ORIGINAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

FRIENDS OF MARTIN'S BEACH, a California unincorporated association organized and existing under Corporation Code sections 21000 et seq.,

Plaintiff,

v.

MARTINS BEACH 1, LLC; MARTINS BEACH 2, LLC; all persons unknown, claiming any legal or equitable right title, estate, lien or interest in the property described in the complaint adverse to plaintiffs' title or any cloud on plaintiffs' title thereto; and Does 1 to 100 inclusive,

Defendants.

AND RELATED CROSS-ACTION.

CASE NO. CIV517634

MEMORANDUM OF DECISION AND ORDER ON: (1) DEFENDANTS MARTINS BEACH 1, LLC AND MARTINS BEACH 2, LLC'S MOTION FOR SUMMARY JUDGMENT OR ALTERNATIVELY, SUMMARY ADJUDICATION; AND (2) PLAINTIFF FRIENDS OF MARTINS BEACH'S MOTION FOR SUMMARY ADJUDICATION

Date: October 24, 2013
Judge: Hon. Gerald J. Buchwald

PRE'CIS

This Memorandum Decision and Order confirms this Court's earlier oral ruling announced on the record on October 24, 2013, a copy of which is attached as **Exhibit 4.**

At the outset, I wish to express some prefatory comments[1]:

[1] The Court makes this introductory comment because the Court's earlier oral ruling, stated on the record at the conclusion of the hearings on the matter, has generated some misconceptions in the press and media as to the scope and meaning of this decision.

The Court recognizes the strong public policy currently prevailing in California that generally favors public access to, and environmental protection for, California's coastline and beaches. Regrettably, in this case that State public policy must give way to private ownership rights because, as explained below, several United States Supreme Court cases say so. Those United States Supreme Court precedent cases are the Law-of-the-Land, and this Court has the judicial duty to follow them even if California law would require a different result.

This Court's intent in making this decision is not to close the entire California coastline to public access and recreational use. This decision only confirms a particular and specific type of private property ownership, namely ownership where title is clearly traceable back to a Spanish Land Grant and is held by a United States Land Patent.[2]

Also, the Court's decision here does not disturb, in any way, two important rights that belong to the public: (1) the Consitutional right of the State to buy coastal property using the power of eminent domain (Calif. Const., Art. 1, Sec. 19) and (2) the authority of the California Coastal Commission to make real estate development permits subject to some public access (see *Nollan v. Calif. Coastal Com'n* (1987) 483 U.S. 825).

INTRODUCTION

This lawsuit represents a clash between the right of private owners of beachfront property to exclude others from their property versus the right of the public to access the beach for recreation and enjoyment. The Plaintiff, who refers to itself as Friends of Martin's Beach, claims that it has a right to traverse the private property owned by Defendants, Martins Beach 1, LLC and Martins Beach 2, LLC, to access private property known as Martins Beach. The Court concludes, however, that the private property at issue is indisputably owned in fee simple by the Defendants and that the Plaintiff has no cognizable legal theory which gives it the right to access Defendants' private property.

[2] As set forth in the decision herein, the original title holders of what is now known as Martins Beach held their ownership by virtue of a land grant issued to them when California was part of Spanish Mexico. After the Mexican-American war, when California became a Territory of the United States, they obtained a United States land patent that was required to perfect their title under the laws of the United States.

Before the Court are cross-motions for summary disposition of this case:

(1) The motion of Defendants Martins Beach 1, LLC and Martins Beach 2, LLC ("Defendants") for summary judgment, or in the alternative summary adjudication, as to all seven causes of action alleged by Plaintiff Friends of Martins Beach ("Plaintiff") in its First Amended Verified Complaint, namely: the first (injunction), second (quiet title – tideland-based public easement under Calif. Const. Art. 10, Sec. 4), third (express dedication), fourth (quiet title – public trust doctrine), fifth (quiet title – pre-existing right of use/ownership), sixth (declaratory relief), and seventh (quiet title –tideland-based public easement under Calif. Const., Art. 10, Sec. 4) causes of action;

(2) The motion of Defendants for summary adjudication on the first (quiet title) and second (declaratory relief) causes of action alleged in Defendants' Verified First Amended Cross-Complaint; and

(3) The cross-motion of Plaintiff Friends of Martins Beach on the second cause of action (tideland-based public access under Calif. Const., Art. 10, Sec. 4) in its First Amended Verified Complaint.

These motions were heard by the Court on October 1, 2013, October 21, 2013, and October 24, 2013. Plaintiff appeared by counsel Gary Redenbacher of Redenbacher & Brown, LLP and Defendants appeared by counsel Jeffrey Essner and Dori Yob of Hopkins & Carley.

