UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 20-00453 PA (SSx)	Date	May 18, 2020
Title	Hollister Ranch Owners Association v. Xavier Becerra, et al.		

Present: The Honorable	PERCY ANDERSON, UNITED STATES DISTRICT JUDGE	
T. Jackson	Not Reported	N/A
Deputy Clerk	Court Reporter	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	
None	None	

Proceedings: IN CHAMBERS - COURT ORDER

Before the Court is a Motion to Dismiss (Dkt. No. 16 ("Defendant's Mot.") filed by defendants Xavier Becerra ("Becerra), Attorney General of the State of California; John Ainsworth ("Ainsworth"), Executive Director of the California Coastal Commission; Jennifer Lucchesi ("Lucchesi"), Executive Officer of the State Lands Commission; Sam Schuchat ("Schuchat"), Executive Direct of the California Coastal Conservancy; and Lisa Mangat ("Mangat"), Director for the California Department of Parks and Recreation (collectively the "Defendants"). Plaintiff Hollister Ranch Owners Association ("Hollister Ranch HOA" or "Plaintiff")) filed an Opposition (Dkt. No. 18 ("Plaintiff's Opp.")), and Defendants filed a reply ("Defendants' Reply") Dkt. No. 19)).

Also before the Court is a Motion for a Preliminary Injunction filed by Plaintiff. (Dkt. No. 10 ("Plaintiff's Mot."). Defendants filed an Opposition ("Dkt. No. 17 ("Defendants' Opp.") and Plaintiff filed a Reply (Dkt. No. 20) ("Plaintiff's Reply").

Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds these matters appropriate for decision without oral argument. The hearing scheduled for May 18, 2020 at 1:30 p.m. is vacated and the matter taken off calendar.

I. Background

Hollister Ranch (the "Ranch") "is a 14,400 acre area of land located just south of Point Conception, at the northern edge of the area commonly known as 'Southern California.'" (Dkt. No. 1 ("Compl.") ¶ 21.) "The Ranch is a cattle ranch that is [sparsely] developed with homes on large, agriculturally zoned, 100 minimum acre parcels." (Id.) The Ranch "contains approximately 8.5 miles of Pacific Ocean shoreline." (Id.)

"In 1971, the Ranch was subdivided into 136 separate, approximately 100 acre parcels, and some common areas." (Id. ¶ 24.) "133 of the parcels are privately owned." (Id.) The "other three lots . . . are commonly owned by Plaintiff and used for administrative, cattle ranching, and other common purposes." (Id.) "The Pacific Ocean lies along the Ranch's southern boundary." (Id. ¶ 26.) "The Ranch owns the land along its coastline and out to the mean high water line, an area of ownership that includes much of

the 'dry sand' portion of the beach." (Id.) "The State owns the tidelands, sometimes known as the 'wet beach,' lying seaward of the mean high water line." (Id.)

As alleged in the complaint, "[t]he development potential of Ranch parcels is extremely limited due to an agricultural zoning classification applicable to the land under Santa Barbara County law, the Ranch's own covenants, conditions, and restrictions, and the California Coastal Act." (Id. ¶ 30.) "Each 100 acre Ranch parcel has a maximum building envelope of only two acres, which allows for the construction of one house and a few accessory structures." (Id. ¶ 31.) "Fences are generally allowed on the 100+ acre Ranch parcels only around the small, two-acre building area." (Id.)

To enter the Ranch, people "must stop at the gatehouse and show proper owner credentials, or establish that the vehicle's passengers are on a pre-approved Ranch guest list." (Id. ¶ 39.) The Ranch contains "'No Trespassing' and other signs notifying the public of the private and exclusive nature of the Ranch." (Id. ¶ 40.)

As alleged in the Complaint, "[i]n the past, the California Coastal Commission and other agencies have pressured the Ranch to grant a public access easement or other means of general public access to the Ranch, without compensation to the Ranch or clarity on the mechanics of such access, potential liability, or the effect of a larger human presence on the Ranch environment." (Id. ¶ 49.) "The Ranch has resisted this pressure through legal means such as lobbying and litigation, while also increasing controlled access opportunities to the Ranch for educational and research groups." (Id.)

"In 2019, the State of California passed AB 1680 and that law went into effect January 1, 2020." (Id. ¶ 50.) "AB 1680 purports to amend, update, and replace a prior, 1980's-era Coastal Act provision that directed the Coastal Commission to implement a public access program for the Ranch," which was never fully implemented. (Id.)

