

CALIFORNIA COASTAL COMMISSION

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**PRESS RELEASE****JUDGE AWARDS COASTAL COMMISSION \$3.9 MILLION, ORDERS ILLEGAL DEVELOPMENT REMOVED**

TO ALL MEDIA

FOR IMMEDIATE RELEASE 01/28/11

CONTACT: Peter Douglas 415-407-3208

Los Angeles—

A Superior Court judge has awarded the California Coastal Commission over \$3.9 million in fines and penalties for Coastal Act violations in the Santa Monica Mountains. Judge Holly Kendig issued a ruling today, finding that property owner Madalon Witter and her manager, Douglas Richardson, had illegally developed a 40-plus-acre site in the Santa Monica Mountains with unpermitted trailers, residential structures, roads, storage sheds, pipelines, tanks and abandoned vehicles. Witter and Richardson had been renting out as many as 25 illegal, sub-standard residential structures since at least 1992, on land zoned for a maximum of four houses. Inadequate power and water systems and sewage discharge created health hazards, according to court documents. Witter and Richardson also subdivided the property without the required permits, intending to sell it off in smaller lots.

“This is one of the worst Coastal Act violations we have seen,” said Peter Douglas, the Coastal Commission’s Executive Director. “We have been trying to resolve this case for nearly 20 years. It is gratifying to get such a strong signal of support from the court.”

In papers filed for the case, the Commission noted that ongoing harm to the environment was caused by the clearing of sensitive habitat, vegetation removal, erosion of graded areas, and contamination of soil and water from various toxic substances, including from the deterioration of numerous non-operational vehicles. The Santa Monica Mountains ecosystem contains some of the rarest habitat types in the world, and its plants and animals are protected under the Coastal Act.

Judge Kendig ordered Witter and Richardson to pay more than \$3.9 million in fines and penalties to the state, in recognition of the gravity and duration of their violations as well as the costs associated with years of enforcement proceedings. The property owner was first notified of the violations in 1992, but continued to operate the site illegally, bringing in more trailers, building additional structures and continuing to grade roads and housing pads. The court also issued an injunction, requiring that the site be restored.

Douglas pointed out that Witter and Richardson profited from their illegal rentals for years. Most of the illegal structures also required grading that removed protected plants and harmed the sensitive habitat. None of them had adequate water, power or sewer facilities. Some discharged sewage and gray water directly onto the ground. “This is a great outcome and we are gratified that the Court required both restoration of precious coastal resources and penalties to provide a deterrent to others who might ignore the protections provided by the Coastal Act,” concluded Douglas.

#

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 01/27/11

DEPT. 42

HONORABLE HOLLY E. KENDIG

JUDGE M. ARTIS

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

N. ALVARADO, C/A

Deputy Sheriff

NONE

Reporter

BC356711

Plaintiff

Counsel

CALIFORNIA COASTAL COMMISSION

VS

Defendant

MADALON K. WITTER ET AL

Counsel

NO APPEARANCES

NATURE OF PROCEEDINGS:

COURT ORDER

In this cause, the Court renders its decision as set forth below and as fully reflected in the Statement of Decision signed and filed this date:

The Court finds that plaintiff, California Coastal Commission, is entitled to judgment on the complaint against defendants, Madalon K. Witter and Douglas Richardson. The plaintiff is entitled to an injunction directing the defendants to remedy the Coastal Act violations on their property, and the Court awards the plaintiff civil penalties of \$30,000.00 plus \$3,891,000.00 which represents \$1,000.00 per day from June 2, 1992, to October 9, 1998, and August 9, 2006, to the date of the judgment, for a total of \$3,921,000.00. The plaintiff is ordered to prepare and submit a proposed judgment, including an injunction, within 10 days of this ruling.

The Judicial Assistant is directed to give notice.

CLERK'S CERTIFICATE OF MAILING/
NOTICE OF ENTRY OF ORDER

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I

MINUTES ENTERED 01/27/11 COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 01/27/11

DEPT. 42

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Plaintiff

Counsel

CALIFORNIA COASTAL COMMISSION

VS

Defendant

MADALON K. WITTER ET AL

Counsel

NO APPEARANCES

NATURE OF PROCEEDINGS:

served Notice of Entry of the above minute order of 01-27-2011 and the Court's Statement of Decision upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

Date: 01-28-2011

John A. Clarke, Executive Officer/Clerk

By:

Michael N. Artis

Christina B. Arndt
OFFICE OF THE ATTORNEY GENERAL
300 South Spring Street, Suite 1702
Los Angeles, California 90013

Vicken S. Papazian
517 East Wilson Avenue, Suite 101
Glendale, California 91206

MINUTES ENTERED
01/27/11
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 01/27/11

DEPT. 42

HONORABLE HOLLY E. KENDIG

JUDGE M. ARTIS

DEPUTY CLERK

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ELECTRONIC RECORDING MONITOR

N. ALVARADO, C/A

Deputy Sheriff

NONE

Reporter

BC356711

Plaintiff

Counsel

CALIFORNIA COASTAL COMMISSION

VS

Defendant

MADALON K. WITTER ET AL

Counsel

NO APPEARANCES

NATURE OF PROCEEDINGS:

Dennis P. Wilson
LAW OFFICES OF DENNIS P. WILSON
3322 West Victory Boulevard
Burbank, California 91505

JAN 27 2011

John A. Clarke, Executive Officer/Clerk
By _____, Deputy
M. Artis

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

CALIFORNIA COASTAL COMMISSION,

Plaintiff,

v.

**MADALON WITTER, DOUGLAS
RICHARDSON, and DOES 1 through 100,
inclusive,**

Defendants.