Having considered all the evidence set forth in the papers submitted, and the inferences reasonably drawn therefrom, the Court: (1) GRANTS Defendants' motion for summary judgment on all causes of action in Plaintiff's First Amended Verified Complaint; (2) GRANTS Defendants' motion for summary adjudication on the first (quiet title) and second (declaratory relief) causes of action in Defendants' Verified First Amended Cross-Complaint; and (3) DENIES Plaintiff's motion for summary adjudication on the second cause of action (tideland-based public access under Calif. Const., Art.10, Sec.4) in Plaintiff's First Amended Verified Complaint.

In arriving at these rulings, the Court has reviewed and considered the motion and

opposition papers, supporting declarations, separate statements of fact, judicial notice requests, and other documents set forth in the attached **Exhibit 1**.

UNDISPUTED MATERIAL FACTS

The Court finds that the facts described in this section are material facts which are undisputed.

Defendants Martins Beach 1, LLC and Martins Beach 2, LLC are the owners of the real property located south of Half Moon Bay at 22325 Cabrillo Highway (also known as Highway 1) (hereinafter the "Property").[3] Defendants obtained ownership of the property in fee simple title by two separate grant deeds that were recorded on July 22, 2008. (*See* MB MSJ UMF No. 1; see *also* FOMB MSJ Opp. UMF No. 1; *see also* MB MSA Opp. UMF No. 7.)

There is a private road on the Property commonly referred to as Martins Beach Road, that leads from the entrance on Cabrillo Highway (also known as Highway 1) to the beach. (MB MSJ UMF No. 2; FOMB MSJ Opp. UMF No. 2; MB MSA Opp. UMF No. 8.) The only road to Martins Beach is on Martins Beach Road. (MB MSA Opp. UMF No 3.)

Martins Beach is sheltered from the North and South by high cliffs that stretch out into the Pacific Ocean forming an isolated cove. As a practical matter, there is no reasonable access from other beaches to the North or South as Martins Beach is separated from other beaches by the high cliffs. Short of rappelling down the cliffs, the only access is by Martins Beach Road from the East or by boat from the off-shore Pacific Ocean tidelands to the West.

Plaintiff alleges that the former owners of Martins Beach – the Deeney Family – welcomed the public to the beach with "open arms" upon payment of a fee.[4] It is undisputed that

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[3] *See* Separate Statement of Undisputed Material Facts in Support of Martins Beach 1, LLC and Martins Beach 2, LLC's Motion for Summary Judgment or Alternatively, Summary Adjudication (hereinafter "MB MSJ UMF") at No. 1; *see also* Plaintiff's Separate Statement of Undisputed Material Facts in Opposition to Defendants' Motion for Summary Judgment or Summary Adjudication and Additional Undisputed Material Facts (hereinafter "FOMB MSJ Opp. UMF") at No. 1.; *see also* Defendant and Cross-Complainant Martins Beach 1, LLC and Martins Beach 2, LLC's Separate Statement of Undisputed Material Facts in Opposition to Plaintiff's Motion for Summary Adjudication (hereinafter "MB MSA Opp. UMF") at No. 7.

[4] *See* Request for Judicial Notice in Support of Martins Beach 1, LLC and Martins Beach 2, LLC's Motion for Summary Judgment or Alternatively, Summary Adjudication (hereinafter "MB MSJ RJN") at Exh. J, ¶10; *See also* Request for Judicial Notice in Support of Defendants Martins Beach 1, LLC and Martins Beach 2, LLC's Opposition to Plaintiff's Motion for Summary Adjudication (hereinafter "MB MSA Opp. RJN" at ¶10.)

Plaintiff alleges that Martins Beach was a popular community beach that was used for picnicking, fishing, surfing, and other recreational uses under the business run by the Deeney family whereby they charged a fee for entry to the beach; originally 25 cents. (*Id.*) The Deeney family also provided a general store and public restrooms. (*Id.*) Plaintiff alleges that this changed when Defendants purchased the Property, closed the gate to the road, and put security guards on the beach. (MB MSJ RJN, Exh. J, ¶11.) Plaintiff further alleges that Defendants have attempted to support criminal prosecution of those who are allegedly trespassing on the Property. (*Id.* at ¶11.) In response, a group of citizens staged rallies and generated press coverage in an attempt to regain public access to the beach and this lawsuit followed. (*Id.* at ¶12.)

