providing the consideration the State Defendants obtained from the HROA Settlement. The State Defendants' position regarding interdependence of the settlements implies that the consideration received in the HROA Settlement is a substantial component of the consideration for the Class Settlement, without which there would be a failure of consideration for the Class Settlement.

Plaintiffs argue that the only matter that should be addressed by this motion is the question of fairness to the plaintiff class of owners. This argument is based in part upon language in various cases that discuss the fairness issue in the context of fairness to the plaintiff class. (Motion, pp. 14-17; cf. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 ["The purpose of the [fairness determination] 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.'"]). This argument is also based in part upon the absence of definitive case law identifying the public interest as a factor to be considered in the fairness determination. (Motion, p. 14.) The case law discussion regarding absent class members and the absence of case law discussing the public interest is not surprising given the usual arrangement of interests in a class action case as compared with the unique situation in this case. But as discussed above, existing law supports a determination of fairness to "all concerned." "All concerned" is more typically intended to refer to absent class members. Here, as discussed above and in the ruling on GCTA's motion to intervene, "all concerned" in this case includes the affected members of the absent public. The "public interest" here is not a generic public policy interest but is a discrete—albeit disputed—real property interest for the benefit of the public. Notwithstanding plaintiffs' arguments to the contrary, the court does, and indeed must, consider this interest in making the fairness determination.

This is not to say, as suggested by plaintiffs, that the determination is to second-guess legitimate determinations of the litigants as to an appropriate balance of risks and potential returns. The history of this litigation shows that the dispute is fierce, the outcome uncertain, and the cost of litigation significant. A fair settlement may be made within a broad range of outcomes.

As this motion is asserted by plaintiffs, the court cannot determine that the Class Settlement is fair and reasonable. The fairness analysis depends too heavily upon the validity and effectiveness of the HROA Settlement. Without a merits determination of the validity and effectiveness of the HROA Settlement, the court cannot meaningfully assess the respective value obtained and given in the Class Settlement. As noted above, if the HROA Settlement were determined to be invalid or ineffective in a significant way, the court's analysis may be substantially different and the Class Settlement, taken by itself, may be determined not to be fair and reasonable within the standards for approval of a class action settlement. The court's inability to make a determination of fairness on the evidence and arguments presented is another facet of why the presumption of fairness does not apply.

Accordingly, after a review of all evidence and arguments of the parties, the court determines that the conditions for a presumption of fairness have not been shown and that plaintiffs have not met their burden to show that the Class Settlement is fair and reasonable. The motion for final approval of the Class Settlement will therefore be denied without prejudice.

Plaintiffs alternatively request that the court sign the stipulated judgment attached to the HROA Settlement agreement and dismiss the class claims as moot. For the same reasons discussed above, the court will deny this request.

This disposition makes it unnecessary for the court to address other issues presented by the parties, including issues raised in the objection of Robert Duncan (the court noting his effort.)

(3) Scope of Ruling and Other Procedural Issues

As the above discussion makes clear, the court determines that the validity and effectiveness of the HROA Settlement are at issue and that the present procedural posture is not sufficient for the court to make a merits determination of the validity and effectiveness of the HROA Settlement. The court recognizes that a merits determination of validity and effectiveness of the HROA Settlement would inherently affect the above analysis and therefore the court's rulings denying plaintiffs' motion is without prejudice to a subsequent motion for final approval following determination of those issues, if and when appropriate.

Because the validity and effectiveness of the HROA Settlement raise potentially determinative issues, the court raises the question of whether early disposition of these issues on the merits, by bifurcated court trial, by summary adjudication motions, or by other appropriate procedure may be expedient to resolve this matter. The parties are requested to be prepared to discuss this issue at the hearing of this matter.