Case No. BC 356711

STATEMENT OF DECISION

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	Page
Summary	1
Findings of Fact	2
A. Property History	2
B. Witter and Richardson’s Use of the Property	4
C. Current Physical Development	5
D. Subdivision and Lot Line Adjustment	6
E. Environmental Effects	7
The Development on Witter’s Property Violates the Coastal Act	8
A. Physical Development	8
B. Grading and Vegetation Removal	9
C. Land Division	10
Witter and Richardson Are Both Liable For the Coastal Act Violations	10
The Commission is Entitled to an Injunction	11
The Commission is Entitled to Penalties	11
A. Application of Penalty Factors	12
1. Nature, Circumstance, Extent and Gravity of Violation	12
2. Susceptible to Remediation	12
3. Sensitivity of the Resource	13
4. Cost to the State	13
5. Prior History of Violations	15
6. Profit	15
B. Civil Penalties Under Public Resources Code Section 30820, Subdivision (a)(1).	16
C. Civil Penalties for Knowing and Intentional Violations Under Public Resources Code Section 30820, Subdivision (b).	16
D. Penalty Calculation	18
Conclusion	20

1 This matter came on for trial on May 24, 2010. Christina Bull Arndt and Wyatt Sloan-
2 Tribe, of the Office of the Attorney General, appeared on behalf of plaintiff the California Coastal
3 Commission (Commission). Dennis Wilson and Vicken Papazian appeared on behalf of
4 defendants Douglas Richardson and Madalon Witter. Testimony concluded on June 17, 2010.
5 The parties submitted written closing briefs and the Court heard closing argument on October 18,
6 2010. The Court, having considered the evidence and heard the arguments of counsel and being
7 fully advised, issues the following statement of decision.

8 SUMMARY

9 The Commission brought this action to enforce the Coastal Act against defendants Madalon
10 Witter and Douglas Richardson. The evidence overwhelmingly and conclusively demonstrated
11 Coastal Act violations on the Santa Monica mountains property that Witter owns and Richardson
12 manages. For at least the past 18 years, Witter and Richardson have operated the property as a de
13 facto mobile home park yet never obtained any coastal development permit to do so. The
14 property has held trailers, sheds, workshops, animal enclosures, wells, tanks, and piles of trash
15 and debris. Witter and Richardson's tenants discharged their raw sewage and gray water directly
16 onto the ground. Richardson cleared acres of vegetation from the property, which the
17 Commission conclusively established over a decade ago and neither Witter nor Richardson
18 challenged. In addition, Richardson recorded documents purporting to adjust the property lot
19 lines. All of this activity requires a coastal development permit under the Coastal Act. The
20 evidence is undisputed that Witter and Richardson never obtained a coastal development permit
21 for any of this development.

22 Richardson has largely cleared the property of residences now, following a criminal
23 prosecution by the District Attorney, but Coastal Act violations still remain. The Commission is
24 entitled to an injunction ordering Witter and Richardson to remedy the remaining violations on
25 their property. The Commission is also entitled to civil penalties under the Coastal Act, because
26 Witter and Richardson knowingly violated the Coastal Act for over 18 years.

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FINDINGS OF FACT

A. Property History

Madalon Witter owns about 42 acres of land at 2100 McReynolds Road, in the Santa Monica Mountains area of unincorporated Los Angeles County (hereinafter, the property). Douglas Richardson acquired a portion of the property in 1964 and the rest in 1980. Richardson thereafter subdivided the property and in 1987 transferred it to Witter in five individual deeds so that Witter could sell the land in different configurations. Richardson remained on the property to manage it, and he continues to live on the property. At all times relevant to this action, Richardson was the caretaker of the property.

The property is in the coastal zone as defined by the California Coastal Act (Pub. Resources Code, § 30000 et seq.). The Coastal Act charges the Commission with regulating land use in the coastal zone. With limited exceptions not relevant here, any development in the coastal zone requires a coastal development permit.

In 1992, the Commission received a report of unpermitted development on the property. On June 2, 1992, Commission employees John Ainsworth and Susan Friend met Richardson and visited the property. Ainsworth saw multiple mobile homes and trailers on the property, which meet the Coastal Act definition of development and therefore require a permit.

During that 1992 visit Ainsworth also saw fresh grading on the property. Richardson told him he had bladed off the road with a bulldozer. Ainsworth could tell that the land was recently graded because there was no vegetation on the graded areas, nor was there any evidence of erosion or the effects of rain. The color of the cut material was not weathered in any way, and there was extensive fresh material cast downslope. In addition, there were fresh bulldozer tracks. At this meeting, Ainsworth told Richardson that the mobile homes, vegetation clearance, and road grading were development that required a coastal development permit. Richardson became angry and confrontational, and the meeting ended.

After the June 1992 meeting, Commission staff corresponded with Richardson about the property, both to advise Richardson about the existence of violations as well as to attempt to obtain access to perform a complete inspection. Richardson and Witter neither submitted permit

1 applications nor agreed to a site inspection. The Commission asked its counsel at the Office of
2 the Attorney General to obtain an inspection warrant in order to inspect the property thoroughly.
3 Commission staff including Ainsworth executed the inspection warrant on October 27, 1993 and
4 visited all areas of the property.

5 Commission staff continued their investigation and enforcement actions throughout the
6 1990s, which included issuing cease and desist orders directing Witter and Richardson to either
7 obtain permits or remove the unpermitted development. After these attempts failed to compel
8 compliance with the Coastal Act, the Commission in 1995 filed a lawsuit against Witter and
9 Richardson under the Coastal Act.