Defendants' ownership of the Property has its origin in a provisional Mexican land grant, a fact that is not disputed by the Plaintiff. (MB MSJ UMF Nos. 10-22; FOMB MSJ Opp. UMF at Nos. 10-22.) By virtue of that undisputed provisional land grant, as I further find below by drawing reasonable inference from that undisputed fact, it is beyond dispute that the Property was originally part of a larger parcel of ranch land that passed from the Mexican government into private ownership prior to the time that California was ceded by Mexico to the United States after the Mexican-American war. (MB MSJ UMF No. 11; FOMB MSJ Opp. UMF No. 11.)

In 1838, the governor of then Spanish Mexico, Juan B. Alvarado, acting in the name of the King of Spain, provisionally granted an 8,905 acre parcel of property known as Rancho Canada de Verde y Arroyo de la Purisima to Jose Maria Alviso. (MB MSJ UMF No. 10; FOMB MSJ Opp. UMF No. 10.) The Property that is involved in this case was included within the area known as Rancho Canada de Verde y Arroyo de la Purisima. (MB MSJ UMF Nos. 11; FOMB MSJ Opp. UMF No. 11.) Two years later, on April 30, 1840, Jose Maria Alviso conveyed his interest in Rancho Canada de Verde y Arroyo de la Purisima to his brother, Jose Antonio Alviso. (MB MSJ UMF No. 12; FOMB MSJ Opp. UMF No. 12.)

Thereafter, a decade later, the 1848 Treaty of Guadalupe Hidalgo which formally ended the Mexican-American war resulted in Mexico ceding a region of the present day Southwestern United States, including California, to the United States. (MB MSJ UMF No. 13; FOMB MSJ

Opp. UMF No. 13.) That treaty on its face required that the United States honor the pre-existing Mexican land grants and protect the property rights of Mexican landowners living in those areas. (MB MSJ UMF No. 14; FOMB MSJ Opp. UMF No. 14.)

Shortly after that, on March 3, 1851, about six months after California's admission as a State in late 1850[5], Congress passed the California Land Act of 1851 to provide for the orderly settlement of Mexican land claims. (MB MSJ UMF No. 15; FOMB MSJ Opp. UMF No. 15.) Congress created the Board of Land Commissioners to Ascertain and Settle the Private Land Claims in the State of California (commonly known as the Board of California Land Commissioners). (MB MSJ UMF No. 16; FOMB MSJ Opp. UMF No. 16.) The Board of California Land Commissioners was delegated with the authority to decide land rights and to issue land patents which were a conclusive adjudication of the rights of the claimant as against the rights of the United States, the public, and the citizens of the United States. (MB MSJ UMF No. 17; FOMB MSJ Opp. UMF No. 17.)

The next year, in 1852, Jose Antonio Alviso filed a claim for Rancho Canada de Verde y Arroyo de la Purisima with the Board of California Land Commissioners. (MB MSJ UMF No. 18; FOMB MSJ Opp. UMF No. 18.) Jose Antonio Alviso's claim was confirmed by the Board of California Land Commissioners and the District Court of California. (MB MSJ UMF No. 18; FOMB MSJ Opp. UMF No. 18.)

The United States filed an appeal from the Land Commissioners' and U.S. District Court's decisions that confirmed Jose Antonio Alviso's claim for Rancho Canada de Verde y Arroyo de la Purisima. That case went to the United States Supreme Court and was resolved in a published opinion in *United States v. Alviso* (1859) 64 U.S. 318. (MB MSJ UMF No. 19; FOMB MSJ Opp. UMF No. 19.) Jose Antonio Alviso's claim was confirmed by the United States Supreme Court without any mention or reservation of a public trust easement. (MB MSJ UMF No. 20; FOMB

[5] The people of the Territory of California's October 13, 1849 Constitution was presented to the Congress on February 13, 1850 and an Act of Admission was adopted September 9, 1850. See Vol. 9, United States Statutes at Large, page 452. A further Act adopted on September 28, 1850, provided "That all laws of the United States which are not locally inapplicable shall have the same force and effect within the said State of California as elsewhere within the United States." Vol. 9, United States Statutes At Large, page 521.

MSJ Opp. UMF No. 20.) The U.S. Supreme Court found that Alviso proved that his occupation of the land commenced in 1840, and that he had continued his possession uninterrupted for fourteen years, during which time he had been recognized as owner of the land. The high Court held that "No imputation was made against the integrity of his documentary evidence, and no suspicion existed unfavorable to the bona fides of his petition, or the continuity of his possession and claim." (*U.S. v. Alviso*, 644 U.S. at 319.) As a result, by 1859 the pre-existing provisional Mexican land grant for Rancho Canada de Verde y Arroyo de la Purisima was subject to a final patent confirming the land rights of the Alviso family. (MB MSJ UMF Nos. 21 & 22; FOMB MSJ Opp. UMF Nos. 21 & 22.)

