

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
Nathan Bluestein, Ettaleah Bluestein, Theodore	)	C/A No. 10-CP-10-5449
Albenesius and Karen Albenesius	)	
	)	
<i>Plaintiffs,</i>	)	<b>ORDER APPROVING SETTLEMENT</b>
	)	
Versus	)	
	)	
Town of Sullivan's Island and Sullivan's	)	
Island Town Council,	)	
	)	
<i>Defendants.</i>	)	

UPON Motion of all Parties, and it appearing that the said Parties deem the offer of settlement acceptable, advantageous, and to the best interest of all Parties and

IT FURTHER APPEARING in the discretion of this Court that such settlement is proper and in the best interest of all Parties, it is

ORDERED, ADJUDGED AND DECREED that the Parties are hereby authorized to consummate the settlement referred to in the within Settlement Agreement and General Release (Exhibit 1) and to execute and deliver to the Defendants an appropriate Release terminating, releasing, and ending any and all claims and actions asserted or brought under or by virtue of any South Carolina Statute or by common law against the Defendants, Town of Sullivan's Island and Sullivan's Island Town Council, including their Mayor, council, officers, directors, employees, agents, servants, attorneys, partners and representatives, predecessors and successor corporations or entities and their attorneys, heirs, assigns, executors, administrators, successors, subsidiaries, affiliated companies, parent companies, insiders, and any other indemnitors.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each side bear and pay their own costs, including court costs and attorneys' fees.

*ELECTRONIC SIGNATURE PAGE TO FOLLOW.*



Charleston Common Pleas

**Case Caption:** Nathan Bluestein, plaintiff, et al VS Sullivans Island Town Of Etc,  
defendant, et al  
**Case Number:** 2010CP1005449  
**Type:** Order/Approval Of Settlement

So Ordered

s/Jennifer B. McCoy #2764

**SETTLEMENT AGREEMENT AND GENERAL RELEASE**

This Settlement Agreement and General Release ("Settlement Agreement") is given by Nathan Bluestein and Theodore Albenesius, III (Plaintiffs) to the Town of Sullivan's Island and Sullivan's Island Town Council ("Town"), collectively referred to as "Parties", as of this 7<sup>th</sup> day of October, 2020.

Nathan Bluestein, Ettaleah Bluestein, M.D., Theodore Albenesius, III, and Karen Albenesius filed a lawsuit against the Town of Sullivan's Island and Sullivan's Island Town Council in the Court of Common Pleas for Charleston County, Case No. 2010-CP-10-5449, which was appealed and heard in the South Carolina Court of Appeals, App. No. 2015-002550 and the South Carolina Supreme Court, App. No. 2018-001888 ("Lawsuit"), concerning the municipal ordinances and restrictions regarding the land along the Atlantic Ocean in the Town under a conservation easement and donation to the Town in 1991. Since the Lawsuit was filed, Ettaleah Bluestein, M.D. passed away and Karen Albenesius was divorced from Theodore Albenesius and is no longer a participating Plaintiff in the litigation.

The Parties have now agreed to a resolution of this long-standing dispute, pursuant to the following terms and conditions that have been approved and adopted by the Town Council. This settlement agreement balances the competing needs of beachfront and inland island residents and the ecological and natural interests on the one hand and human needs and safety on the other.

**I. RECITALS**

**Whereas**, the Town owns property along the Atlantic Ocean which is known generally as The Accreted Land (AL); and

**Whereas**, the Town obtained title to the AL by way of a deed from the Low Country Open Land Trust; and

**Whereas**, the deed contained certain restrictions and covenants, both procedural and substantive; and

**Whereas**, the deed provides the Town with the unrestricted authority to trim and control the growth of vegetation; and

**Whereas**, after a decade of litigation the Town and Plaintiffs have reached a voluntary settlement; and

**Whereas**, the Town recognizes the need to develop a detailed implementation plan to use in conjunction with OCRM; and

**Whereas**, after preliminary consultation with the Land Trust the Town has received feedback that the Land Trust does not object to the settlement; and

