

1 ELLISON FOLK (State Bar No. 149232)
RICA V. GARCIA (State Bar No. 320758)
2 SHUTE, MIHALY & WEINBERGER LLP
396 Hayes Street
3 San Francisco, California 94102
Telephone: (415) 552-7272
4 Facsimile: (415) 552-5816
5 Folk@smwlaw.com
Rgarcia@smwlaw.com

6 MARC S. CHYTILO (State Bar No. 132742)
ANA CITRIN (State Bar No. 255587)
7 LAW OFFICE OF MARC CHYTILO, APC
Post Office Box 92233
8 Santa Barbara, California 93190
Telephone: (805) 682-0585
9 Facsimile: (805) 682-2379
10 Marc@lomesb.com
Ana@lomesb.com

11 TODD T. CARDIFF (State Bar No. 221851)
LAW OFFICE OF TODD T. CARDIFF
12 1901 First Avenue, Suite 219
San Diego, California 92101
13 Telephone: (619) 546-5123
Facsimile: (619) 546-5133
14 todd@tcardiffllaw.com

15 Attorneys for Defendant Intervenors
GAVIOTA COASTAL TRAIL ALLIANCE
16

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **COUNTY OF SANTA BARBARA, ANACAPA DIVISION**

19 TOM PAPPAS, et al.,
20 Plaintiffs,
21 v.
22 CALIFORNIA COASTAL
CONSERVANCY, et al.,
23 Defendants.
24

Case No. 1417388
**OBJECTIONS TO STIPULATION
AND AGREEMENT OF
SETTLEMENT BETWEEN
HOLLISTER RANCH OWNERS
ASSOCIATION AND DEFENDANTS
STATE OF CALIFORNIA COASTAL
CONSERVANCY, CALIFORNIA
COASTAL COMMISSION AND
RANCHO CUARTA**

25 GAVIOTA COASTAL TRAIL
ALLIANCE,
26 Defendant Intervenors.
27

Date: August 20, 2018
Time: 9:30 a.m.
Dept.: 5
The Hon. Colleen K. Sterne

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1 The Gaviota Coastal Trail Alliance submits the following objections to the
2 proposed Stipulation And Agreement Of Settlement Between Hollister Ranch Owners’
3 Association And Defendants State Of California Coastal Conservancy, California Coastal
4 Commission And Rancho Cuarta and corresponding objections to the Class Action
5 Conditional Stipulated Settlement Agreement With Defendants State Of California Coastal
6 Conservancy, California Coastal Commission And Rancho Cuarta (“Settlement”). The
7 Alliance objects to the Settlement on the following grounds.

8 1. The Settlement relinquishes rights gained through a duly recorded and vested
9 Offer-to-Dedicate designed to enable a program providing safe and universal overland
10 public access to Hollister Ranch in exchange for a narrow license allowing access to a
11 narrow sliver of sandy beach only through a potentially hazardous journey by boat,
12 available to only a small number of people, in violation of the Coastal Act.

13 2. The Settlement exchanges universal, non-discriminatory overland public
14 access, for limited access by boat and managed overland access for a small number of
15 school children (K-12) and non-profit entities that serve the disabled and underserved
16 communities.

17 3. The Settlement provides the HROA with unlimited discretion to exclude
18 non-profit entities that it disagrees with.

19 4. The Settlement provides a windfall to the HROA for a managed access
20 program at the expense of taxpayers and true public access.

21 5. The Settlement improperly transfers and depletes Coastal Conservancy
22 Funds collected specifically to open public access at Hollister Ranch, in violation of Public
23 Resources Code § 30610.8.

24 6. The Settlement is unfair because it will forever commit state (and potentially
25 local) agencies to fund a managed access program that provides little to no benefits to the
26 general public without a formal plan to pay for such program.

27 7. The Settlement is unfair because it can be cancelled by the HROA without a
28 corresponding means of cancelling the benefits provided by the State.

1 public.