"AB 1680 mandates the creation and implementation of a new public access program at the Ranch that secures public access to the shoreline adjacent to the Ranch." (Id.) AB 1680 directs State agencies to "develop a contemporary public access program for Hollister Ranch by April 1, 2021." (Id. ¶ 51.) "The program must include "[a] list of public access options to the state-owned tidelands at Hollister Ranch" (Id.) Each option should, "at a minium, include options for public access by land and shall include a description of the scope of access as well as an assessment of implementation costs and ongoing research." (Id., Exhibit 1, AB 1680 § 3(a)(2)(A), Cal. Pub. Res. Code § 20610.81(a)(2)(A)." The public access program mandated by 1680 also requires a "description of the physical environment at Hollister Ranch, including the shoreline, beach areas, coastal and marine habitat, existing land uses, and cultural and historical resources." (Id. ¶ 52, Exhibit 1 AB 1680 § 3(a)(2)(B), Cal. Pub. Res. Code § 30610.81(a)(2)(B).) AB 1680 further mandates "[a] program that implements specified portions of the program providing land access that includes a first phase of public access to the beach by land controlled by the [Hollister Ranch HOA]." (Id. ¶ 53, Exhibit 1 AB 1680 § 3(a)(3)(C), Cal. Pub. Res. Code § 30610,81(a)(3)(C).)

To facilitate the State's new public access mandate, AB 1680 finds that "[a]ccess to Hollister Ranch for state officials and their designated representatives is critical to enable the development of a contemporary public access program." (Id. ¶ 54, Exhibit 1 AB 1680 § 1(f).) AB 1680 further states that "[t]he [Coastal] Commission, the State Coastal Conservancy, the Department of Parks and Recreation, and the State Lands Commission, or their designated representatives, shall have access to the common areas within Hollister Ranch in order to evaluate resources and determine appropriate public access opportunities and to fulfill implementation of the public access program identified in this section." (Id. ¶ 55, Exhibit 1, AB 1680 § 3(b), Cal. Pub. Res. Code § 30610.81(b).)

AB 1680 also declares that "[a]n action by a private person or entity to impede, delay, or otherwise obstruct the implementation of the public access pursuant to subparagraph (C) of paragraph (3) or other provisions of the public access program constitutes a violation of the public access provisions of the Coastal Act." (Id. ¶ 56, Exhibit A, AB 1680 § 3(a)(4), Cal. Pub. Res. Code § 30610.81(a)(4).) Plaintiff alleges that "a violation of the Act's public access provisions, including AB 1680, is punishable by a fine of up to $22,500[1/] for each day a violation exists." (Id. ¶ 57.)

Plaintiff filed its Complaint on January 16, 2020 challenging two provisions of the Hollister Ranch public access program enacted by AB 1680. Plaintiff challenges: (1) the provision providing that state officials "shall have access to the common areas within Hollister Ranch in order to evaluate resources and determine appropriate public access opportunities" (Cal. Pub. Res. Code § 30610(b)); and (2) the provision allowing penalties against anyone who impedes, delays, or obstructs implementation of the public access plan (Id. § 30610.81(a)(4)). Plaintiff alleges these two provisions of AB 1680 violate: (1) the search clause of the Fourth Amendment, (2) the due process clause of the Fourteenth Amendment; (3) the free speech Clause of the First Amendment, and (4) the takings clause of the Fifth Amendment to the United States Constitution. (Id. ¶¶ 79-112.) Plaintiff seeks a declaration that these access provisions are unconstitutional, as well as a permanent injunction that prohibits Defendants from enforcing them.

On March 16, 2020, Plaintiff filed a Motion for a Preliminary Injunction. On April 20, 2020, Defendant filed a motion to dismiss.

II. Legal Standard

A. Motion to Dismiss

Defendants seek to dismiss Plaintiff's Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

[1/] There is some dispute over how much the fine for violating the Act is. (See Defendant's Mot. at n. 2 ("Plaintiff is mistaken about the maximum amount of the fine, which is $11,250."); Opp. at 7 (stating the fine is $11,250 per day).) This discrepancy is irrelevant to the Court's analysis.

1. Federal Rule of Civil Procedure 12(b)(1)

"Article III of the Constitution requires that a plaintiff have standing to assert claims in federal court." Jones v. Micron Technology Inc., 400 F. Supp. 3d 897, 906 (N.D. Cal. 2019) (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992)). Challenges to "Article III standing implicate the court's subject matter jurisdiction and therefore are properly raised under Federal Rule of Civil Procedure 12(b)(1)." Id. (citing White v. Lee, 227 F.3d 1214, 1242 (9th Cir. 2000). "Federal courts are courts of limited jurisdiction." and "[i]t is presumed that a cause lies outside this limited jurisdiction," unless otherwise shown. Kokkonen v. Guardial Life Ins. Co. of Am., 511 U.S. 375, 377 (1994). Where a challenge is to the plaintiff's standing as alleged, the Court looks only to the allegations in the complaint, and assumes the allegations are true. Wolfe v. Strankam, 392 F.3d 358, 362 (9th Cir. 2004).