Whereas, the Town is permitted to undertake activity on the AL to enhance mosquito control, engage in scenic enhancement, and to control vegetation pursuant to the following specific written findings of fact;

## II. Findings of Fact:

- a. The settlement, and implementing steps associated therewith, are solely undertaken to further specific enumerated, permissible public purposes under the Deed. In this instance, the Town Council believes that thinning of vegetation will serve the interests of improved mosquito control, improved vegetation management, enhanced public safety, improved public health, and scenic enhancement. The current thickness of vegetation, in significant part caused by the "hedging effect" of prior cutting rules, makes it extremely difficult for anti-mosquito treatments to penetrate. There is also an increased prevalence of pests correlated to the growth of the AL over past years with the 2005 cutting rule in effect. Additionally, the level of thickness significantly impedes airflow causing stagnant conditions that is not conducive to healthful and enjoyable living. Further, the thickness of vegetation on the AL allows for rapid spread of wildfire should favorable fire conditions exist. The thinning of myrtles and trees would improve all of these shortcomings. In addition, the cumulative effect of decades of growth has been to alter views from what existed at the time of deed signing. The proposed action would help restore views to a level closer to what were enjoyed at the time the Deed Restrictions were implemented. Finally, excessive plant density (stems per acre) can retard desirable maturation of plant life on the AL and that the thinning proposed herein will allow those stems retained to develop more fully and beneficially. The combination of these factors will not only improve the safety of human habitation on the island, but also improve the overall condition of flora and fauna on the island. The utilization of environmentally sensitive means (use of appropriate equipment, thinning techniques, naturalist approved seeding, etc) can avoid material problems with erosion, particularly in light of the decades of documented natural accretion in this area.
- b. The settlement, and implementing steps associated therewith, are necessary for the health, safety and general welfare of the Town. Reduction in pests and mosquitoes benefits public health, as does fire hazard reduction. Improved airflow is also beneficial, allowing for (among other things) increased opportunities to avoid the need for artificial climate control during the course of a year.
- c. The benefits of the proposed settlement, and implementing steps associated therewith, outweigh any potential damage done to the aesthetic, ecological, scientific and education value of the property in its natural state. The AL is proposed to remain in an undeveloped state. The proposed changes are intended to improve aesthetic conditions. They are also intended to improve wildlife habitat and allow maturation of retained vegetation. Given the diversity and number of stems remaining under the proposed plan, the scientific and educational value of the property will not be undermined but will be enhanced.

d. The Parties have considered

- i. The cumulative effect of actions pursuant to the proposed settlement and past AL related actions on the natural state of the Property. The Town's cutting rules have been unchanged for fifteen years and, in fact, bear striking resemblance to the rules in place at the time the deed restrictions were enacted. Consequently, there is no significant "cumulative" action to be considered. Regardless, the changes proposed here will either not harm or enhance the natural environment of the AL for flora and fauna and will do so in a manner that benefits the island as a whole.
- ii. There are no suitable alternative methods of furthering the stated public benefits that would not adversely impact the natural state of the AL. The principle concern being addressed here is excessive vegetation growth and density leading to all of the problems previously enumerated. The only way to address excessive vegetation growth and density is selective thinning. The current plan represents a selective thinning plan carefully tailored to address these stated concerns while maximizing retained ecological, educational and scientific goals.
- iii. First, the existing conditions (and trend toward increasing vegetation thickness and growth) will continue to mature into an increasing problem. In that sense, taking no action at this point would amount to "action" furthering the undesirable attributes. Second, failure to undertake the proposed settlement would subject the Town and residents to the uncertainty inherent in a trial.

