

Electronically Received 06/20/2022 11:20 AM

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: 53179
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 ATTORNEY FOR (Name): CITIZENS FOR THE RESPONSIBLE USE OF CARBON AND LA COSTA BEACHES

FOR COURT USE ONLY

FILED
 Superior Court of California
 County of Los Angeles
06/20/2022
 Sherri R. Carter, Executive Officer / Clerk of Court
 By: A. Flores Deputy

CASE NUMBER:
 21STCP02371
 Dept. 47

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
 STREET ADDRESS: 111 North Hill Street
 MAILING ADDRESS:
 CITY AND ZIP CODE: Los Angeles, CA 90012
 BRANCH NAME: STANLEY MOSK COURTHOUSE

Plaintiff/Petitioner: CITIZENS FOR THE RESPONSIBLE USE OF CARBON AND LA COSTA BEACHES
 Defendant/Respondent: SANTA MONICA MOUNTAINS CONSERVANCY, et al.

REQUEST FOR DISMISSAL

A conformed copy will not be returned by the clerk unless a method of return is provided with the document.

This form may not be used for dismissal of a derivative action or a class action or of any party or cause of action in a class action. (Cal. Rules of Court, rules 3.760 and 3.770.)

- TO THE CLERK: Please **dismiss** this action as follows:
 - With prejudice (2) Without prejudice
 - Complaint (2) Petition
 - Cross-complaint filed by (name): on (date):
 - Cross-complaint filed by (name): on (date):
 - Entire action of all parties and all causes of action
 - Other (specify):*

2. (Complete in all cases except family law cases.)
 The court did did not waive court fees and costs for a party in this case. (This information may be obtained from the clerk. If court fees and costs were waived, the declaration on the back of this form must be completed).

Date: June 15, 2022
ALAN ROBERT BLOCK
 (TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)


 (SIGNATURE)

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

Attorney or party without attorney for:
 Plaintiff/Petitioner Defendant/Respondent
 Cross Complainant

3. TO THE CLERK: Consent to the above dismissal is hereby given.**

Date:
 (TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)


 (SIGNATURE)

** If a cross-complaint – or Response (Family Law) seeking affirmative relief – is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

Attorney or party without attorney for:
 Plaintiff/Petitioner Defendant/Respondent
 Cross Complainant

(To be completed by clerk)

- Dismissal entered as requested on (date): 06/20/2022
- Dismissal entered on (date): as to only (name):
- Dismissal **not entered** as requested for the following reasons (specify):

- Attorney or party without attorney notified on (date):
- Attorney or party without attorney not notified. Filing party failed to provide a copy to be conformed means to return conformed copy

Date: 06/20/2022 Clerk, by A. Flores Deputy

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Plaintiff/Petitioner: CITIZENS FOR THE RESPONSIBLE USE OF CARBON AND LA COSTA BEACHES Defendant/Respondent: SANTA MONICA MOUNTAINS CONSERVANCY, et al.	CASE NUMBER: 21STCP02371
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COURT'S RECOVERY OF WAIVED COURT FEES AND COSTS

If a party whose court fees and costs were initially waived has recovered or will recover \$10,000 or more in value by way of settlement, compromise, arbitration award, mediation settlement, or other means, the court has a statutory lien on that recovery. The court may refuse to dismiss the case until the lien is satisfied. (Gov. Code, § 68637.)

Declaration Concerning Waived Court Fees

1. The court waived court fees and costs in this action for *(name)*:
2. The person named in item 1 is *(check one below)*:
 - a. not recovering anything of value by this action.
 - b. recovering less than \$10,000 in value by this action.
 - c. recovering \$10,000 or more in value by this action. *(If item 2c is checked, item 3 must be completed.)*
3. All court fees and court costs that were waived in this action have been paid to the court *(check one)*: Yes No

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date:

 (TYPE OR PRINT NAME OF ATTORNEY PARTY MAKING DECLARATION)



 (SIGNATURE)

SETTLEMENT & MUTUAL RELEASE AGREEMENT

This Settlement & Mutual Release Agreement is made effective June 7, 2022, by and between CITIZENS FOR THE RESPONSIBLE USE OF CARBON AND LA COSTA BEACHES, a California unincorporated association (“CITIZENS”) on one hand, and SANTA MONICA MOUNTAINS CONSERVANCY (“SMMC”) and MOUNTAINS RECREATION AND CONSERVATION AUTHORITY (“MRCA”) on the other, with reference to the following facts:

RECITALS

A. SMMC is the owner of two beachfront parcels of real property located between Carbon Beach and La Costa Beach in the City of Malibu, County of Los Angeles, State of California, commonly known as Assessor Parcel Nos. 4451-003-900 and 4451-004-900 (“subject property”). MRCA manages the subject property on behalf of SMMC.