The reasonable factual inference to be drawn from this fact is that the Alviso family, by virtue of its pre-existing provisional Mexican land grant, had perfected title to the beachfront land, road, tidelands, and related easements that currently are Martins Beach. And, that is exactly the reasonable inference that the appeals courts have drawn in the precedent cases that apply here.

As will be discussed further below in expressing this Court's legal conclusions, a land patent issued by the Board of Land Commissioners is a quitclaim deed from the government of the United States to the claimant by which all other interests in the land that might be possessed by the United States or the public are relinquished and/or extinguished. (*Id.*; *see also Beard v. Federy* (1865) 70 U.S. 478, 479.) Land from titles not confirmed by a land patent of the Board of California Land Commissioners then become part of the public domain. (*See Summa Corp. v. California* (1984) 466 U.S. 198, 202.) Some of the land that Mexico ceded to the United States following the Mexican-American war remained part of the public domain and some went into private ownership. (*Id.*) The Property at issue in this case was confirmed to the Alviso family at the time the patent became final in 1865, and at no point was there any conveyance of the Property here to the State of California. (*Id.*)

Defendants' predecessors-in-interest, the Denney family, had a large billboard along Highway 1 that advertised Martins Beach and invited members of the public to the beach for the

payment of a fee.[6] (MB MSJ UMF No. 6; FOMB MSJ Opp. UMF No. 6.) The billboard advertised permissive access along Martins Beach Road to use the parking area and the dry sand beach for recreational use and for fishing. (MB MSJ UMF No. 7; FOMB MSJ Opp. UMF No. 7.) The Deeneys constructed a parking lot on the Property, and also constructed public toilets, and opened a convenience store on the beach that catered to the public that came to use the tidelands. (MB MSJ UMF No. 7; FOMB MSJ Opp. UMF No. 7.)

LEGAL CONCLUSIONS

Based on the undisputed facts recited above, this case may be summarily decided as a matter of law because there are no triable issues of material fact raised in the pending motions.

This Court will address this matter as a motion for summary adjudication so there is an accurate record of the Court's reasoning on each cause of action. The end result, taken collectively, is that the Court is (1) granting Defendants' motion for (a) summary judgment on all causes of action in Plaintiff's First Amended Verified Complaint and (b) summary adjudication on the first (quiet title) and second (declaratory relief) causes of action in Defendants' Verified First Amended Cross-Complaint and (2) denying Plaintiff's cross-motion for summary adjudication on the second cause of action (tideland-based public access under Calif. Const., Art. 10, Sec. 4) in Plaintiff's First Amended Verified Complaint.

The Court grants Defendants' motion for summary adjudication on the fourth (quiet title), second (tideland-based public access [by road] under Calif. Const., Art. 10, Sec. 4), and seventh (tideland-based public access [by water] under Calif. Const., Art.10, Sec.4) causes of action in Plaintiff's First Amended Verified Complaint and denies Plaintiff's motion for summary adjudication on the second cause of action (tideland-based public access [by water] under Calif. Const., Art. 10, Sec. 4) in Plaintiff's First Amended Verified Complaint based primarily on the

[6] The Court notes that in footnote 1 to Defendants' Separate Statement of Undisputed Material Facts in Support of Martins Beach 1, LLC and Martins Beach 2, LLC's Motion for Summary Judgment or Alternatively, Summary Adjudication, Defendants state that it is an undisputed fact that Plaintiff made the allegations described in UMF Nos. 6,7, and 8, but Defendants reserved the right to fully contest those allegations at trial. The Court finds that it is a fair reading of Defendants' papers that they did not, for purposes of the motions before the Court, dispute the allegations in UMF Nos. 6, 7, and 8, therefore the Court will accept those facts as materially undisputed for purposes of these motions.

following three points of law, discussed in more detail below:

1. California state law does not control because a series of United States Supreme Court cases are preemptive in holding that no public right of access exists because Defendants' federal patent rights are controlling.

2. Any countervailing public rights under Article 10, Section 4 of the California Constitution do not and cannot override the federal land patent title in the Defendants because, as a matter of federal law, the patent acted as a quitclaim deed that ended any preexisting public access rights.

3. For the Court to rule otherwise would confer to the public a right of public access without any eminent domain proceeding and without any just compensation which is required as a matter of both federal and state constitutional law, and would constitute an unlawful taking of the Defendants' federal land patent ownership rights.