**III. Settlement of this litigation is agreed to on terms stated below:**

**General Approach:**

- The Town would implement selective thinning of the Accreted Land (AL), based on initial cut parameters set forth below for each of the four Zones (Transition Zone, Zone 1, Zone 2, and Zone 3.) In order to maintain similar conditions going forward, with the help of a naturalist the Town would review changes in the condition of the AL on a recurring basis (for instance, once every five years) with an eye towards making whatever changes might be necessary to maintain appropriate levels of density and diversity. This would provide a mechanism to deal with natural attrition, growth, or other changes to the natural environment. Primary funding for transition zone work will be from the Town. Funding for work in Zones 1-3 is subject to receipt of adequate donations or grants.
- To facilitate resolution of this case, the Town retained Thomas and Hutton to perform a tree survey which is reflected in the attachments hereto. Due to the lapse of time from the tree survey to the actual performance of the work described herein, the Parties recognize the potential for further tree

growth from the time of the tree survey to the time of the work described. The trees meeting the dimensions for trimming described below and identified in the attached tree survey are the specific trees to be trimmed, cut or removed notwithstanding any growth during that interval.

**Zones:**

- Zone 1: Station 16 beach path to western edge of property line at 1715 Atlantic (TMS# 523-12-00-014)
- Zone 2: Eastern edge of Zone 1 to Eastern Edge of SIES property
- Zone 3: Eastern edge of Zone 2 to Station 28.5 beach path
- Transition Zone (TZ)

**Beach Paths:**

- All vegetation to be removed 4' on either side of town owned beach paths/boardwalks
- Private beach paths to be maintained at a width of 6.5' plus additional understory may be cleared to a maximum of 2' on either side (per draft plan 3a.) Cutting and maintenance shall be subject to the receipt by the Town of sufficient grants or donations.

**Myrtles (All Zones):**

- Allow for 50% of myrtles seaward of TZ to be removed with focus on saving myrtles located in low-lying topography areas
- All remaining myrtles may be cut to a height of 5'
- Property owners abutting town owned beach paths may trim myrtles from non-adjacent property line to beach path (eliminating "no man's land" currently existing in certain areas)
- Current town procedures will apply for annual cutting and payment thereof will apply

**Zone 1:**

- Keep all Live Oaks, Magnolias, Palmettos
- Remove all Cedar, Pine, Hackberry trees under 12" DBH

- Remove all other tree species under 6" DBH
- Limbing of trees >16" DBH will be allowed with TOSI approval so long as proposed limbing would not harm health of tree.
- Vines on trees may be removed with TOSI approval for health of tree
- All non-native or invasive species may be removed

**Zone 2:**

- Keep all Live Oaks, Magnolias, Palmettos >6" DBH
- Remove all Cedar, Pine, Hackberry trees under 16" DBH
- Remove all other tree species under 8" DBH
- Limbing of trees allowed with TOSI approval so long as proposed limbing would not harm health of tree.
- Vines located on trees may be removed with TOSI approval for health of tree
- All non-native or invasive species may be removed

**Zone 3:**

- Keep all Live Oaks, Magnolias, Palmettos >6" DBH
- Remove all Cedar, Pine, Hackberry trees under 18" DBH
- Remove all other tree species under 10" DBH
- Limbing of trees will be allowed with TOSI approval so long as proposed limbing would not harm health of tree.
- Vines on trees may be removed with TOSI approval for health of tree
- All non-native or invasive species may be removed

**Transition Zone:**

- Trees to be preserved are only Live Oaks, Magnolias, Palm Trees 16" DBH or greater
- All other vegetation to be removed

- 100' seaward of property line of adjacent properties (includes Bayonne right of way)
- Heavy machinery allowed landward of OCRM setback line

**Permitting:**

Permitting will be required through OCRM. Continued consultation with OCRM and the Land Trust will be important as the Town develops its implementation plan and permit application. The Town will need to engage an engineer and/or technical consultant to develop an appropriate, detailed plan specifying methods and objectives, and to make appropriate regulatory applications. We would expect environmentally appropriate overseeding to be a part of any such plan in order to assure continued soil stability. The Parties agree to cooperate as required to obtain any such permit. The Parties covenant and agree to work in good faith to obtain all permits and complete the work agreed to and described herein. Neither of the Parties shall directly or indirectly, individually or through others, endeavor to interfere with the permitting process.