2 STANDARD OF REVIEW

3 Pursuant to the California Rules of Court, for settlement of class actions, “the court
4 must conduct an inquiry into the fairness of the proposed settlement.” (Cal. Rules of Court,
5 rule 3.769(g); *see also Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 [court
6 must determine the settlement is fair, adequate, and reasonable].) Such determination is a
7 two-step process. First, the court “preliminarily approves the settlement and the class
8 members are notified as directed by the court.” (*Cellphone Termination Fee Cases* (2009)
9 180 Cal.App.4th 1110, 1118.) The court then sets a fairness hearing where it may hear
10 from objectors. (*Id.*) In assessing the fairness of a proposed settlement, the court “must
11 reach a reasoned judgment . . . that the settlement, taken as a whole, is fair, reasonable and
12 adequate to all concerned parties.” (*Ficalora v. Lockheed California Co.* (9th Cir. 1985)
13 751 F.2d 995, 997.) “[T]he Court must independently and objectively analyze the evidence
14 and circumstances before it in order to determine whether the settlement is in the best
15 interests of those whose claims will be extinguished.” (*Kullar v. Foot Locker Retail, Inc.*
16 (2008) 168 Cal.App.4th 116, 130 [citing 4 Newberg on Class Actions (4th ed. 2002)
17 § 11:41, p. 90]). “[J]udges [are] to exercise the highest degree of vigilance in scrutinizing
18 proposed settlements of class actions.” (*Reynolds v. Ben. Nat’l Bank* (7th Cir. 2002) 288
19 F.3d 277, 279.) The Courts must, in some sense, act as a fiduciary to absentee interests.

20 As recognized by this Court in its May 21 Order, this case is somewhat anomalous
21 in terms of class action litigation. (Tentative Ruling, May 21, 2018 at 2.) Unlike typical
22 class actions, the plaintiffs represent a class of owners of 136 parcels, all of whom are
23 keenly interested in defeating the Defendants’ and public’s claims in the litigation.
24 Defendants Coastal Commission and Coastal Conservancy, however, represent an absentee
25 class of 39.5 million people, most of whom are unaware of the effect of the proposed
26 Settlement on their Constitutional and statutory rights of coastal access, or of the value of
27 the vested and accepted offer to dedicate public access at Hollister Ranch. Therefore, this
28 Court required the parties to the litigation to provide notice of the proposed settlement and

1 recognized that members of the public might be eligible to intervene in the litigation to
2 contest the fairness of the settlement. Similar to a court scrutinizing a settlement providing
3 non-monetary coupons in exchange for damages, the court here must determine whether a
4 proposed settlement offering boat-only access and a limited exclusive managed access
5 program is a fair exchange for extinguishing the vested and recorded offer to dedicate
6 land-based public access and relinquishing all claims to any public access over the 136 lots
7 that comprise Hollister Ranch. (cf. *Figueroa v. Sharper Image Corp.* (S.D.Fla. 2007) 517
8 F.Supp.2d 1292, 1320-21.) Unlike a typical class action, the rights compromised are
9 extremely dear to the people of California and are protected by common law, the
10 Constitution and the Coastal Act. As set forth below, the Settlement is not consistent with
11 the Coastal Act, would deprive the public of substantial rights, and should be denied.

12 ARGUMENT

13 I. The Settlement is Not Consistent with the Coastal Act.

14 One of the principle purposes of the Coastal Act is to maximize the public’s access
15 to and along the beach and to achieve recreational opportunities for “*all the people.*” (Pub.
16 Res. Code §§ 30001.5, 30210 [emphasis added]; *Remmenga v. Cal. Coastal Com* (1985)
17 163 Cal.App.3d 623, 629-630; *see also* Cal. Const., art. X, § 4.) The Coastal Commission
18 is the public entity charged with implementing the Coastal Act, including the provisions
19 mandating public access for new development between the ocean and first public road.
20 (Pub. Res. Code § 30600.)

21 The Coastal Conservancy is the public entity that is the “repository” for lands that
22 are required as permit conditions to meet the requirements of the Coastal Act. (Pub. Res.
23 Code § 31104.1.) “Pursuant to [this] authority, the conservancy may accept dedication of
24 fee title, easements, development rights, or other interests in lands, including interests
25 required to provide public access to recreation and resources areas in the coastal zone.”
26 (Pub. Res. Code § 31104.1.) Like the Coastal Commission, the Coastal Conservancy is
27 legislatively mandated to maximize public access, particularly for those interests in land
28 acquired through coastal development permit process. (Pub. Res. Code §§ 30530-30534.)