"If the plaintiff lacks standing under Article III of the U.S. Constitution, then the court lacks subject matter jurisdiction, and the case must be dismissed." Mollicone v. Universal Handicraft, Inc., 16-cv-07322, 2017 WL 440257, at *5 (C.D. Cal. Jan. 30, 2017). "To establish standing, a plaintiff has the burden to demonstrate (i) that he suffered an injury-in-fact, (ii) which resulted from the defendant's conduct, and (iii) that a favorable ruling would redress the injury." Jones, 400 F. Supp. 2d at 906.

2. Federal Rule of Civil Procedure 12(b)(6)

Generally, plaintiffs in federal court are required to give only "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). While the Federal Rules of Civil Procedure ("Rules") allow a court to dismiss a cause of action for "failure to state a claim upon which relief can be granted," Fed. R. Civ. P. 12(b)(6), they also require all pleadings to be "construed so as to do justice," Fed. R. Civ. P. 8(e). The purpose of Rule 8(a)(2) is to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957)).

However, in Twombly, the Supreme Court rejected the notion that "a wholly conclusory statement of [a] claim would survive a motion to dismiss whenever the pleadings left open the possibility that a plaintiff might later establish some 'set of [undisclosed] facts' to support recovery." Twombly, 550 U.S. at 561 (second alteration in original) (quoting Conley). Instead, the Court adopted a "plausibility standard," in which the complaint must "raise a reasonable expectation that discovery will reveal evidence of [the alleged infraction]." Id. at 556. For a complaint to meet this standard, the "[f]actual allegations must be enough to raise a right to relief above the speculative level." Id. at 555 (citing 5 C. Wright & A. Miller, Federal Practice and Procedure §1216, pp. 235-36 (3d ed. 2004) ("[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action")); see also Daniel v. County of Santa Barbara, 288 F.3d 375, 380 (9th Cir. 2002) ("All allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party." (quoting Burgert v. Lokelani Bernice Pauahi Bishop Tr., 200 F.3d 661, 663 (9th Cir. 2000))). "[A] plaintiff's obligation to provide the grounds of his entitlement to relief

requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555 (internal quotation marks omitted). In construing the Twombly standard, the Supreme Court has advised that "a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." Ashcroft v. Iqbal, 556 U.S. 662, 679, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009).

B. Preliminary Injunction

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Winter v. Nat. Res. Def. Council, 555 U.S. 7, 20, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008). "A preliminary injunction is an extraordinary remedy never awarded as of right." Id. at 24. The Ninth Circuit employs a "sliding scale" approach to preliminary injunctions as part of this four-element test. All. for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir. 2011). Under this "sliding scale," a preliminary injunction may issue "when a plaintiff demonstrates . . . that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff's favor," as long as the other two Winter factors have also been met. Id. (quoting The Lands Council v. McNair, 537 F.3d 981, 987 (9th Cir. 2008),). "[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." Mazurek v. Armstrong, 520 U.S. 968, 972, 117 S. Ct. 1865, 138 L. Ed. 2d 162 (1997) (quoting 11A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2948, pp. 129-130 (2d ed. 1995)).

III. Judicial Notice

In support of their motion, Defendants request that the Court take judicial notice of the following three documents regarding the statute at issue:

1. California State Assembly's Floor Analysis, Third Reading of AB 1680;

2. California State Assembly's Natural Resources Committee's comments on AB 1680, at a hearing held on April 22, 2019; and

3. Frequently Asked Questions prepared by the Coastal Commission regarding AB 1680.

(Dkt. No. 16-1.)

"In ruling on a 12(b)(6) motion, a court may generally consider only allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice." Swartz v. KPMG LLP, 476 F.3d 756, 763 (9th Cir. 2007) (per curiam) (citing Jacobson v. Schwarzenegger, 357 F. Supp. 2d 1198, 1204 (C.D. Cal. 2004)). The documents submitted by Defendants are appropriate subjects of judicial notice. See Fed. R. Evid. 201; United States v. 14.02 Acres of Land More or Less in Fresno County, 547 F.3d 943, 955 (9th Cir. 2008) (records and reports of administrative bodies); Reyn's Pasta Bella, LLC v. Visa USA, Inc., 442 F.3d 741, 746 n.6 (9th Cir. 2006) (court filings and other matters of public record); Anderson v. Holder, 673 F.3d 1089, 1094 n.1 (9th Cir. 2012) (legislative history). In addition, Plaintiff does not object to Defendants' request for judicial notice. (See Opp. at 9 ("[T]he Association does not object to judicial notice."). Accordingly, Defendants' request is granted.