**Funding and Timing:**

Thinning of the 2500 Block of Atlantic will proceed with all deliberate speed after formal settlement approval by Council and the funding of the block thinning cost by Plaintiff and/or homeowners in that block. The work shall be done by way of a contract signed by the Town and a vegetation management contractor as appropriate under the Town's procurement process.

Homeowners shall have the right to enter into an agreement with the Town whereby they must provide sufficient funds with the Town within 12 months of the settlement of Bluestein v. Town of Sullivan's Island to cut the property within their block in accordance with the zone specifications contained herein. As described above, using such funds the Town shall hire the approved contractor to complete the thinning. Such cutting will be done on a block by block basis after sufficient funds to thin a particular block are on-hand.

**Appeals:**

No party shall appeal the issuance of any permits issued for completion of work consistent with the settlement.

**Compliance with Law required:**

Implementation is subject to compliance with law.

**Good Faith and Fair Dealing:**

The Parties covenant and agree to work in good faith to obtain all permits and complete the work agreed to and described herein. No Party shall directly or indirectly, individually or through others, endeavor to interfere with the permitting process or the completion of the work described herein.



**Incorporation of Charts and Diagrams:**

The supporting Charts and Diagrams are attached hereto and shall be incorporated as if set forth fully herein.

**Submission of Applications:**

The Town agrees to (1) authorize the necessary procurement actions in accordance with Town policy, (2) the development of detailed plans and applications, and (3) the submittal of applications necessary to effectuate this settlement.

**IV. Mutual Release**

In consideration of the covenants contained in this Settlement Agreement, Nathan Bluestein and Theodore Albenesius, III, their heirs, legal representatives, and assigns, do hereby release, cancel, acquit, relinquish and forever discharge the Town, together with its agents, representatives, attorneys, assigns, affiliates, predecessors, successors, officers, directors, employees, and any and all persons or entities in privity with them ("Releasees") from any and all claims, rights, demands, debts, liabilities, controversies, or causes of action, known or unknown, asserted or unasserted, liquidated or unliquidated, fixed or contingent, of any nature whatsoever including, but not limited to, those pertaining to (a) the Deed for AL; (b) the Ordinances related to the AL; (c) all claims under the Deed or Ordinances and the manner in which the Town interpreted those documents; (d) any claim asserted or assertable in the Lawsuit including, without limitation, claims in contract or in tort, common law or statutory, for actual, multiple, or punitive damages, attorneys' fees, interest and costs; and (e) all claims arising out of any act, transaction, or occurrence through the date hereof relating in any manner to the issues raised in the Lawsuit or which could have been raised in the Lawsuit.

In consideration of the covenants contained in this Settlement Agreement, the Town does hereby release, cancel, acquit, relinquish and forever discharge Nathan Bluestein and Theodore Albenesius, III, their heirs, legal representatives, and assigns, together with their agents,

representatives, attorneys, assigns, affiliates, predecessors, successors, officers, directors, employees, and any and all persons or entities in privity with them ("Releasees") from any and all claims, rights, demands, debts, liabilities, controversies, or causes of action, known or unknown, asserted or unasserted, liquidated or unliquidated, fixed or contingent, of any nature whatsoever including, but not limited to, those pertaining to (a) the Deed for AL; (b) the Ordinances related to the AL; (c) all claims under the Deed or Ordinances and the manner in which the Town interpreted those documents; (d) any claim asserted or assertable in the Lawsuit including, without limitation, claims in contract or in tort, common law or statutory, for actual, multiple, or punitive damages, attorneys' fees, interest and costs; and (e) all claims arising out of any act, transaction, or occurrence through the date hereof relating in any manner to the issues raised in the Lawsuit or which could have been raised in the Lawsuit.

#### **V. Dismissal with Prejudice**

Nathan Bluestein and Theodore Albenesius, III, agree that the Lawsuit shall be dismissed with prejudice, with each side bearing and paying their own costs, including court costs and attorneys' fees.