Also, the Court finds that its rulings on the these above-referenced fourth (quiet title), second (Calif. Const., Art. 10, Sec.4 [road]), and seventh (Calif. Const., Art. 10, Sec. 4 [water] causes of action are completely dispositive of the first (injunction), fifth (quiet title), and sixth (declaratory relief) causes of action in Plaintiff's First Amended Verified Complaint and on that basis grants Defendants' motion for summary adjudication on those causes of action. As to Plaintiff's third cause of action (express dedication), the Court grants Defendants' motion for summary adjudication on the grounds that no triable issue is raised based on the undisputed facts, namely that there was no express dedication of the road or of any form of public access from the ocean onto Defendants' Property.

Finally, the Court grants Defendants' motion for summary adjudication on the first cause of action (quiet title) and its second cause (declaratory relief) in Defendants' Verified First Amended Cross-Complaint.

A. Summary Adjudication is Granted in Favor of Defendants On The Fourth, Second, and Seventh Causes of Action in Plaintiff's First Amended Verified Complaint

1. California State Law Does Not Control Because a Series of United Supreme Court Cases are Preemptive in Holding that No Public Right of Access Exists Because Defendants' Federal Patent Rights Are Controlling

Summary adjudication is granted in favor of Defendants on Plaintiff's fourth cause of

action to quiet title to the "tidelands" and the "inland dry sand area" under the public trust doctrine.[7] The "tidelands" are defined as "the lands between the lines of mean high tide and mean low tide, covered and uncovered successively by the tidal ebb and flow." (*Aptos Seascape Corp. v. County of Santa Cruz* (1982) 138 Cal.App.3d 484, 505 [citations omitted].) Generally, under the public trust doctrine, "when the tidelands have been granted by the state to a private party, that party receives the title to the soil, subject to the public's right to use the property for purposes such as commerce, navigation, fishing, as well as *for environmental and recreational purposes*." (*Aptos Seascape Corp.*, 138 Cal.App.3d at 505 [emphasis added].)

Relevant here, however, is that under the authority of *Summa Corp. v. California* (1984) 466 U.S. 198, the State's public trust easement only exists over lands to which the State acquired title by virtue of its sovereignty upon admission to the United States. In *Summa*, the United States Supreme Court found that a public trust easement cannot be asserted over private property when the owners' predecessor-in-interest had their interest confirmed in federal patent proceedings under the Act of 1851 without any mention of such an easement.

In dispute in *Summa* were tidelands in an area known as Ballona Lagoon to which Summa Corp. held a confirmed patent derived from a Mexican land grant. The City of Los Angeles sought to enter and dredge an area of the Ballona Lagoon and build improvements thereon without exercising eminent domain or paying compensation. The City brought suit against the property owner in a California state court, alleging that it held an easement in the Ballona Lagoon pursuant to the public trust. The State of California was joined as a defendant and filed a cross-complaint in the action, "alleging that it had acquired an interest in the lagoon... upon its admission to the Union, that it held this interest in trust for the public, and that it had granted this interest to the City of Los Angeles." (*Id.* at 200.) The trial court ruled in favor of the City and State, finding that Ballona Lagoon was subject to the public trust easement. The California Supreme Court affirmed.

[7] The public trust doctrine has its origins in ancient Roman law. See Vol. I *Wigmore, A Panorama of the World's Legal Systems* (1923), at pages 387-389, quoting the text of a Roman land conveyance that reserved portions of meadowlands for pre-existing public uses.

The U.S. Supreme Court reversed the decision of the California Supreme Court, holding in *Summa* that the State had no public trust easement in the property. This was so, said the U.S. Supreme Court, because neither the United States nor the State ever obtained sovereign title to the property -- the State having failed to assert a public trust easement during the patent proceedings that were held to confirm privately held title to rancho lands pursuant to the Act of March 3, 1851. (*Id.* at 205-209.)

A land patent issued by the Board of Land Commissioners is a quitclaim deed from the Government of the United States to the claimant relinquishing all interests in the land that might be possessed by the United States or its people including the people of the State of California. (*Beard v. Federy* (1865) 70 U.S. 478.) In *Beard v. Federy* the United States Supreme Court said:

> A patent of the United States issued upon a confirmation of a claim to land by virtue of a right or title derived from Spain or Mexico is to be regarded in two aspects,- as a deed of the United States, and as a record of the action of the government upon the title of the claimant as it existed upon the acquisition of California. As a deed its operation is that of a quitclaim, or rather of a conveyance of such interest as the United States possessed in the land, and it takes effect by relation at the time when proceedings were instituted by the filing of the petition before the Board of Land Commissioners. As a record of the government it is evidence that the claim asserted was valid under the laws of Mexico, that it was entitled to recognition and protection by the stipulations of the treaty; and might have been located under the former government, and is correctly located now so as to embrace the premises as they are surveyed and described. As against the government and parties claiming under the government, this record, so long as it remains unvacated, is conclusive."