10 In September 1997, Witter submitted an application to the Commission for a vested rights
11 determination. Witter contended that all the development on the property — including 39 trailer
12 pads — legally preexisted the Coastal Act. Commission staff reviewed the application, requested
13 additional information, researched Commission permit records as well as County records, and
14 prepared a staff report. Cartographers in the Commission's technical services unit also prepared
15 maps, diagrams, and visual aids. The Commission found the following development to be vested
16 because it existed legally on the property prior to the Coastal Act permit requirements: one
17 private domestic water well and pump; one single-family home permitted in 1941 (16 foot by 24
18 foot); one storage structure permitted in 1952 (168 square feet); and one garage (600 square feet).
19 The Commission concluded that all other development on the property was not vested, and
20 therefore required a coastal development permit.

21 The vested rights determination also evaluated the extent of vegetation removal and
22 grading. It compared aerial photographs from 1976, just prior to the inception of the Coastal Act,
23 and 1993. (See Ex. 9, p. 393, and Ex. 30 [exhibit to vested rights determination].) It compared
24 the roads and cleared areas existing in 1976 with the roads and cleared areas in 1993. The
25 Commission determined that the clearance Richardson performed in that time frame was not
26 vested or permitted and therefore violated the Coastal Act. Exhibit 30 depicts the scope of
27 clearance accomplished between 1976 and 1993 as patches outlined in dashed lines. Exhibit 9
28

1 details how much land was cleared in each area, and estimates that Richardson cleared a total of
2 210,560 square feet, or 4.88 acres. (Ex. 9, pp. 377-378.)

3 The vested rights determination as to the vegetation clearance dates to the time of the 1993
4 photograph. Ainsworth's trial testimony validated the vested rights determination. He testified
5 that he saw the areas of expanded grading and vegetation removal depicted in Exhibit 30 when he
6 visited the property in 1993. He went to the areas identified as numbers 2, 5, 6A, 6B, and 6C on
7 Exhibit 30, and saw the grading and vegetation clearance in those areas. The Court found
8 Ainsworth's testimony to be credible.

9 In 1998, the Commission agreed to dismiss its enforcement action in order to give Witter
10 and Richardson an opportunity to file coastal development permit applications to bring the
11 property into compliance with the Coastal Act. Witter did not file permit applications until 2005.
12 In 2006, the Commission denied the applications, and the Commission reinstated its enforcement
13 action as the present action, as provided for in the 1998 agreement. Witter filed a petition for writ
14 of mandate challenging the Commission's denial. The superior court denied the writ of mandate,
15 finding that substantial evidence supported the Commission's denial of the applications. Witter
16 appealed, and the Court of Appeal affirmed. (*Witter v. California Coastal Com.* (September 1,
17 2009, B204871).) The Court of Appeal decision, quoting the underlying staff report, described
18 the development on the property as "massive visual degradation:"

19 consisting of unpermitted grading; removal of major vegetation; at least 23 trailer
20 pads; at least three single family homes; four areas with stables, barns, and pens; two
21 concrete structures; a garage; storage sheds; an outhouse; a yurt; sheds attached to
trailers; pipes; abandoned vehicles, including cars, boats, trucks and buses; tents;
trash; construction materials and equipment; and water wells and tanks.

22 (*Witter v. California Coastal Com., supra*, pp. 24-25.)

23 **B. Witter and Richardson's Use of the Property**

24 During the entire time that either Witter or Richardson owned the property, they rented out
25 flat areas to tenants. These tenants would move onto the property with trailers, motor homes, or
26 other vehicles. Some tenants would build additional makeshift structures onto the residences and
27 often tenants brought additional material, vehicles, structures, and refuse on the land. Many
28 tenants would move from one area of the property onto another.

1 Commission enforcement officer Tom Sinclair visited the property five or six times from
2 2002 to 2010, and he testified that, until his 2007 visit, there were generally about 25 trailers and
3 other residences on the property. Richardson testified that there were never less than 12 tenants,
4 and at times as many as 30. A “massive water distribution network,” in Richardson’s words,
5 supplied water to the tenants. Defendants’ tenants ran sewage and gray water, such as washing
6 machine discharge, directly into the ground. Defendants and their tenants also polluted the
7 ground with petroleum discharge, which Sinclair touched and smelled to identify as petroleum.
8 The photos in Exhibit 31 document this activity.

9 Defendants and their tenants ran unpermitted electrical wiring throughout the property.
10 Typically every residence had an electric meter, and throughout the property there had been about
11 30 meters. Richardson provided those meters, and he also installed circuit breaker boxes.

12 **C. Current Physical Development**

13 The County of Los Angeles prosecuted Richardson for the illegal condition of the property,
14 and pursuant to his plea agreement, Richardson has removed many of the residences on the
15 property. But many Coastal Act violations remain.

16 Sinclair visited the property on April 27, 2010. Sinclair testified that he walked all around
17 the property at that time and took photographs. In addition to his testimony on the state of the
18 property he found in his multiple prior site visits, Sinclair testified as to the current state of the
19 property. The Court found his testimony to be credible and reliable.

20 Sinclair testified to ten individual sites with existing physical development. Exhibit 26A,
21 an aerial photo of the site, identified these sites. Sinclair’s testimony as well as individual
22 exhibits also evidenced this development:

23 • Exhibits 32-1 and 32-2 show accumulated material and debris in a large, open clearing on
24 the property.

25 • Exhibits 32-3 and 32-4 show development surrounding the vested garage. The two trucks
26 in this photo are stationary and have not moved from this spot in at least five years. (See Ex. 31-
27 41, dated August 22, 2005.)