1 In addition, the Coastal Conservancy is legislatively mandated to obtain public
2 access at Hollister Ranch as expeditiously as possible. Public Resources Code section
3 30610.8 states:

4 It is the intent of the Legislature that the State Coastal Conservancy and the
5 State Public Works Board utilize their authority provided under law to
6 implement, **as expeditiously as possible**, the public access policies and
7 provisions of this division at the Hollister Ranch in Santa Barbara County.
(emphasis added.)

8 The purpose of such section was to provide public access into Hollister Ranch. “The
9 fact that the ownership has been divided into 135 lots should not foreclose the access
10 requirement as a condition of development. Each lot owner may be required, not to provide
11 total access, but to participate in providing it. This is the plan devised and mandated by the
12 Legislature.” (*Remmenga*, 163 Cal.App.3d at 630.) More than thirty years have passed
13 since the enactment of Public Resources Code § 30610.8 in 1982. It is unfair to California
14 and contrary to the legislative intent displayed in Public Resources Code section 30610.8
15 to enter into a Settlement that does not provide adequate public access and that would
16 impede or even preclude efforts to establish comprehensive access consistent with Public
17 Resources Code section 30610.8 in the future.

18 **A. The Settlement Does not Provide Feasible or Safe Public Access Within
19 the Meaning of the Coastal Act.**

20 The YMCA OTD allows over-land access to Cuarta Canyon beach for 50 people a
21 day. (Declaration of Marc Chytilo [“Chytilo Decl.”], Exh. G at 6, ¶ 3 (B.1) [Irrevocable
22 Offer to Dedicate and Covenant Running with the Land, “YMCA OTD”].) The Settlement
23 would abandon this right to access the beach over land (with the exception of the limited
24 rights under the managed access program) in favor of public access *only by limited types of*
25 *boats* to the 3,880 linear feet of Cuarta Canyon Beach. (Public Access License Agreement
26 at 2, ¶ 2(i), (xii), attached as Exhibit B to Settlement [“License”].) This exchange does not
27 provide the public with any meaningful rights.

28 First, such agreement essentially maintains the status quo, because the public has
always had the right to take a boat to the Ranch, and walk along the beach below the mean

1 high-tide line. (*Marks v. Whitney* (1971) 6 Cal.3d. 251; cf. *Gion v. Santa Cruz* (1970) 2
2 Cal.3d 29, 42 [superseded by statute on other grounds].) A promise to do that which the
3 law already requires is not a valuable benefit. (cf. *Acosta v. Trans Union, LLC* (C.D. Cal.
4 2007) 243 F.R.D. 377, 396.)

5 Access solely by boat or other water craft is not considered “public access” under
6 the Coastal Act. Public access under the Coastal Act means access from the first public
7 road to the shoreline and along the coast. (Pub. Res. Code §§ 30001.5(c); 30212(a).)
8 Article X, Sec. 4 of the California Constitution guarantees a “right of way to” tidal lands
9 for “any public purpose” to every member of the public, and constrains Plaintiffs’ rights to
10 exclude access to such rights of way:

11 No individual, partnership, or corporation, claiming or possessing the frontage or
12 tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State,
13 shall be permitted to exclude the right of way to such water whenever it is required
14 for any public purpose, nor to destroy or obstruct the free navigation of such water;
and the Legislature shall enact such laws as will give the most liberal construction
to this provision, so that access to the navigable waters of this State shall be always
attainable for the people thereof.

15 Courts have repeatedly found that requiring land-based public access in exchange
16 for new development is constitutional and required under the Coastal Act. (*Whaler’s*
17 *Village Club v. Cal. Coastal Com* (1985) 173 Cal.App.3d 240, 256; *Georgia-Pacific Corp.*
18 *v. California Coastal Com.* (1982) 132 Cal.App.3d 678, 699.) In justifying the Hollister
19 Ranch in-lieu fee program, the *Remmenga* court found that private development at
20 Hollister Ranch and elsewhere cumulatively impact public access to state tidelands.
21 “Government studies have demonstrated that hundreds of miles of publicly owned
22 tidelands have been walled off from public access by private development.”
23 (*Remmenga*, 163 Cal.App.3d at 630 [citing *Comprehensive Ocean Area Plan and*
24 *Supplement* (1971) and others].) If public access meant access by boat, the Legislature
25 would not be concerned with walling off the coast.