B. In or about May 5-7, 2021, a fence separating a portion of the subject property from Pacific Coast Highway was removed and replaced without authorization of SMMC or MRCA. MRCA removed the unauthorized fence on May 7, 2021. On June 17, 2021, MRCA announced on its website that the subject property was open for public beach use and access.

C. On July 21, 2021, CITIZENS filed a complaint in the Los Angeles Superior Court, Case Number 21STCP02371 (the “Action”), against SMMC and MRCA for a writ of mandate and declaratory relief. The complaint was later amended to delete the cause of action for a writ of mandate and add a cause of action for injunctive relief. CITIZENS alleged in the Action that SMMC and MRCA were required but failed to obtain a coastal development permit before removing the unauthorized fence and opening the subject property to public beach use and access.

D. SMMC and MRCA deny the allegations raised in the Action and deny that they engaged in any improper conduct in connection with the subject property.

E. The parties hereto desire to settle and resolve their dispute regarding the Action and the claims raised therein in order to avoid the uncertainty, cost and expenditure of time involved in the Action, upon the terms and conditions set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and terms set forth herein, the sufficiency of which is hereby acknowledged, the undersigned Parties agree as follows:

1. **DISMISSAL OF ACTION.** CITIZENS shall file a Request for Dismissal of the Action in its entirety with prejudice within 5 days of receipt of a copy of this settlement agreement executed by SMMC and MRCA.

2. **COSTS AND ATTORNEYS' FEES.** The parties hereto acknowledge and agree that each of them are to bear their own costs, expenses and attorneys' fees arising out of the Action and this Agreement, except that, in the event any action is brought by any party hereto to enforce this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs in addition to all other relief to which the party or those parties may be entitled.

3. **MUTUAL RELEASE.** The parties hereto do hereby forever release and discharge each other party and each and all of their respective heirs, executors, administrators, successors, assigns, partners, affiliated or related entities, directors, officers, agents, employees, subcontractors, servants, representatives, indirectly or on behalf of the corporation, all other persons, firms, associations, or corporations connected with each and all of the above, including, but not limited to, their attorneys from any and all claims, demands, causes of action, liens, damages, loss, costs, attorneys' fees or expenses of any kind or nature whatsoever, known or unknown which any of the Settling Parties may have or may hereafter have against any and all of them by reason of any matter, cause or thing, pertaining to, arising out of the Action. This Agreement is intended to discharge each of the parties from any liability, known or unknown, manifested in the present or future, in connection with the claims and disputes arising out of the Action.

4. **WAIVER OF CIVIL CODE SECTION 1542.** The parties hereto acknowledge that there is a risk that subsequent to the execution of this Agreement, they may incur, suffer or sustain injury, loss, damage, costs, attorneys' fees, expenses, or any of these, which is in some way caused by or connected with the persons, entities and/or matters referred to above, or which is unknown and unanticipated at the time this Agreement is signed, or which is not presently capable of being ascertained; and further that there is a risk that such damages as are known may become more serious than any party now expects or anticipates. Nevertheless, the parties hereto acknowledge that this Agreement has been negotiated and agreed upon in light of that realization and the parties hereto expressly waive any rights they may have in such unsuspected claims and

understand and knowingly and specifically waive their rights under California Civil Code §1542, which provides as follows:

“A general release does not extend to the claims, which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

5. **EXCEPTION TO MUTUAL RELEASE.** The mutual release contained in paragraphs 3 and 4 above shall not insulate any person or entity from criminal or civil liability, if any, for the unauthorized removal and replacement of the previously-existing fence that crossed portions of the subject property, as alleged in paragraph 19 of the Petition (paragraph 22 of the First Amended Complaint) that occurred on or about May 5-7, 2021.

6. **NO ADMISSION OF LIABILITY.** The parties hereto acknowledge that the execution of this Agreement effects the settlement of claims which are contested and denied. This Agreement is the result of a compromise and shall never at any time for any purpose be considered as an admission of liability or responsibility on the part of any party herein released, who continue to deny such liability and to disclaim such responsibility.