28

- 1 • Exhibit 32-5 depicts development including sheds, a tank, a shipping container, and
2 several 55-gallon drums.
- 3 • Exhibit 33 depicts a tented structure, a shed, a generator, and assorted other detritus.
- 4 • Exhibit 34 shows a number of structures, including a concrete building with another
5 structure next to it, a large shed on the other side, two vans, and piles of lumber and rebar.
- 6 • Exhibit 35 shows a site with a shed and a trailer.
- 7 • Exhibit 36 shows a site with a well, a shed, and a trailer chassis.
- 8 • Exhibit 37 depicts a building with an attached platform for a trailer.
- 9 • Exhibit 38 depicts an area on the property with a workshop and a metal storage shed and
10 other debris. (See also Exh. 31-84, depicting same development.)
- 11 • Exhibit 39 depicts a trailer and barrels.

12 In addition, there is plumbing infrastructure on the property, primarily consisting of PVC
13 pipe and hose which distributed water to the tenants. (Ex. 40.) There is also electrical
14 infrastructure, including wires and cables. (Ex. 41.)

15 Sinclair testified that none of this development has a coastal development permit.
16 Richardson confirmed that the property has not received any coastal development permits since
17 1982.

18 **D. Subdivision and Lot Line Adjustment**

19 Richardson applied for a coastal development permit in 1978 authorizing the division of the
20 top portion of the property into three parcels. The Commission issued that permit. In 1982,
21 Richardson again applied for, and received, a coastal development permit authorizing subdivision
22 of the property, this time permitting the division of the lower portion into three separate parcels.
23 Richardson later sold two of those parcels, and they are no longer part of the property. These
24 were the last coastal development permits issued for the property. Thus, the proper, permitted
25 configuration is in four parcels.

26 Nevertheless, in 1988, Witter recorded a division of the property with the County of Los
27 Angeles for which she had not received a coastal development permit. Witter recorded a second
28 unpermitted division in 1989.

1 **E. Environmental Effects**

2 Commission ecologist John Dixon, Ph.D., testified on behalf of the Commission to explain
3 the environmental context and consequences of Witter and Richardson's conduct. Witter and
4 Richardson offered no opposing evidence. Dixon testified that the Witter property is located in
5 the heart of one of the most pristine Mediterranean habitats left on the planet. As is characteristic
6 of the surrounding Santa Monica Mountains, this property contains large communities of native
7 chaparral and oak woodland that the Commission considers environmentally sensitive habitat
8 area. The property also encompasses riparian areas.

9 The unpermitted clearance of the native chaparral on the property contributes to negative
10 environmental consequences: without the chaparral root network to tie the topsoil down, the
11 property is subject to increased erosion from rainfall. Physically disturbing the earth by cutting or
12 grading intensifies erosion. This erosion then leads to increased siltation in any down-flow
13 streams or water bodies, disrupting the natural habitat and endangering the species dependant on
14 those water bodies. As the water carries the sediment downstream over time, it can have
15 deleterious effects on even distant water bodies.

16 Similarly, the unpermitted clearance of chaparral and grading on the site allows non-native
17 weed species to take hold and flourish. These weeds disrupt the habitat of the native animal
18 species that have co-evolved with the chaparral because the invasive plants fail to fill the
19 chaparral's ecological niche.

20 Witter and Richardson's tenants' ongoing discharge of human and animal waste, besides
21 polluting the property, has the potential to spread e-coli and other pathogens to downstream water
22 bodies. Moreover, the haphazard electrical network strung throughout the property, often through
23 tree canopies and chaparral, poses an ongoing fire hazard to this property as well as surrounding
24 homes and structures.

25 The structural developments on the property pose their own harms to the property's
26 sensitive environmental resources. The unpermitted structures and debris that dot the Witter and
27 Richardson property prevent regrowth of the cleared native vegetation, and their potentially toxic
28 contents remain unknown. Similarly, the petroleum products Commission staff observed spilled

1 in various places are known toxins harmful to most organisms and capable of polluting soil for
2 many years.

3 The Court finds that Dixon’s testimony is persuasive evidence that Witter and Richardson’s
4 development has deleterious effects on an important environmental resource.

5 **THE DEVELOPMENT ON WITTER’S PROPERTY VIOLATES THE COASTAL ACT**

6 The Coastal Act requires that “any person wishing to perform or undertake any
7 development in the coastal zone . . . shall obtain a coastal development permit.” (Pub. Resources
8 Code, § 30600, subd. (a).) The Legislature broadly defined “development” in order to protect
9 coastal resources:

10 “Development” means, on land, in or under water, the placement or erection of any
11 solid material or structure; discharge or disposal of any dredged material or of any
12 gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or
13 extraction of any materials; change in the density or intensity of use of land,
14 including, but not limited to, subdivision pursuant to the Subdivision Map Act
(commencing with Section 66410 of the Government Code), and any other division
of land, including lot splits . . . ; and the removal or harvesting of major vegetation
other than for agricultural purposes, kelp harvesting, and timber operations . . .”

15 (Pub. Resources Code, § 30106.) The Coastal Act requires that courts liberally construe it to
16 accomplish its purposes and objectives. (Pub. Resources Code, § 30009.) In keeping with this,
17 courts have given effect to the broad language of section 30106. For example, *Gualala Festivals*
18 *Committee v. California Coastal Com.* (2010) 183 Cal.App.4th 60, 68, found that a fireworks
19 display was development under the Coastal Act because it entailed gaseous discharge on the land,
20 and *La Fe, Inc. v. County of Los Angeles* (1999) 73 Cal.App.4th 231 concluded that lot line
21 adjustments — even if not resulting in the creation of additional parcels — require a coastal
22 development permit.