(*Beard v. Federy*, 70 U.S. 478 at 479.)

Read together, the U.S. Supreme Court decisions in *United States v. Alviso* (1859) 64 U.S. 318 and *Beard v. Federy* (1865) 70 U.S. 478, stand for the proposition that the claim made by the Plaintiff in this case is extinguished by virtue of the Mexican land patent to the Alviso family. In other words, Defendants' predecessor-in-interest, Jose Antonio Alviso, had his interest in the Property confirmed in federal patent proceedings that took place pursuant to the Act of 1851 without any mention of a public trust easement. (MB MSJ UMF No. 20; FOMB MSJ Opp. UMF No. 20.) Accordingly, under the express authority of *Summa*, *Beard,* and *Alviso,* there can be no claim that any part of the Property is held subject to the public trust.

It does not matter that the Plaintiff is asserting this claim so many years after the U.S. land patent was issued. If this claim had been made immediately after the land patent was confirmed and its quitclaim effect declared, it is clear that there would have been summary judgment or a Rule 12(b)(6) motion for dismissal in U.S. District Court. This Court is obligated to follow the decisions of the United States Supreme Court.

Moreover, the United States would arguably not be much of a nation if we did not honor the international treaties it has made. If the United States did not do so, even as to a treaty that is quite old like the one involved in this case, what foreign nations abroad would ever be willing to make such international treaties with our nation in the future?

Applicable international law requires that such treaties can be relied upon.[8] See *Murray v. Schooner Charming Betsy* (1804) 6 U.S. (2 Cranch) 64, observing that "... An Act of Congress ought never to be construed to violate the law of nations...". See also, *Medellin v. Texas* (2008) 522 U.S. 491, at 505-506, commenting that, as a compact between nations, a treaty "...ordinarily depends for the enforcement of its provisions on the interest and honor of the governments which are parties to it.", citing *Head Money Cases* (1884) 112 U.S. 580, at 598.

Furthermore, the international obligation of nations to honor the treaties they make has been held to override countervailing public trust easements. Even if Plaintiff Friends of Martins Beach were correct that the scope of the provisional Mexican land grant held by the Alviso family did not include the submerged off-shore tidelands, and that those tidelands were reserved from the land grant and, as a result, remained in public trust at the end of the Mexican-American war when California became a territory of the United States, the suggestion that – as a result of such a "carve-out" of those tidelands by virtue of the provisional status of the Mexican land grant – the submerged lands had to remain public and could not be conveyed into private ownership is simply wrong as a matter of international law. Under its international duty to implement treaties entered into the United States, Congress had the power and authority to include tidelands within the scope of the land patent issued here by the Board of California Land Commissioners.

[8] A fundamental rule of international law is that treaties must be performed in good faith under the rule of pacta sunt servanda. See *Bishop, International Law Cases and Materials* (2d Edit. 1962) at pages 133-134.

That this is so was held in *Shively v. Bowlby* (1894) 152 U.S. 1, at 27-28. In *Shively v. Bowlby*, in describing native-American Indian treaty lands, the United States Supreme Court noted that prior to the admission of new states into the United States, territorial lands in the West were held by the United States government in public trust for future states. With respect to the general rule that such public trust lands could not be sold or otherwise conveyed into private ownership, the U.S. Supreme Court declared that there were certain exceptions to that doctrine, one of those exceptions being the international obligation to honor treaties made by the United States with other nations.

As the high Court stated in *Shively v. Bowlby*:

> We cannot doubt, therefore, that Congress has the power to make grants of lands below the high water mark of navigable waters in any Territory of the United States, whenever it becomes necessary to do so *in order to perform international obligations*, or to effect the improvement of such lands for the promotion and convenience of commerce with foreign nations and among the several States, or to carry out other public purposes appropriate to objects for which the United States hold the Territory [emphasis added]."

And, the above-quoted international obligation exception applies to the pre-statehood period when California was a Territory of the United States.

The importance of this international obligation to honor treaties with foreign nations has been specifically recognized in respect to the Treaty of Guadalupe Hidalgo, the very one involved here. In *Borax Consol., Ltd. v. City of Los Angeles* (1935) 296 U.S. 10, at 15 (dicta), the U.S. Supreme Court distinguished between tidelands acquired from Mexico to be held in public trust for the benefit and use of the public from tidelands that were subject to pre-existing Mexican land grants "...which required a different disposition, -- a limitation resulting from *the duty resting upon the United States under the Treaty of Guadalupe Hidalgo ... to protect all rights of property which had emanated from the Mexican Government prior to the treaty.* [emphasis added]."