26 While the current mean high-tide line at Cuarta Canyon has not been legally
27 established and the HROA offer to provide a “license” might resolve a theoretical legal
28 problem of trespassing on the beach above the mean high-tide line, in reality, it provides

1 very little practical benefit to the public. Unlike other beaches at Hollister Ranch, Cuarta
2 Canyon Beach is narrow and constrained by bluffs to the north, so the amount of dry sand
3 beach gained to benefit boat-going public is limited to, at times, non-existent. (Chytilo
4 Decl. ¶¶ 12-13 [photos showing high tide line, established by a line of kelp, very near to
5 the bluff].) As members of the public familiar with an ocean approach to Cuarta Canyon
6 beach have testified, the route is hazardous and challenging for even accomplished ocean
7 going members of the public. (Declaration of Mark Morey In Support of Motion to
8 Intervene and Objections to Proposed Settlement [“Morey Decl.”] ¶¶ 5-8; Declaration of
9 Joshua Brown In Support of Motion to Intervene and Objections to Proposed Settlement
10 [“Brown Decl.”] ¶¶ 4-5; Chytilo Decl. ¶¶ 15-16.)

11 Cuarta Canyon Beach is approximately 3 to 4 miles from the closest publicly
12 accessible beach from which a boat can be launched—at Gaviota State Beach. Launching a
13 boat from that beach through breaking waves and then paddling through extremely
14 variable wind, swell and surface conditions is unpredictable and hazardous. (Morey Decl.
15 ¶¶ 6-7.) Offshore winds blowing 25-40 mph down canyon can arise quickly, typically in
16 afternoons, with particularly significant effects on the specific types of boats permitted
17 under the license agreement. (Chytilo Decl. ¶ 15.)¹ The probability of encountering
18 adverse wind and sea conditions is relatively high in this stretch of the Gaviota Coast, and
19 the consequence—getting blown offshore into the Santa Barbara channel—can be deadly,
20 particularly for the types of craft permitted by the license. (Brown Decl. ¶ 4-5; Morey
21 Decl. ¶¶ 7-8.) Paddling a surfboard over three miles through these conditions is out of the
22 question for even a surfer of exceptional capability. Any member of the public attempting
23 to access Cuarta Canyon Beach by boat from Gaviota State Park may face serious

24

25 ¹ The License Agreement only allows soft bottomed boats of less than 12 feet, which are
26 invariably inflatable “zodiac” type boats, which have a large profile and are particularly
27 vulnerable to winds. Most recreational kayaks used in the Santa Barbara area, including all
28 boats available to rent, are “sit on top” designs, which have relatively high volumes and
large profiles, making them also more vulnerable to winds. Stand up paddleboards are also
vulnerable to strong winds. Any motorized or human powered watercraft is particularly
vulnerable to winds that blow from the side. (Chytilo Decl. ¶ 16.)

1 challenges and peril. (Morey Decl. ¶¶ 7-8.) Surfers, families, casual hikers, swimmers, or
2 kayakers will be effectively precluded from the boat access to Cuarta Canyon Beach.
3 (Morey Decl. ¶¶ 7-9.) Those who do try will risk their own lives and that of others. (*See*
4 *Brown Decl*, ¶¶ 4-5.)

5 Because the boat access offered by the Settlement is so perilous and challenging, it
6 is effectively available only to those who are of exceptional physical capability, willing to
7 accept the risks, and who have the financial means to own or rent a watercraft or pay for a
8 guided visit. Access that is only available to such a small group is not public access at all.

9 **B. The Managed Access Program is Unreasonably Limited and Improperly**
10 **Relies on Funds from the In-Lieu Fee Program.**

11 Whereas the YMCA OTD authorized overland access by 50 members of the public
12 a day, the only land access to Hollister Ranch under the Settlement is a managed access
13 program limited to the “Tidepool School Program” supervised by the HROA and the Non-
14 Profit Access Program. (Settlement ¶ 1.11.) The Tidepool Program provides access to “K-
15 12th grade children who are granted access to observe tidepools on Hollister Ranch for
16 educational purposes.” (Settlement ¶ 1.19.) The second category for the Managed Access
17 Program is for “certain Approved Non-Profit Groups.” (Settlement ¶ 1.12.)