#### **VI. Binding**

This Settlement Agreement shall be binding upon and inure to the benefit of all the Parties, and their heirs, successors and assigns.

#### **VII. Disputes**

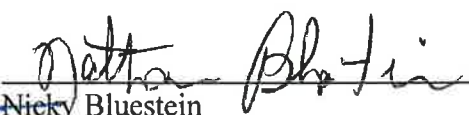
Any Party may commence a legal proceeding to enforce this Settlement Agreement. Any such action shall be brought exclusively in the Court of Common Pleas located in Charleston County, South Carolina.


# **VIII. Miscellaneous Provisions.**

- a) Fees and Costs. Each Party shall be solely responsible for the fees and costs he, she, or it has incurred in connection with the Lawsuit.
- b) Acknowledgements. Each Party acknowledges and agrees that this Settlement Agreement was negotiated and drafted with the full participation of the Parties and the Parties' respective counsel; that this Settlement Agreement was negotiated at arms' length and in good faith; that this Settlement Agreement was voluntarily executed after consultation with experienced legal counsel; that the Parties have carefully read the contents of this Settlement Agreement and understand its terms; that the consideration provided to the Parties under this Settlement Agreement is adequate; and that this Settlement Agreement is a legally binding contract with which the Parties will faithfully comply. Each individual signing this Settlement Agreement on behalf of one of the Parties to this Agreement has the authority to execute this Settlement Agreement and bind the entity or person on whose behalf this Settlement Agreement is executed.
- c) Governing Law and Jurisdiction. This Settlement Agreement shall be interpreted and enforced, in all respects, according to the laws of the State of South Carolina.
- d) Time is of the Essence. Time is of the essence as to every provision of this Settlement Agreement.
- e) Interpretation and Severability. The paragraph headings contained in this Settlement Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Settlement Agreement. In interpreting this Settlement Agreement and construing its terms, neither of the Parties shall be deemed to have drafted this Settlement Agreement, and no drafting presumption against either of the Parties shall be applicable to this Settlement Agreement. Should any portion, word, clause, phrase, sentence or paragraph of this Settlement Agreement be declared void or unenforceable, such portion shall be considered independent and severable from the remainder, the validity of which shall remain unaffected.
- f) Modification. This Agreement may not be modified or amended, nor may any of its provisions be waived, except upon mutual agreement of all Parties or their authorized agents in writing.
- g) Counterparts. This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, all of which together shall constitute one and the same instrument. The Parties agree that as to this Settlement Agreement, electronic copies and signatures have the same force and effect as originals.
- h) Entire Agreement. Each of the Parties acknowledge and agree that this Settlement Agreement constitutes the entire agreement of the Parties hereto with respect to the subject matter of this Settlement Agreement, and each of the Parties further acknowledge and agree that this Settlement Agreement supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing,

express or implied, between one or more of the Parties. The Parties each acknowledge that no representations, inducements, promises, agreements, or warranties, oral or otherwise, have been made by them, or anyone acting on their behalf, which are not embodied in this Settlement Agreement; that they have not executed this Settlement Agreement in reliance on any representation, inducement, promise, agreement, warranty, fact or circumstances, not expressly set forth in this Settlement Agreement; and that no representation, inducement, promise, agreement, or warranty not contained in this Settlement Agreement shall be valid or binding unless executed in writing and signed by all Parties to this Settlement Agreement.

IN WITNESS WHEREOF, we have hereunto set our hand this 7<sup>th</sup> day of October, 2020.

  
Nathan Bluestein  
2513 Atlantic Ave.  
Sullivan's Island, SC 29482

  
Teddy Albenesius  
P.O. Box 60477  
North Charleston, SC 29419

IN WITNESS WHEREOF, I have hereunto set my hand this 7<sup>th</sup> day of October, 2020

**ON BEHALF OF** *Town of Sullivan's Island*  
*and Sullivan's Island Town Council*  
(*"Town"*):



Derk Van Raalte, Esquire

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