IV. Discussion

A. Motion to Dismiss

Defendants argue: (1) the Court lacks jurisdiction over Becerra and state officers sued in their official capacity based on the Eleventh Amendment; (2) Hollister Ranch HOA lacks standing to bring this action; (3) Hollister Ranch HOA's claims are not ripe for adjudication; and (4) the Complaint fails to plead any facts supporting a claim for relief.

1. The Eleventh Amendment

Defendants first argue the Eleventh Amendment "immunizes [Becerra], who is named [in the Complaint] as a defendant solely in his official capacity, as the chief law enforcement officer for the State of California," as well as "Lucchesi, Schuchat and Mangat, as the executive officers of the State Lands Commission, the California State Coastal Conservancy, and the California Department of Parks and Recreation." (Defendants' Mot. at 6)

"The Eleventh Amendment bars suits against the State or its agencies for all types of relief, absent unequivocal consent by the state." Krainski v. Nevada ex rel. Bd. of Regents of Nevada System of Higher Educ., 616 F.3d 963, 976 (9th Cir. 2010). "The Eleventh Amendment jurisdictional bar applies regardless of the nature of relief sought and extends to state instrumentalities and agencies." Id.

Additionally, "[t]he Eleventh Amendment bars a suit against state officials when 'the state is the real, substantial party in interest.'" Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 101 (1984) (quoting Ford Motor Co. v. Dep't of Treasury, 323 U.S. 459 (1945); and citing In re Ayers, 123 U.S. 443, 487-92 (1887). The "general rule is that relief sought nominally against an officer is in fact against the sovereign if the decree would operate against the latter." Id. at 101 (quoting Hawaii v. Gordon, 373 U.S. 57, 58 (1963) (per curiam)). "[A] suit against state officials that is in fact a suit against a State is barred regardless of whether it seeks damages or injunctive relief." Id. at 101-02 (quoting Cory v. White, 457 U.S. 85, 91 (1982)).

"The Supreme Court recognized an important exception to this general rule in Ex parte Young, 209 U.S. 123 (1908). The Ex parte Young doctrine provides a narrow exception to Eleventh Amendment immunity for "prospective declaratory or injunctive relief against state officers sued in their official capacities for their alleged violations of federal law." Coal. to Defend Affirmative Action v. Brown, 674 F.3d 1128, 1134 (9th Cir. 2012). For the exception to apply, it must be clear "that such officer [has] some connection with the enforcement of the act, or else it is merely making him a party as a representative of the State, and thereby, attempting to make the State a party." Snoeck v. Brussa, 153 F.3d 984, 986 (9th Cir. 1998). "This connection must be fairly direct; a generalized duty to enforce state law or general supervisory power over the persons responsible for enforcing the challenged provision will not subject an official to suit." L.A. Cty. Bar Ass'n v. Eu, 979 F.2d 697, 704 (9th Cir. 1992).

There is no dispute that Plaintiff is seeking prospective injunctive relief. In addition, Plaintiff "agrees to [the] dismissal of [Becerra] as a defendant in this case." (Plaintiff's Opp. at 7 n. 1.) Thus, Plaintiff's claims against the Attorney General are dismissed with prejudice. See Welchen v. County of Sacramento, 343 F. Supp. 3d 924, 935 (E.D. Cal. 2018). Defendants also concede that Ainsworth is not subject to Eleventh Amendment immunity. (Defendant's Mot. at n. 1 (The "allegations regarding Ainsworth, the Executive Director of the California Coastal Commission, are more detailed." "Ainsworth is alleged to have the principal authority for enforcing provisions of the Coastal Act, which encompasses the statutes enacted and amended by AB 1680." (Id. citing Compl. ¶ 15.) Thus, the only dispute is whether Lucchesi, Schuchat, and Mangat, as executive officers of the State Lands Commission, the Coastal Conservancy, and the California Department of Parks and Recreation respectively, have a sufficient connection with the enforcement of AB 1680 such that they are not subject to Eleventh Amendment immunity.