18 While it is absolutely appropriate to encourage organizations whose mission is to
19 serve the disabled, children, or underserved,² the limitations on the time, narrow categories
20 of permissible participants, and number of opportunities destroys any semblance of a
21 “Public Access Program.” In effect, the Settlement would allow the HROA to meet the
22 obligations for public access to Hollister Ranch by offering access to only a limited group
23 of people over whom the HROA has complete veto power. To make matters worse, the
24 Settlement proposes to finance this privately controlled access through public funds—the
25 Hollister Ranch Access fund—which has been generated from in-lieu fees imposed on
26 Hollister Ranch developments to offset their impact on public access to the coast. Use of

27 _____
28 ² Which Hollister Ranch has been undertaking apparently, at its own expense, since the
early 1980’s.

1 these funds to support the managed access program constitutes an improper use of these
2 funds to relieve the HROA of the obligations of the YMCA OTD.

3 **1. The Settlement Improperly Constrains the Type and Amount of**
4 **Use Under the Managed Access Program And Vests the HROA**
5 **with Broad Control Over Who Can Access the Ranch Beaches**
6 **Through the Program.**

7 The Managed Access Program includes twenty-four “opportunities” per year for the
8 Tidepool School Program. An “opportunity” means an offer to allow up to 20 people
9 access to the beach that is accepted. (Settlement ¶ 1.13.) If more than 40 people are offered
10 an opportunity for public access at the same time, it counts as two “opportunities.” (*Id.*)

11 Applying the calculation of “Opportunities” to the Tidepool School Program further limits
12 the availability of this program. Given that school classes often exceed 20 students, plus
13 adult chaperones, one class could easily take two “opportunities.” (*See* Settlement ¶ 4.2)

14 Similarly, the Non-Profit Access Program entails seven “Opportunities” per year,
15 increasing over time to twenty (20) annually, for up to twenty visitors transported,
16 supervised and insured by an “Approved” Non-Profit organization. (Settlement ¶ 4.3.)
17 However, the Settlement unnecessarily limits the non-profits that may participate and it
18 grants the HROA far too much control over who may visit. Any eligible non-profit must
19 meet very specific criteria that effectively narrows the beneficiaries of this element of the
20 program to disabled, children, and underserved populations. (Settlement ¶ 1.3.) The
21 Settlement also grants the HROA has unfettered discretion to reject, and thus to
22 discriminate against, any Non-Profit seeking to participate in this program “for any reason,
23 at any time.” (*Id.*)

24 While the Coastal Act permits limitations on public access taking into account the
25 need to regulate the time, place, and manner of public access (Pub. Res. Code § 30214.),
26 there is no legitimate environmental interest that is served by limiting the public in such a
27 manner. At its peak of 20 opportunities for managed non-profit access, the Settlement
28 would accommodate a maximum of 400 visitors under the Non-Profit Access Program.
Together, the two programs would accommodate less than 1,000 visitors per year in a

1 program that is controlled by the privately run HROA. By contrast, the YMCA OTD
2 permits access by up to 50 people a day, in addition to the 50 campers on the YMCA
3 parcel. (*See* Chytilo Decl., Exh. G at 6, ¶ 3 (B.1)(a) [YMCA OTD].) The Regional Coastal
4 Commission reasoned that while the YMCA as a membership organization might be
5 practically speaking open to the public “it is still exclusive of many people” and thus
6 expanding over-land access to these 50 members of the public was necessary for
7 compliance with Public Resources Code § 30213 (which states that developments
8 providing public recreational opportunities are preferred) and with § 30210 (requiring that
9 maximum access be provided to all the people). (Chytilo Decl., Exh. G [YMCA OTD,
10 Exhibit 3, § 8.5.]) Limiting access to fewer than a 1,000 people from 31-44 days a year in
11 exchange for a complete release of rights under the YMCA OTD that would have allowed
12 approximately 18,000 visitors per year, 365 days of the year, is not a fair bargain and is not
13 necessary for environmental protection or privacy rights.