23 The property is in the coastal zone. Therefore, any development on the property requires a
24 coastal development permit.

25 **A. Physical Development**

26 All of the development on the ten individual sites identified in trial on Exhibit 26A and as
27 Exhibits 32 through 39 requires a coastal development permit. Construction materials, debris,
28 barrels, tanks, and sheds all meet the Coastal Act definition of development because they are

1 “placement of solid materials and structures.” Likewise, the vehicles depicted in Exhibits 32-3,
2 32-4, and 34-3 are development under the Coastal Act because they are evidently immobile. In
3 addition, the remaining electrical and plumbing infrastructure also requires a permit.

4 Sinclair testified that none of this development has a coastal development permit.
5 Richardson confirmed that the property has not received any coastal development permits since
6 the 1982 subdivision permit. Therefore, the above developments require a coastal development
7 permit, do not have one, and violate the Coastal Act.

8 **B. Grading and Vegetation Removal**

9 Exhibit 30 also depicts Coastal Act violations. This exhibit was part of the Commission’s
10 vested rights determination, and it established the extent of vegetation clearance that was not
11 vested, i.e., occurred after the Coastal Act’s passage. This grading and vegetation removal was
12 never permitted and therefore remains a Coastal Act violation.

13 The Commission’s vested rights determination — and therefore Exhibit 30 also — is a
14 final, conclusive decision. Witter and Richardson could have challenged it within 60 days after
15 the Commission’s action. (See Pub. Resources Code, § 30801.) But having let those findings
16 become final, they cannot attempt to challenge them over a decade later. The doctrine of
17 collateral estoppel bars parties from relitigating issues that an administrative agency acting in a
18 quasi-judicial capacity already resolved. (*Castillo v. City of Los Angeles* (2001) 92 Cal.App.4th
19 477, 481.) Thus, defendants’ failure to challenge and obtain a reversal of the Commission’s
20 vested rights decision forecloses any future litigation over the issues addressed in that
21 determination. (*Patrick Media Group v. California Coastal Com.* (1992) 9 Cal.App.4th 592,
22 617.) Accordingly, the Court lacks jurisdiction to consider Witter and Richardson’s untimely
23 claims that Exhibit 30 fails to prove that they are responsible for unpermitted grading and
24 vegetation clearance on the property.

25 The Court also rejects Witter and Richardson’s argument that the parties’ 1998 settlement
26 agreement affected the finality of the vested rights determination. To the contrary, the settlement
27 agreement incorporates and relies upon the vested rights determination. (See Exhibit 10, §§
28 4.1.2.3, 4.1.2.4, 4.1.2.8, and 4.1.211 [specifically excluding vested development].) The vested

1 rights determination and 1998 settlement agreement are separate documents with discrete legal
2 effects. Moreover, the settlement agreement could not have impacted the vested rights
3 determination because the vested rights determination had already become final by operation of
4 law on October 10, 1998, and the parties had not fully executed the settlement agreement until
5 October 23, 1998. (Exhibit 10, p. 10.) The settlement agreement could not have changed the
6 already-final findings of the vested rights determination. Therefore, Exhibit 30 is conclusive
7 evidence of unpermitted grading and vegetation clearance.

8 **C. Land Division**

9 Finally, Witter and Richardson obtained approval for earlier subdivisions from the
10 Commission, yet subsequently recorded numerous lot line adjustments without obtaining coastal
11 development permits. Although Witter submitted a permit application for the lot line adjustment
12 in 2005, the Court of Appeal held the Commission properly denied that application. Therefore,
13 that land division remains conclusively unpermitted and also violates the Coastal Act.

14 **WITTER AND RICHARDSON ARE BOTH LIABLE FOR THE COASTAL ACT** 15 **VIOLATIONS**

16 The Court rejects Witter's argument that she is not liable for the Coastal Act violations
17 because she did not personally perform the development. The uncontested evidence showed that
18 she has owned the property since 1987 and has lived on it, at least part time, since 1980. She
19 personally received rent payments on the illegal development. As the owner, she controls what
20 happens upon the property, and she is legally responsible for the consequences of its use.

21 Moreover, liability under the Coastal Act does not require a showing that the property
22 owner personally undertook unpermitted development. (Cf. *Leslie Salt Co. v. San Francisco Bay*
23 *Conservation and Development Commission* (1984) 153 Cal.App.3d 605, 618 [property owner is
24 strictly liable for unpermitted fill in San Francisco Bay under an analogous statutory scheme even
25 if it did not request it or even know that the work occurred].) Indeed, merely holding property
26 with unpermitted development is a violation of the Coastal Act. (*Feduniak v. California Coastal*
27 *Com.* (2007) 148 Cal.App.4th 1346, 1380 [private golf course that pre-dated owners' acquisition
28 of property by nearly twenty years is a Coastal Act violation].)

1 (3) The sensitivity of the resource affected by the violation.

2 (4) The cost to the state of bringing the action.

3 (5) With respect to the violator, any voluntary restoration or remedial measures
4 undertaken, any prior history of violations, the degree of culpability, economic
5 profits, if any, resulting from, or expected to result as a consequence of, the violation,
6 and such other matters as justice may require.

6 (Pub. Resources Code, § 30820, subd. (c).)