Accordingly, as a matter of law, any claim that the Property is subject to the public trust is now barred and summary adjudication is granted in favor of the Defendants on Plaintiff's fourth

(quiet title) cause of action.

2. Any Countervailing Public Rights Under Article 10, Section 4 of the California Constitution Do Not and Cannot Override the Federal Land Patent Title in The Defendant Because, as a Matter of Federal Law, The Patent Acted as a Quitclaim Deed That Ended any Preexisting Legal Rights

Summary adjudication is also granted in favor of the Defendants on Plaintiff's second and seventh causes of action whereby Plaintiff seeks the imposition of a "public easement" to the beach, inland dry sand, and parking area under the Article 10, Section 4 of the California Constitution.

Plaintiff believes, under its second cause of action, that members of the public are entitled to a right of access under the California Constitution, Article 10, Section 4, which basically says that, since the State has ownership of the tidelands. Plaintiff contends that, going hand-in-hand with that tideland ownership is a right of access by virtue of the road going into the tidelands and also a right, under California Constitution, Article 10, Section 4, of access and use of the inland beach fronting the ocean which is the claim of plaintiff's seventh cause of action. As Article 10, Section 4 of the California Constitution provides:

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

This Section of the California Constitution is a restatement or codification of the preexisting public trust doctrine as it relates to the tidelands and what rights flow from the tidelands. Accordingly, under the authority of *United States v. Alviso* (1859) 64 U.S. 318 and *Beard v. Federy* (1865) 70 U.S. 478, as a matter of federal law, the public trust doctrine as it is restated in the California Constitution does not give the Plaintiff public access rights in this circumstance, and that is what was expressly held in *Summa Corp. v. California* (1984) 466 U.S. 198.

While it is correct that in *Summa* Justice William Rehnquist (then still an Associate

Justice of the Court) addressed the issue under the public trust doctrine, it is also clear from reading the facts recited in the decision that the City's position in that case was grounded in the idea that the right to access Ballona Lagoon was rooted in Article 10, Section 4 of the California Constitution. Therefore, while the *Summa* case reads in terms of the public trust doctrine, this Court is also relying on it in connection with the second and seventh causes of action under the California Constitution because the State Constitution is simply a restatement of the public trust doctrine as it preexisted, specifically with respect to access rights in connection with the tidelands.

In that regard, in *Summa,* Justice Rehnquist states:

> The question we face is whether a property interest so substantially in derogation of the fee interest patented to petitioner's predecessors can survive the patent proceedings conducted pursuant to the statute implementing the Treaty of Guadalupe Hidalgo. We think it cannot. The Federal Government, of course, cannot dispose of a right possessed by the State under the equal-footing doctrine of the United States Constitution. [Citation] Thus, an ordinary federal patent purporting to convey tidelands located within a State to a private individual is invalid, since the United States holds such tidelands only in trust for the State. (*Borax, Ltd. v. Los Angeles*, 296 U.S. 10, 15–16, 56 S.Ct. 23, 25–26, 80 L.Ed. 9 (1935).) But the Court in Borax recognized that a different result would follow if the private lands had been patented under the 1851 Act. (*Id.*, at 19, 56 S.Ct. at 27.) Patents confirmed under the authority of the 1851 Act were issued "pursuant to the authority reserved to the United States to enable it to discharge its international duty with respect to land which, although tideland, had not passed to the State." (*Id.*, at 21, 56 S.Ct. at 28. *See also Oregon ex rel. State Land Board v. Corvallis Sand & Gravel Co.*, 429 U.S. 363, 375, 97 S.Ct. 582, 589, 50 L.Ed.2d 550 (1977); *Knight v. United States Land Assn.*, 142 U.S. 161, 12 S.Ct. 258, 35 L.Ed. 974 (1891).)
>
> This fundamental distinction reflects an important aspect of the 1851 Act enacted by Congress. While the 1851 Act was intended to implement this country's obligations under the Treaty of Guadalupe Hidalgo, the 1851 Act also served an overriding purpose of providing repose to land titles that originated with Mexican grants.

Summa Corp. v. California, 466 U.S. 198, 205-06 (citations omitted).

Justice Rehnquist goes on to explain:

> The 1851 Act was intended "to place the titles to land in California upon a stable foundation, and to give the parties who possess them an opportunity of placing them on the records of this country, in a manner and form that will prevent future controversy." (Citations).

> California argues that since its public trust servitude is a sovereign right, the interest did not have to be reserved expressly on the federal patent to survive the confirmation proceedings.