14 The Settlement’s Managed Access Program’s purported benefits must be compared
15 against the baseline of comparable use today, for which there is no empirical evidence in
16 the Settlement. However, the Approved 1982 Hollister Ranch Access Plan reported that
17 Hollister Ranch hosted one educational and/or scientific group on the Ranch per week at
18 that time. (Chytilo Decl., Exh. E at 7 [1982 HRAP].) While the Settlement purports to
19 increase these managed group access opportunities, the only publicly available evidence
20 would indicate this approximate level of use has been underway for decades.

21 Given the extremely limited visitation rights, the complete discretion held by the
22 HROA over the program, and the baseline of comparable levels of use, the Managed
23 Access Program is not a fair exchange for an agreement to relinquish the rights under the
24 YMCA OTD.

25 **2. The Settlement Improperly Diverts In-Lieu Funds Back to the**
26 **Hollister Ranch Owners Association.**

27 The Settlement provides that the Hollister Ranch Managed Access Program “shall
28 be funded” through the Hollister Ranch in-lieu fee program funds. (Settlement ¶ 4.6.) The

1 “Hollister Ranch in-lieu fee program” was created under Public Resources Code § 30610.8
2 and contains less than \$300,000 after more than thirty years of operation. (Chytilo Decl.,
3 Exhibit I at 5 [CCC Staff Report for Informational Meeting July 13, 2018].) The in-lieu fee
4 program was designed to open up public access at Hollister Ranch. (Pub. Res. Code §
5 30610.8(c); *see also Remmenga*, 163 Cal.App.3d at 630.) It was not legislatively created to
6 support a managed access program that is wholly controlled by a private entity, and must
7 be used to develop access, not fund programs or as grants. (*See* Pub. Res. Code, § 31405
8 [Conservancy is limited in its expenditure of fees collected from a local agency for coastal
9 access to use for the “sole purpose of acquisition, development, and maintenance of public
10 accessways to the coastline.”].) In fact, the grant of funds from the Hollister Ranch in-lieu
11 fee program would be a violation of Public Resources Code section 30610.8 which
12 provides that the \$5,000 in-lieu fee shall be used by the State Coastal Conservancy “to
13 implement, as expeditiously as possible, the public access policies and provisions of this
14 division at Hollister Ranch.” (Pub. Res. Code § 30610.8 (c).) The Hollister Ranch public
15 access program, as it existed in 1982 when Public Resources Code section 30610.8 was
16 adopted, lays out a comprehensive coastal access plan. (*See* Chytilo Decl., Exh. E [1982
17 HRAP].) The 1982 Approved Hollister Ranch Access Program envisioned initial use of
18 pedestrian trails, a bike path and van service to San Augustine beach under a permit
19 program by up to 100 people per day, expanding in phases to include other beach areas and
20 up to 500 people per day. (Chytilo Decl. Exh. E at 10-18 [1982 HRAP].) The Managed
21 Access Program authorized by the proposed Settlement is patently a different type of
22 access and far more limited. As such, the Managed Access Program is not an appropriate
23 use of the precious in-lieu fee funds, which should be reserved to help implement public
24 access such as is contemplated in the 1982 HRAP and not pay HROA for their narrow
25 program.

26 Nor is it a reasonable use of public funds to pay the HROA to relieve it of the
27 obligations under the YMCA OTD. Nothing in the YMCA OTD required the state
28 agencies to pay for the public access program set forth in that document. Although the

1 license contemplated that users of the shuttle system might pay a fee for operation of that
2 system, the license did not make any provision for public funding of the YMCA's
3 expenses in connection management of the access program. (Chytilo Decl., Exh. G at 6 ¶ 3
4 (B.1)(b) (YMCA OTD].) Even if it were appropriate to enter into a settlement regarding
5 the scope of public access, public funds should not be used to pay the HROA to offer a
6 much smaller program than provided in the YMCA OTD while at the same time giving up
7 all rights to any other land access at Hollister Ranch.