7 **A. Application of penalty factors**

8 **1. Nature, circumstance, extent and gravity of violation**

9 Witter and Richardson's violations are substantial. They spanned more than 40 acres, over
10 18 years, and dozens of individual violations. Witter and Richardson's conduct, and that of their
11 tenants, compounded each violation — such as individual trailer sites — with additional
12 violations: sewage discharge, electrical service, plumbing hookups, trash dumping. They
13 massively increased the density and intensity of use of the land by bringing twenty or more
14 residences into what had been four lots zoned for single residences. Moreover, Witter and
15 Richardson attempted to permanently increase the density of use by carving the land up into
16 smaller pieces so that they could be sold — and potentially developed — in multiple smaller lots.
17 Ainsworth testified that this is one of the most significant violations the Commission has ever
18 seen in the Santa Monica Mountains because of the extensive vegetation clearance and grading
19 and the resulting resource damage.

20 The violations that remain on the property are a fraction of what had existed, and yet by any
21 other standard would still be huge. Although the Commission has grouped the violations into
22 sites, each site has multiple structures. Even after years of the County attempting to rid the
23 property of violations through Richardson's criminal prosecution, there still remain sheds, a
24 trailer, debris and materials, immobile vehicles, dozens of barrels, a well, storage containers, and
25 multiple other structures and assorted debris.

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1 **2. Susceptible to remediation**

2 The Court must consider if the violation is susceptible to remediation. The Court finds that
3 Witter and Richardson’s violations can be remediated if they comply with the terms of the
4 injunction.

5 **3. Sensitivity of the resource**

6 While the Coastal Act charges the Commission with stewardship of the entire California
7 coastal zone, the Act requires heightened protection for environmentally sensitive habitat areas.
8 (Pub. Resources Code, § 30240; *Feduniak v. California Coastal Com.*, *supra*, 148 Cal.App.4th at
9 p. 1376.) As described in the Court’s factual findings, the property is located in pristine
10 ecological habitat and defendants’ Coastal Act violations directly threatened these sensitive
11 environmental resources. Defendants produced no evidence contradicting the Commission’s
12 evidence on the environmental harm of their activities.

13 In fact, the Court of Appeal already determined that defendants’ widespread unpermitted
14 development is a source of environmental harm. Specifically, in *Witter v. California Coastal*
15 *Com.* (2009) 2009 WL 2751152 (Exhibit 50), the Court of Appeal held that “[s]ubstantial
16 evidence supports the [Commission’s] finding water quality on the Property would be impacted.”
17 (*Id.* at p. 7.) The court rejected Witter’s argument that there was no evidence the development
18 caused any deterioration of the stream:

19 The Commission stated it was concerned the animal enclosures or septic tanks might
20 overflow and cause pollution to wash down into the stream and several of the mobile
21 homes discharged polluted water directly on ground and not into a septic system. The
22 report noted that vegetation removal and other unpermitted uses could cause erosion
23 because there was no longer any brush or underbrush to slow surface water flow,
24 preventing runoff from being absorbed into the ground, resulting in increased
25 pollution and sedimentation in the streams. These concerns are a matter of common
26 sense.

27 Thus, even though the report was stated in terms of potential problems, the
28 Commission was fulfilling its obligation to protect water quality.

29 (*Id.* at p. 8, emphasis added.) Thus, the Court of Appeal already conclusively established the
30 potentially serious environmental consequences of defendants’ unpermitted development and
31 noted this as a valid concern for Coastal Act enforcement.

1 **4. Cost to the State**

2 Commission staff has been attempting to bring the property into compliance with the
3 Coastal Act for over 18 years. The matter has occupied many Commission staffers who have
4 investigated the violations, inspected the property, communicated with Witter and Richardson and
5 their attorneys and consultants, brought formal enforcement proceedings to the Commission,
6 participated in the litigation of multiple cases and analyzed the property, the violations, and the
7 defendants' various applications to the Commission.

8 In 1992, when Commission staff learned of the violations, two Commission employees
9 visited the property together. Later, they corresponded with Richardson about the property, both
10 to advise him about the existence of violations as well as to attempt to obtain a complete
11 inspection. By refusing to cooperate, Richardson forced the Commission and its counsel to
12 obtain an inspection warrant in order to inspect the property thoroughly in 1993.

13 Commission staff continued their investigation and enforcement actions throughout the
14 1990s, which included issuing cease and desist orders directing Witter and Richardson to either
15 obtain permits or remove the unpermitted development.

16 Commission enforcement officer Tom Sinclair visited the property five or six times as well
17 as viewing it from adjacent land 10 to 20 times; Ainsworth and Dixon both visited the property
18 three times, and Commission staffer Steve Hudson also visited the property. Ainsworth met with
19 Witter's consultant, in an attempt to explain how to bring the property into compliance, and went
20 through every violation in detail.

21 When Witter submitted a vested rights application, the Commission's review was
22 extensive, entailing work by several staff members who reviewed the application, requested
23 additional information, researched Commission permit records as well as County records, and
24 prepared the staff report. It also entailed the work of cartographers in the Commission's technical
25 services unit who prepared maps, diagrams, and visual aids. Indeed, the size alone of the vested
26 rights determination (Exhibit 9, 184 pages) as well as the two staff reports on Witter's 2005
27 permit applications (Exhibit 21, 52 pages, without exhibits; Exhibit 22, 193 pages) indicates the
28 massive amount of work required to address violations the size of those on this property.

1 The Commission expended additional resources bringing the first lawsuit for Coastal Act
2 enforcement, and the Commission staff spent yet more time negotiating a tolling agreement to
3 give Witter and Richardson an opportunity to correct the violations. But Witter's permit
4 applications were ineffective, which forced the Commission to reinstate its enforcement lawsuit
5 and take it to trial. Richardson conceded that he has received many written and oral
6 communications from the Commission over the years.