Drawing all reasonable inferences in Plaintiff's favor, as the Court is required to do at this stage of the proceedings, the Court finds that Plaintiff has adequately shown a causal connection between defendants Lucchesi, Schuchat, Mangat and the purported constitutional violations at issue. AB 1680, which is attached to and referenced extensively in Plaintiff's Complaint, and which this Court can consider in deciding Defendants' Motion, states that the California Coastal Commission, in "collaboration with the State Coastal Conservancy, the Department of Parks and Recreation, and the State Lands Commission," is required to "develop a contemporary public access program for Hollister Ranch." (Compl. ¶ 55, Ex. A.) AB 1680 further directs that the "State Coastal Conservancy and the State Lands Commission shall use their full authority provided under law to implement, as expeditiously as possible, the public access policies and provisions of this division at the Hollister Ranch." (Id.) "To ensure public access to Hollister Ranch in the County of Santa Barbara, the Commission shall, in collaboration with the State Coastal Conservancy, the Department of Parks and Recreation, and the State Lands Commission, by April 1, 2021, develop a contemporary public access program for Hollister Ranch that will replace the existing coastal access program for Hollister Ranch that the commission adopted in 1982." (Id.)

Based on the language of AB 1680 as well as Plaintiff's Complaint, the Court finds that officers Lucchesi, Schuchat, and Mangat, as executive directors of the agencies charged with enforcing AB 1680,

have an adequate connection to enforcing AB 1680 such that the Ex parte Young exception applies. The Court therefore finds that Eleventh Amendment immunity does not shield these defendants from this lawsuit.

2. Standing and Ripeness

Defendants next argue "Plaintiff . . . has not alleged any facts sufficient to establish that it has standing because of harm to its members." (Defendants' Mot. 9.) Defendants additionally argue that Plaintiff as an organization has not "show that it has suffered an injury in fact." (Id.) Defendants reason that "[b]ecause Plaintiff can allege only hypothetical injuries from AB 1680, the claims are unripe and, for the same reasons, Plaintiff lacks standing to bring [its] claims." (Id.)

i. Standing

Article III of the Constitution limits the jurisdiction of federal courts to "cases" and "controversies." U.S. Const. art. III, § 2. To enforce this constitutional limitation, the Supreme Court has articulated numerous doctrines that restrict the types of disputes that federal courts can entertain, including standing and ripeness.

Constitutional standing has three components:

> [A] plaintiff must show (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Friends of the Earth, Inc. v. Laidlaw Envt'l Srvs. (TOC), Inc., 528 U.S. 167, 180-81 (2000). "In limiting the judicial power to 'Cases' and 'Controversies,' Article III of the Constitution restricts it to the traditional role of Anglo-American courts, which is to redress or prevent actual or imminently threatened injury to persons caused by private or official violation of law." Summers v. Earth Island Institute, 555 U.S. 488, 492 (2009). "Except when necessary in the execution of that function, courts have no charter to review and revise legislative and executive action." Id.

"A plaintiff who challenges a statute must demonstrate a realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement." Babbit v. United Farm Workers Nat. Union, 442 U.S. 289, 298 (1979). "The basic inquiry is whether the conflicting contentions of the parties . . . present a real, substantial controversy between the parties having adverse legal interest, a dispute definite and concrete, not hypothetical or abstract." Id. (internal quotations omitted).

An organization can assert an injury in fact by alleging either: (1) it has at least one member who has suffered an injury in fact, or (2) it has suffered a legally redressable injury in its own right. Summer,

504 U.S. at 498, Havens Realty Corp. v. Coleman, 455 U.S. 363, 378-79 (1982). Plaintiff "bears the burden of showing that [it] has standing for each type of relief sought." Id.

ii. Ripeness

"A dispute is ripe in the constitutional sense if it 'present[s] concrete legal issues, presented in actual cases, not abstractions.'" Montana Envt'l Info. Ctr. v. Stone-Manning, 766 F.3d 1184, 1188 (9th Cir. 2014) (citing Colwell v. HHS, 558 F.3d 1112, 1123 (9th Cir. 2009). "In the context of a declaratory judgment suit, the inquiry depends upon whether the facts alleged, under all the circumstances, show that there is a real substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." Id. (internal quotations omitted).

"Ripeness and standing are closely related because they originate from the same Article III limitation." Id. (internal quotations omitted). As a result, courts have previously recognized that "in many cases, ripeness coincides squarely with standing's injury in fact prong." Id., see also Thomas v. Anchorage Equal Rights Comm'n, 220 F.3d 1134, 1138 (9th Cir. 2000) (en banc) ("The constitutional component of the ripeness inquiry is often treated under the rubric of standing . . . . Indeed, because the focus of our ripeness inquiry is primarily temporal in scope, ripeness can be characterized as standing on a timeline.").