8 Significantly, the Conservancy may not grant or donate Coastal Access funds to the
9 HROA. The HROA is not a non-profit organization as defined by the Coastal
10 Conservancy. (Pub. Res. Code § 31013.) As a mutual benefit corporation, the HROA is
11 ineligible to receive grants for the public access studies, (Pub. Res. Code § 31111) nor is it
12 eligible for grants to “to develop, operate, or manage lands for public access purposes to
13 and along the coast.” (Pub. Res. Code, § 31400.1.)

14 Not only does the Settlement grant significant funds to study and develop an
15 extremely limited managed access program, in derogation of the Legislative Intent of §
16 30610.8, but it purports to transfer funds to an ineligible recipient of Coastal Conservancy
17 funds.

18 **3. The Settlement Provides a Windfall to the Hollister Ranch**
19 **Owners Association at the Expense of the Public.**

20 The Settlement specifies that the Managed Access Program “[t]he HRMAP shall be
21 funded with Coastal Conservancy funds collected through the Hollister Ranch in-lieu fee
22 program and other funding sources that support increased public access to the California
23 coast and Hollister Ranch.” (Settlement ¶ 4.6.) There are limited controls on what is to be
24 funded with in-lieu fees, as long as it is deemed necessary to implement the Managed
25 Access Program. The Agreement authorizes HROA to conduct a comprehensive “baseline
26 survey of resources and facilities that will be used or affected by the Managed Access
27 Program and shall obtain and establish any staffing, support services, infrastructure, and
28 procedures it deems necessary to implement the Non-Profit Access Program on an ongoing

1 basis.” (Settlement ¶ 4.4.) The \$295,000 of in-lieu fees that have been collected may be
2 quickly exhausted through Consultant surveys, staffing, and infrastructure, much of which
3 will require permitting by the County, which also would presumably be funded by the in-
4 lieu fees. Although any “necessary” improvements for the Managed Access Program may
5 well be permanent improvements permanently benefitting the HROA, there is nothing in
6 the Settlement that requires the HROA to pay for these infrastructure improvements. The
7 Settlement will thus create a windfall to the Hollister Ranch Owners Association.

8 The more expensive the managed access program, the quicker funds in the Hollister
9 Ranch in-lieu access fund will be depleted. In this event, the Settlement provides that the
10 Coastal Commission and Coastal Conservancy, both chronically underfunded agencies,
11 “will make good faith efforts to support the funding of the Hollister Ranch Managed
12 Access Program,” including use of Santa Barbara County’s Coastal Resources
13 Enhancement Fund (CREF). (Settlement ¶ 4.6.) Because it is predictable that the \$295,000
14 in the Hollister Ranch in-lieu fee program will not last forever (and likely be depleted in
15 the near future), the Settlement should not be approved without consideration of whether
16 the Managed Access Program would significantly diminish the availability of funds for
17 other public access needs throughout California’s 1,100 miles of coast. The Settlement’s
18 reference to CREF is utterly improper (Settlement ¶ 4.6) because the CREF Guidelines
19 prohibit use of CREF funds for programs that address impacts that are mitigated through
20 in-lieu fees, including, specifically, “In-lieu Coastal Access Fees.” (Chytilo Decl., Exhibit
21 H at 5.) The County is not a party to the Settlement and distribution of the declining CREF
22 mitigation funds is at the discretion of the Board of Supervisors in a highly competitive
23 process. (Chytilo Decl. ¶ 12.) While there is local, statewide and even national interest in
24 securing meaningful public access to Hollister Ranch, funding remains a significant
25 impediment and all potentially available funds may be required to complete the access
26 program and amenities. Such information is critical for the Court for determining whether
27 the settlement will impinge on public funds for coastal access in Santa Barbara County and
28 California.

1 Such consideration is particularly important here because, in the absence of public
2 funds to support the Managed Access Program, the HROA has no obligation to continue to
3 provide it. There is no contingency set forth in the Settlement addressing what will occur
4 when the Managed Access Program is underfunded or unfunded. There is no promise by
5 the HROA to continue the Managed Access Program despite lack of funding.

6 If anything, the Settlement provides a method for the HROA to cancel the entire
7 agreement if the Managed Access Program is underfunded. The Settlement states, “[i]f any
8 material provision hereof is deemed unenforceable by a court of competent jurisdiction,
9 then the Agreement as a whole shall be deemed terminated and null and void.” (Settlement
10 ¶ 6.1.) Thus, if the Conservancy lacks funds for HRMAP costs, or may not legally fund
11 HROA’s administration of the HRMAP, the HROA could seek a judgment of the
12 unenforceability of a material provision, and thereby terminate the entire Settlement. The
13 public would have no access and no recourse.