7 Thus, the cost to the State has been significant. It has dedicated the labor hours of its
8 analysts, enforcement officers and attorneys in order to attempt to bring this property into legal
9 compliance. Not only did the State have to pay its staff to enforce the law against Witter and
10 Richardson, but their time was necessarily taken away from other Coastal Act violators. The
11 length of this proceeding and amount of staff time it has consumed are considerable.

12 **5. Prior History of Violations**

13 The photos at exhibit 30 depict the history of prior violations on the property over the past
14 two decades. There were trailers, motorhomes, and various buildings, temporary and otherwise;
15 sheds, workshops, and storage containers; animal pens, corrals, and stables; wells and tanks;
16 abandoned vehicles; piles of construction material and salvage; and all manner of junk and trash.
17 The property bore all the indicia of haphazard development including outdoor plumbing,
18 uncontained debris, and accumulated waste. In short, Richardson and Witter put massive
19 residential development on their property, with all the concomitant burdens to the surrounding
20 resources, yet never obtained a permit for any of it.

21 **6. Profit**

22 Throughout their ownership, Richardson, and then Witter, maintained rent-paying tenants
23 on the property. These tenancies were themselves "development," as defined in the Coastal Act,
24 because they increased the density and intensity of the use of the land and entailed physical
25 residential structures.

26 Tom Sinclair estimated that there were 25 residences on the property in both 2002 and
27 2005. Even Richardson admitted that there were never less than about 12 residences on the
28 property.

1 Richardson and Witter charged at least \$485 per month for rent. This amount appears to be
2 a minimum, as they charged as much as \$970 per month for tenants in 2006. (Ex. 76, p. 2-2.)
3 Even at Richardson's estimate of 12 tenants, this equals a minimum \$69,840 per year in income
4 from Coastal Act violations. Under Sinclair's observations, of about 25 trailers on the property,
5 Witter and Richardson were earning at least \$145,500 per year from their violations, and in fact
6 even more given that some tenants paid well more than \$485. Since 1992, this is an estimated
7 minimum of \$2.6 million in income from illegal coastal development.

8 Richardson admits that the rents they received from the property entirely supported them.
9 This was not a side venture for them; rather, they made their entire livelihood from their Coastal
10 Act violations on the property. Yet they never obtained a license to operate a trailer park, nor
11 paid taxes on the land as developed, nor obtained a coastal development permit. Thus,
12 Richardson and Witter directly profited from their illegal development of the property. They had
13 the benefit of a business without the burden of proper permits.

14 **B. Civil Penalties under Public Resources Code section 30820, subdivision**
15 **(a)(1).**

16 The evidence supports penalties under Public Resources Code section 30820, subdivision
17 (a)(1), which states:

18 Civil liability may be imposed by the superior court in accordance with this article on
19 any person who performs or undertakes development that is in violation of this
20 division or that is inconsistent with any coastal development permit previously issued
21 by the commission . . . in an amount that shall not exceed thirty thousand dollars
22 (\$30,000) and shall not be less than five hundred dollars (\$500).

23 A violation under subdivision (a)(1) is akin to a strict liability offense. The foundation for
24 the violation does not rest on defendants' knowledge or intent (which subdivision (b) penalties
25 address) but simply breach of the duty to obtain permits. (Cf. *Leslie Salt Co. v. San Francisco*
26 *Bay Conservation and Development Commission*, *supra*, 153 Cal.App.3d at p. 618.) Here, Witter
27 and Richardson "undertook" development of the property, inter alia, by renting their land to
28 dozens of tenants, clearing and grading the ground, and changing the parcel maps.

1 **C. Civil Penalties for Knowing and Intentional Violations under Public**
2 **Resources Code section 30820, subdivision (b).**

3 The evidence also supports penalties under Public Resources Code section 30820,
4 subdivision (b), because the violations were knowing and intentional:

5 Any person who performs or undertakes development that is in violation of this
6 division . . . , when the person intentionally and knowingly performs or undertakes
7 the development in violation of this division . . . , may, in addition to any other
8 penalties, be civilly liable in accordance with this subdivision. Civil liability may be
9 imposed by the superior court in accordance with this article for a violation as
10 specified in this subdivision in an amount ***which shall not be less than one thousand***
11 ***dollars (\$1,000)***, nor more than fifteen thousand dollars (\$15,000), ***per day for each***
12 ***day in which the violation persists.***

13 (Emphasis added.)

14 Here, the Commission is entitled to daily penalties under subdivision (b), because Witter
15 and Richardson knowingly and intentionally violated the Coastal Act. Ainsworth advised
16 Richardson on June 2, 1992 that development on the property required a permit. From that point,
17 Richardson, Witter's agent, knew of the violations on the property. But Richardson's reaction to
18 Ainsworth was not to inquire about obtaining a permit, or ask for an application, or seek
19 assistance in bringing the property into compliance with the Coastal Act. Rather, Richardson
20 angrily confronted Ainsworth. Ainsworth followed up the visit with a letter explaining the need
21 for permits. Still, Richardson did not attempt to bring the property into compliance. In 1993,
22 Richardson forced Commission staff to obtain an inspection warrant to inspect the property. The
23 Commission attempted to enforce the Coastal Act with cease and desist orders, a lawsuit, a failed
24 settlement to get the property permitted, and yet another lawsuit. Yet there is no evidence Witter
25 or Richardson removed any development until the county brought criminal charges. To this day
26 unpermitted development remains.