The ripeness doctrine "is intended to prevent the courts, through the avoidance of premature adjudication, from entangling themselves in abstract disagreements of administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenged parties." Principal Life Ins. Co. v. Robinson, 394 F.3d 665, (9th Cir. 2005) (citing Abbott Laboratories v. Gardner, 387 U.S. 136, 148-49 (1967)). "Constitutional challenges to local land use regulations are not considered by federal courts until the posture of the challenges makes them 'ripe' for federal adjudication." Pakdel v. City and County of San Francisco, 952 F.3d 1157, 1164 (9th Cir. 2020)

B. Analysis

Plaintiff concedes that it is not "rest[ing] its claims on the rights of unnamed [Hollister Ranch HOA] members," but instead Hollister Ranch HOA is "challenging AB 1680 in its own right based on [Hollister Ranch HOA's] interests, including its right and duty to limit access to the Ranch generally, and to Ranch common areas, specifically," all of which Plaintiff alleges the statute injures. (Plaintiff's Opp. at 11.)

Defendants argue Plaintiff has not "shown that it has suffered an injury in fact." (Defendants' Mot. at 9.) Defendants claim that "[b]ecause Plaintiff challenges a statute yet to be enforced, this Court must determine whether [Hollister Ranch HOA's] alleged injury is 'imminent.'" (Id.) "Since the proposed harm depends on the occurrence of 'contingent future events that may not occur as anticipated,

or indeed may not occur at all," Defendants argue "Article III standing is lacking." (Id.) Defendants further assert Plaintiff "does not allege - because it cannot - that an unwarranted, offensive, intrusive, or harmful action has been taken to implement or enforce the access plan." (Id. at 11.) Plaintiff "does not allege any entry onto the property, nor can it speculate how the statute will be enforced." (Id.) Defendants argue there are "numerous unobjectionable ways that state agents could access the property. Designated representatives could obtain permission to visit; they could stop at the gate and ask to go in; or they could provide written notice." (Id.) "Without some agency action under the statute," Defendants argue, "Plaintiff cannot show that it has suffered an injury that is concrete and particularized enough to confer standing, because it is unknown whether any offensive action will be taken." (Id.)

Plaintiff asserts it "faces imminent enforcement of AB 1680's 'shall have access' provision for state searches of [Hollister Ranch HOA's] property." (Plaintiff's Opp. at 12.) According to Plaintiff, "AB 1680 is effective now, and a strict timeline is running on its implementation, a timeline that requires entry and searches of [Hollister Ranch HOA's] common areas." (Id.) "By April 2021, the officials must secure '[a] description of the physical environment at Hollister Ranch, including the shoreline, beach areas, coastal marine habitat, existing land uses, and cultural and historical resources.'" (Id. citing Pub. Res. Code § 30610.81(a)(2)(B).) "In this regard, it is telling that the Officials do not assert they will decline to search common areas until they get a warrant or pre-compliance review occurs." (Id.)

Additionally, Plaintiff argues Hollister Ranch HOA "faces a credible and imminent threat of enforcement because it intends to engage in 'actions' that appear prohibited and subject to penalty under AB 1680, because they may delay or impede [Defendants'] public access mission." (Id. at 13.) "All anticipated actions are arguably forbidden and subject to penalty under AB 1680." (Id.) According to Plaintiff, there is therefore a "credible threat that the penalty provision will be enforced against the Association." (Id.)

The Court finds that Plaintiff has not yet suffered any injury, and that any alleged injury is not imminently likely. Any potential injury to Plaintiff is contingent on how AB 1680 is enforced. Plaintiff does not allege that Defendants have made any attempt to enter the Ranch without permission, or that Plaintiff has ever been threatened with a civil enforcement hearing. In fact, Plaintiff's own Opposition states that it "intends to engage in 'actions' that appear to be prohibited." (Opp. at 13.) This statement suggests Plaintiff has not yet been told by Defendants that Plaintiff has engaged in any prohibited acts, and that Plaintiff is unaware whether any actions Plaintiff seeks to engage in will actually be prohibited. This cannot be determined if and until Plaintiff is actually charged with a penalty, or Defendants seek access to Plaintiff's property in a way Plaintiff believes violates their constitutional rights. See Montana Environmental Information Center v. Stone-Manning, 766 F.3d 1184, 1190 (9th Cir. 2014) ("Because [the plaintiff] does not allege a substantial risk that Stone-Manning will grant the application, we cannot characterize this dispute as 'a substantial controversy . . . of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. . . . This dispute is more an 'abstraction[]' than an 'actual case' because the supposed injury has not materialized and may never materialize.").