14 **II. The Settlement Improperly Compromises Future Actions to Secure Rights for**
15 **Public Access to Hollister Ranch.**

16 The Settlement not only provides for extremely limited access to Hollister Ranch, it
17 would extinguish all “right, title or interest whatsoever in or to Parcels 1 through 136 of
18 Hollister Ranch.” (Settlement ¶ 3.1). In effect, the state defendants would release all public
19 access claims at Hollister Ranch. The state defendants have further agreed to relinquish all
20 rights to exercise the power of eminent domain by “any public entity” in exchange for the
21 license and Managed Access Program. (Settlement ¶ 4.7; License at 5, ¶ 13, attached as
22 Exhibit B to Settlement.) Should any public entity exercise this power, the releases of
23 rights under the YMCA OTD and state quit-claims of all interests under the Settlement
24 would remain in effect, but the license and Managed Access Program and the access
25 permitted by the YMCA OTD would be terminated.

26 This release could substantially and irrevocably harm the rights of the public to
27 exercise its rights with respect to public access at Hollister Ranch. (*See Citizens for Open*
28 *Access v. Seadrift Ass’n.* (1998) 60 Cal.App.3d 1053, 1075 [action for prescriptive

1 easement over Bolinas Spit barred by prior settlement of public access rights between
2 California Coastal Commission and Seadrift homeowners.]) It is unclear whether the
3 release here could be interpreted as broadly as it was in *Seadrift*. Indeed, the extent of
4 public access gained in the *Seadrift* case demonstrates how meager public access would be
5 under the Hollister Ranch settlement. In *Seadrift*, the Coastal Commission and State Lands
6 Commission reached a settlement allowing for passive, low-intensity recreational use of
7 most of the beach in front of the Seadrift development from one hour before sunrise to 10
8 p.m. (*Seadrift*, 60 Cal.App.4th at 1062.) This access would be via land and open to all
9 members of the public, not a select few over whom the Seadrift owners would have
10 complete veto power. As the court in *Seadrift* found, the “particular and rather unique
11 circumstances” of that case precluded a subsequent case for public access by members of
12 the public. (*Id.* at 1074.) Here, the Alliance strongly disputes that it is in privity with the
13 state defendants in this case and therefore should not be barred by principles of res judicata
14 or collateral estoppel in the event they were to bring an action for prescriptive rights in the
15 future. However, the *Seadrift* case demonstrates the adverse impact that a settlement such
16 as this can have on future efforts to enforce public rights and supports a more rigorous
17 review of the settlement’s terms to ensure that public access to Hollister Ranch is truly
18 available to the public.

19 **CONCLUSION**

20 Proposed Intervenors raise practical, financial and legal objections to the proposed
21 Settlement. The absence of public notification of the terms of the proposed settlement
22 precluded the articulation of these issues. This Court has identified a limited set of triable
23 issues of fact that should be resolved and Proposed Intervenors suggest that the vitality of
24 the YMCA OTD be tested in an open, public, judicial process. The proposed Settlement
25 should not be approved as it is neither fair, legally sound, nor consistent with Defendants’
26 mandate to secure access to the coast for all Californians. It should be rejected.

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DATED: July 23, 2018

SHUTE, MIHALY & WEINBERGER LLP

By: /s/ Ellison Folk
ELLISON FOLK

Attorneys for Defendant Intervenors
GAVIOTA COASTAL TRAIL ALLIANCE

DATED: July 23, 2018

LAW OFFICE OF MARC CHYTILO, APC

By: /s/ Marc S. Chytilo
MARC S. CHYTILO
ANA CITRIN

Attorneys for Defendant Intervenors
GAVIOTA COASTAL TRAIL ALLIANCE

DATED: July 23, 2018

LAW OFFICE OF TODD T. CARDIFF

By: /s/ Todd T. Cardiff
TODD T. CARDIFF

Attorneys for Defendant Intervenors
GAVIOTA COASTAL TRAIL ALLIANCE

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