27 Not only did Richardson and Witter fail to obtain permits for their development, but they
28 continued active development of the property. Sinclair testified that the property was in a state of
constant and evolving development. For example, exhibits 31-9, 31-10, and 31-12 depict the
same site, developed with a trailer in 2002, vacant in 2005, and developed again in 2008.
Exhibits 31-16 and 31-17 show expanded development occurring over three years: a site with

1 one motor home in 2002 expanded to an entire compound of structures and storage containers in
2 2005. Likewise, exhibit 31-36 shows a trailer on the property in 2005 that was not there in 2002.
3 Exhibit 31-51 shows active construction of a new residence in 2002; Exhibit 31-52 shows the
4 same residence completed three years later. Exhibit 31-49 also shows ongoing construction: the
5 tenant was obviously constructing a new residence around a trailer at the time of the site visit.

6 Exhibits 31-81 and 31-82 show the same site; exhibit 31-81 shows a recently abandoned
7 trailer and exhibit 31-82 shows the same site nine years later, with a different occupied trailer on
8 it. Exhibit 31-85 depicts a site with a trailer on December 7, 2007 that was not there in the site
9 visit just two years prior. The fire pit depicted in 2008 in exhibit 31-8 was not there in 2007.

10 Thus, these photos are not simply snapshots of the development existing on a particular
11 day, but document the progression of development sustained in the intervening years as well.
12 Each time a trailer moved off the land, Richardson and Witter had an opportunity to stop
13 development, narrow the number of tenants, and let the property re-vegetate. Rather, tenants
14 would simply reappear in a new location, creating additional harm to the property by disturbing
15 the natural condition somewhere else. Therefore, the ever-changing violations were actually
16 worse than had the violations remained constant, because defendants' tenants were clearing the
17 land in new and different places.

18 Witter and Richardson's continuing development, despite the fact that they were directly
19 told that their conduct violated the Coastal Act, is evidence of their willful violation. The
20 evidence of their willful violation of the Coastal Act with respect to the property division is even
21 clearer, because Richardson obtained a coastal development permit for a lot division in 1982.
22 Thus, he clearly knew that land division required a permit — he just chose to violate the law
23 rather than comply with it. Thus, the Commission is entitled to daily penalties for the Coastal Act
24 violations on the property.

25 **D. Penalty Calculation**

26 The scope and breadth of the violations in this action is enormous, both in number of
27 violations, amount of property, duration of violations, and flagrancy of defendants' conduct.
28 Given the transient nature of the development on the Witter/Richardson property, it would be

1 difficult for the Court to track any individual violation over the course of the many years that the
2 violations have persisted. Nevertheless, the evidence is overwhelming that the property as a
3 whole was in a state of violation at every time since 1992. Therefore, the Commission is entitled
4 to daily penalties since June 2, 1992. The settlement agreement tolled the daily penalties from
5 October 9, 1998 (the day the defendants entered into an agreement giving them an opportunity to
6 apply for permits) to August 9, 2006 (the day the Commission reinstated the enforcement action).
7 (Ex. 10, p. 6.)

8 The Court rejects defendants' argument that the Commission is not entitled to penalties
9 from 1992 to 1998 because there is no evidence of active development in that time frame. The
10 Coastal Act provides for penalties "per day for each day in which the violation persists." (Pub.
11 Resources Code, § 30820, subd. (b).) Because there were violations on the property that persisted
12 through that timeframe — indeed, to the present day — the Commission is entitled to daily
13 penalties throughout that period.

14 Likewise, the Commission rejects defendants' argument that the Commission is not entitled
15 to penalties after Richardson started to comply with the plea agreement from his criminal
16 prosecution. Coastal Act violations persist to this day, and so the daily penalties continue to
17 accrue.

18 The Commission is entitled to strict liability penalties under section 30820, subdivision (a).
19 In light of the egregiousness of defendants' conduct, the Court awards the Commission \$30,000,
20 the maximum penalty for one violation.

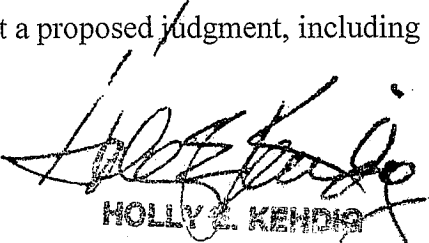
21 The Commission is also entitled to daily penalties from June 2, 1992 to October 9, 1998
22 and August 9, 2006 to the present. Calculated to December 1, 2010, this is 3,891 days that Witter
23 and Richardson willfully maintained Coastal Act violations on the property. Although the factors
24 listed in Section 30820(c) would support a penalty at the high end of the range, for purposes of
25 penalties under Section 30820(b), the Commission has only requested the lowest possible penalty
26 under the statute. The Court awards the Commission daily penalties of \$1,000 per day for the
27 3,891 days, totaling \$3,891,000 in daily penalties as of December 1, 2010 under Public Resources
28

1 Code section 30820, subdivision (b). Thus, the Court awards the Commission \$3,921,000 in
2 penalties, as of December 1, 2010.

3 **CONCLUSION**

4 For all of the foregoing reasons, judgment is granted to plaintiff, California Coastal
5 Commission. The Commission is entitled to an injunction directing defendants to remedy the
6 Coastal Act violations on their property, and the Court awards the Commission civil penalties of
7 \$30,000 plus \$3,891,000 which represents \$1,000 per day from June 2, 1992 to October 9, 1998
8 and August 9, 2006 to the date of the judgment, for a total of \$3,921,000. Plaintiff California
9 Coastal Commission is ordered to prepare and submit a proposed judgment, including an
10 injunction, within ten (10) days notice of this ruling.

11
12 Date: 1-27-11



HOLLY E. KENDIG

13 Holly E. Kendig

14 Judge of the Superior Court

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