7. **WARRANTY OF NON-RELIANCE.** The parties hereto represent and warrant that they have selected and retained their own attorneys, experts and consultants to inspect, analyze and advise them regarding their rights and the nature, extent, cause and cost with respect to each and every claim raised in the Action and this Agreement. The parties hereto further represent and warrant that they are not relying upon any representation, opinion, conclusion, recommendation or estimate expressed by or provided by any other party and/or any other party's attorneys, experts or consultants regarding any matter raised in the Action and this Agreement.

8. **WARRANTY OF NON-ASSIGNMENT.** The parties hereto represent and warrant that they have not sold, transferred, conveyed, assigned, hypothecated, or subrogated, any of the rights, claims, or causes of action released herein.

9. **WARRANTY OF AUTHORITY.** Each individual executing this document on behalf of any party hereto represents that he/she has been

authorized by said party to execute this document, and does so execute this document on behalf of said party.

10. **CONSTRUCTION OF AGREEMENT.** This Agreement shall be construed in accordance with its fair meaning, the captions being for the convenience of the parties only and not intended to describe or define the provision in the portions of the Agreement to which they pertain. Each party has agreed to the use of the particular language of the provisions of this Agreement, and any question of doubtful interpretation shall not be resolved by any rule of interpretation providing for interpretation against the party who causes an uncertainty to exist or against the draftsman. The parties hereto agree that Civil Code §1654, or any similar common law or equitable principle, is not applicable to this Agreement. Therefore, the terms of this Agreement have been freely negotiated by the parties and this Agreement shall not be construed against the drafter.

11. **GOVERNING LAW.** This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced, and governed under the laws of the State of California. By signing this Agreement, the parties hereto select the Los Angeles Superior Court as the proper and sole venue for any action filed to enforce, construe, or interpret this Agreement.

12. **JURISDICTION AND AUTHORITY OF THE COURT.** The parties hereto expressly stipulate and agree that any assigned judge in the Los Angeles Superior Court is expressly authorized to enter any orders necessary to enforce the terms of this Agreement. In accordance with Evidence Code §1123, the parties hereto specifically agree that: (1) this Agreement is admissible as evidence and subject to disclosure in any enforcement proceedings; (2) The Parties intend for this Agreement to be binding and enforceable pursuant to the terms of CCP §664.6 and (3) the Court, upon motion of either Party, may enter judgment pursuant to the terms set forth in this Agreement.

13. **BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and each of their respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, affiliates and related entities, officers, directors, principals, agents, servants, employees, subcontractors, representatives, and all persons, firms, associates and/or corporations connected with them including without limitation their respective attorneys.

14. **SEVERABILITY.** If any provision, or any part thereof, of this Agreement shall for any reason be held by a California Court of competent

jurisdiction to be invalid, unenforceable or contrary to public policy or any law, then the remainder of this Agreement shall not be affected thereby, so long as the intent of this Agreement can be given full effect and all releases and waivers remain mutual and effective.

15. **ENTIRE AGREEMENT.** This Agreement contains the entire understanding between the parties hereto with regard to the matters herein set forth. There are no representations, warranties, agreements, arrangements, undertakings, oral or written, between or among the parties hereto relating to the subject matter of this Agreement which are not fully expressed herein.

16. **AMENDMENT.** This Agreement may only be modified if the modification is in writing and is signed by the party against whom enforcement is sought.

17. **COUNTERPARTS.** This Agreement may be executed in several counterparts and all so executed shall constitute one agreement, which shall be binding upon the parties hereto, notwithstanding that all parties' signatures do not appear on the same page. If an original or digital signature is affixed by a party to a counterpart of this Agreement, it may be relied upon by all Parties for any and all purposes relating to the Agreement.

WHEREFORE, the parties hereto execute this Agreement as follows:

(SIGNATURES FOLLOW ON THE NEXT PAGE)


DATED: _____

**CITIZENS FOR THE
RESPONSIBLE USE OF CARBON
AND LA COSTA BEACHES, a
California unincorporated association**

By: 
MICHAEL N. FRIEDMAN,
its President


DATED: June 10, 2022

**SANTA MONICA
MOUNTAINS CONSERVANCY**

By: 
its Chief Deputy Director

DATED: June 10, 2022

**MOUNTAINS
CONSERVATION AND
RECREATION AUTHORITY**

By: 
its Chief Deputy Executive
Officer