This case is similar to Bova v. City of Medford. 564 F.3d 1093 (9th Cir. 2009). In Bova, the plaintiffs, who were employees for the City of Medford, sued the City for the City's decision to eliminate health insurance benefits from the employees' retirement packages. The district court granted the City's motion to dismiss, and the Ninth Circuit affirmed, finding the "plaintiffs' alleged injury - the denial of health insurance coverage - ha[d] not yet occurred." (Id.) The Ninth Circuit found that the occurrence of any alleged harm was "contingent upon two events: (1) each [p]laintiff's retirement from City service; and (2) the City's official denial of benefits to him or her." (Id.) The Ninth Circuit found it was "possible that neither of these two events [would] ever occur. [The] [p]laintiffs could change jobs, be terminated, or die . . . before retiring." (Id.) [U]nless and until contingent events occur[ed], neither [p]laintiff [would] have suffered an injury that [was] concrete and particularized enough to survive the standing/ripeness inquiry." (Id.).

Similarly, here, any alleged injury to Hollister Ranch HOA depends on one of two things occurring: either (1) Defendants attempt to access the Ranch under AB 1680, or (2) Hollister Ranch HOA is charged a fine for impeding access under AB 1680. Unless and until one of these events occur, Plaintiffs will not have suffered an injury that is concrete and particularized enough to survive the standing/ripeness inquiry. See Babbitt v. United Farm Workers Nat. Union, 442 U.S. 289, 291 (1979) (finding access provision of Arizona Agricultural Employment Relations Act did not present justiciable case or controversy, where, while the defendant union might seek access to employers' property, it was conjectural to anticipate that access would be denied where it was impossible to know whether access would be denied to places fitting plaintiffs' constitutional claim, stating "[w]e can only hypothesize that such an event will come to pass, and it is only on this basis that the constitutional claim could be adjudicated at this time. An opinion now would be patently advisory.").

Without some action by Defendants under the statute, Plaintiff cannot show that it has suffered an injury that is concrete and particularized enough to confer standing, because it is unknown whether any offensive action will be taken. If this case goes forward, this litigation risks "judicial entanglement in administrative agency actions before the agencies have had an opportunity to take action or make decisions." Principal Life Ins. Co. v. Robinson, 394 F.3d 665, 671 (9th Cir. 2005). Thus, the Court finds Plaintiff's direct challenges to AB 1680 are not yet ripe, as Plaintiff has failed to allege any injury, or that any injury is imminent.

3. Facial Challenges

Plaintiff's facial challenges to the statue fare no better. "[A] plaintiff can only succeed in a facial challenge by establishing that no set of circumstances exists under which the Act would be valid, i.e. that the law is unconstitutional in all of its applications." Washington State Grange v. Washington State Republican Party, 552 U.S. 442, 449 (2008) (internal quotations omitted). "In determining whether a law is facially invalid, [courts] must be careful not to go beyond the statute's facial requirements and speculate about 'hypothetical' or 'imaginary' cases." Id. "Exercising judicial restraint in a facial challenge frees the Court not only from unnecessary pronouncement on constitutional issues, but also from premature interpretations of statutes where their constitutional application might be cloudy." Id.

"Facial challenges are disfavored for several reasons." Id. "Claims of facial invalidity often rest on speculation." Id. "As a consequence they risk 'premature interpretation of statutes on the basis of factually barebones records." Id. (quoting Sabri v. United States, 541 U.S. 600, 609 (2004). "Facial challenges also run contrary to the fundamental principle of judicial restraint that courts should neither 'anticipate a question of constitutional law in advance of the necessity of deciding it,' nor 'formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.'" Id. (Quoting Ashwander v. TVA, 297 U.S. 288, (1936). "Finally, facial challenges threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution." Id.

Here, Plaintiff brings facial challenges to AB 1680 under both the Fourth and Fifth Amendments to the Constitution. Plaintiff claims that the challenged statutory clauses, as written, violate both (1) the Fourth Amendment's protection against unwarranted and unreasonable searches, and (2) the Due Process Clause because the words "delay," "impede," or "obstruct," do not give Plaintiff sufficient notice of the type of actions they are prohibited from undertaking.

The Court finds there are several ways in which both of the challenges regulations can be enforced that do not violate the constitution. For example, Defendants could simply agree with Plaintiff on a time and place for Defendants to enter. In addition, the Court finds this case could benefit from further factual development, namely the actual implementation of the two statutory sections at issue.

This case is similar to Washington State Grange v. Washington State Republican Party, 552 U.S. 442 (2008). In Washington, state voters passed an initiative, I-872, providing that candidates must be identified on the primary ballot by their self-designated party preference. Respondent political parties argued the new law, on its face, violated a party's associational rights by usurping its right to nominate its own candidates and by forcing it to associate with candidates it does not endorse. Respondents argued I-872 would result in voter confusion about which nominees a political party actually endorsed. The Supreme Court found the State "had no opportunity to implement I-872, and its courts have had no occasion to construe the law in the context of actual disputes arising from the electoral context, or to accord the law a limiting construction to avoid constitutional questions." Id. at 453. The Supreme Court rejected respondents' facial challenge, finding all of the respondents' contentions depended "not on any facial requirement of I-872, but on the possibility that voters [would] be confused as to the meaning of the party preference designation." Id. at 454. The Supreme Court held there is "simply no basis to presume that a well informed electorate [would] interpret a candidates party-preference designation to mean that the candidate is the party's chosen nominee or representative." Id.; see also New York State Club Assn., Inc. v. City of New York, 487 U.S. 1, 13-14 (1988) (rejecting a facial challenge to a law regulating club membership and noting the court could "hardly hold otherwise on the record before [them], which contain[ed] no specific evidence on the characteristics of *any* club covered by the [l]aw"); United States v. Sineneng-Smith, 590 U.S. __ (2020) (Thomas, J., concurring) (reaffirming Supreme Court's decision in Washington, stating "when a court invalidates a statute based on its theoretical, illicit

applications at the expense of its real-world, lawful applications, the court 'threatens to short circuit the democratic process'").

Similarly, here Defendants have had no opportunity to implement AB 1680, and there is no basis to assume Defendants will implement the statute in an unconstitutional way. The assertion that Defendants will violate Plaintiff's constitutional rights in imposing AB 1680 is mere speculation. See Sibron v. New York, 392 U.S. 40, 59-62 (1968) (Supreme Court refused to consider facial fourth amendment challenge to law authorizing police to stop and search individuals finding that comparing the "extraordinarily elastic categories of a law to the categories of the Fourth Amendment was an 'abstract and unproductive exercise," and reasoning that the heart of a Fourth Amendment constitutional challenge is 'not so much . . . the language employed as . . . the conduct [the statute] authorizes.").

Based on the above, the Court grants Defendants' motion to dismiss for lack of standing and ripeness.

IV. Preliminary Injunction

Plaintiff's request for a preliminary injunction fails for substantially the same reasons. A plaintiff seeking a preliminary injunction must show "that irreparable injury is likely in the absence of an injunction." Winter, 555 U.S. at 22. The mere "possibility" of harm is not enough, because injunctive relief is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." Id. The threatened harm must also be imminent.

In its Opposition to Plaintiff's request for a preliminary injunction, Defendants provide the declaration of the Coastal Commission's Coastal Access Program Manager, Linda Locklin. In her declaration, Locklin states that access to Hollister Ranch was by permission in 2018 and 2019, but the agency is now in the planning and outreach phase, and no further site visits are currently scheduled. (Decl. Of Linda Locklin in support of Opp. To Mot. for Prelim. Inj. (Locklin Decl.) ¶¶ 6-12, 14, 16 and Exs. A - C). Even if the Commission were to schedule a future visit - for which there are no current plans - Ms. Locklin declares that prior site visits were by consent. Id. ¶¶ 10-14, 23. "There is no indication that future site visits cannot proceed similarly." Id. ¶ 23.

Ms. Locklin further states that Plaintiff will be notified and have an opportunity to respond before any penalties are assessed under the statute. (Id. ¶¶ 21-22.) She states that "[l]ike any other public access violation under the Coastal Act, Plaintiff has an opportunity to cure the violation, and appeal a penalty." (Id. (citing Cal. Pub. Res. Code § 30821.) "The Coastal Commission will notify the [Hollister Ranch HOA] prior to commencing any formal administrative enforcement proceeding alleging violations of AB 1680 if it concludes that the [Hollister Ranch HOA] is required to cease its actions that prevent others from entering its land. If any of the posted signs and other notices at [the] Ranch need to be taken down or altered after public access is implemented under AB 1680, the [Hollister Ranch HOA] will be informed of the need to do so and provided and an opportunity to respond prior to the Commission considering the issuance of a cease and desist order or the imposition of penalties for

violations of AB 1680. Pursuant to the cure provision in the Coastal Act (Cal. Pub. Res. Code § 30812(h)), the [Hollister Ranch HOA] would also be given the opportunity to cure any refusal to comply with AB 1680, and it would be entitled to judicial review." ¶ 22.

The Court finds Plaintiff's pure speculation about the state agencies' future behavior does not pose an imminent injury, particularly in light of Ms. Locklin's declaration.

Conclusion

For all of the foregoing reasons, Defendants' Motion to Dismiss is granted without leave to amend. In addition, the Court denies Plaintiff's Motion for a Preliminary Injunction. The Court will issue a judgment consistent with this Order.

IT IS SO ORDERED.