(*Id.* at 206.) The Court then goes on to reject California's position in that regard and remand the case to the California courts. In doing so, at the end of the decision, Justice Rehnquist further states:

> We hold that California cannot at this late date assert its public trust easement over petitioner's property, when petitioner's predecessors-in-interest had their interest confirmed without any mention of such an easement in proceedings taken pursuant to the Act of 1851. The interest claimed by California is one of such substantial magnitude that regardless of the fact that the claim is asserted by the State in its sovereign capacity, this interest, like the Indian claims made in *Barker* and in *United States v. Title Ins. & Trust Co.*, must have been presented in the patent proceeding or be barred. Accordingly, the judgment of the Supreme Court of California is reversed, and the case is remanded to that court for further proceedings not inconsistent with this opinion.

(*Id.* at 209.)

Therefore, in *Summa* the U.S. Supreme Court reversed the decision of the California Supreme Court in *City of Los Angeles v. Venice Peninsula Properties* (1982) 31 Cal.3d 288, 297 and remanded the case for further proceedings not inconsistent with the Supreme Court's opinion. (*Summa*, at 209.) The California Supreme Court then transferred the case to the Second District California Court of Appeal with directions to decide the appeal in light of the decision of the United States Supreme Court in *Summa*. (*City of Los Angeles v. Venice Peninsula Properties* (1988) 251 Cal.Rptr 756.)

On remand, in *City of Los Angeles v. Venice Peninsula Properties* (1988) 205 Cal.App.3d 1522, the Second District Court of Appeal adhered to the U.S. Supreme Court's decision in *Summa* stating:

> The above cited cases are a complete answer to the State's argument here that only the fee title was settled by the patent process and that the public trust easement exists independent of that patent process. It is difficult for us to see how the patent can be described as settling in the grantee a full and *complete* title, while at the same time holding that it was burdened by a servitude of the magnitude of that asserted by the State in this action. Inasmuch as California never acquired sovereign title to land which was the subject of a prior grant by the Mexican government, the public trust easement, which is an adjunct of sovereignty and a creature of United States and California law, never arose.

City of Los Angeles v. Venice Peninsula Properties, 205 Cal.App.3d at 1532 (emphasis in original).

Plaintiff's theory that Mexican law and the Napoleonic Code should apply was also completely rejected by the Second District Court of Appeal. That Court responded to a substantially similar argument with the conclusion "[w]e need not here discuss the Mexican law because any contention that Mexican law is controlling of the scope and effect of the United States patenting process has been laid to rest by decisions of the United States and California Supreme Courts." (*Id.* at 1532.)

In that regard, the U.S. Supreme Court has consistently declined to inquire as to what rights the public may have had under substantive Mexican law, instead opting to confirm private ownership of tidelands free of any easements in favor of public access. See, e.g., *United States v. Coronado Beach Co.* (1921) 255 U.S. 472, at 487-488, where the U.S. Supreme Court rejected a collateral attack on Mexican land grant/based title to tidelands allegedly confirmed in contravention of pre-existing Mexican law, and holding that the question of whether or not a Mexican land grant included submerged tidelands had to have been decided in the land patent board proceedings where "...there was jurisdiction to decide them as well as if the decision was wrong as if it was right." See also *Knight v. United States Land Ass'n* (1891) 142 U.S. 161, 191 [Field, J., concurring], recognizing that the reconsideration of confirmed Mexican land grants under Mexican law would "...lead to great litigation in the State, to the serious detriment of its interests and those of its people."

3. For the Court to Rule Otherwise Would Confer to the Public a Right of Public Access Without Any Eminent Doman Proceeding and Without Any Just Compensation Which is Required As a Matter of Both Federal and State Constitutional Law

For this Court to rule otherwise and to require an easement across private property for public use would constitute a taking in express violation of the Fifth Amendment to the U.S. Constitution and Article 1, Section 19 of the California Constitution.

In *Nollan v. California Coastal Com'n* (1987) 483 U.S. 825, 831, the U.S. Supreme Court

explained that "perhaps because the point is so obvious" the Court has never been confronted with a controversy requiring it to rule on the issue of whether the appropriation of a public easement across a landowner's premises constitutes a taking. (*Id.* at 831.) There, the Court addressed the constitutionality of the Coastal Commission's requirement that the Nollans' offer to dedicate a lateral public beach easement along their beachfront lot as a condition of approval of a permit to demolish an existing bungalow and replace it with a three-bedroom house. (*Id.*)

Before addressing the constitutionality of the permit condition, the Court hypothetically explained that "if California had simply required the Nollans to make an easement across their beachfront available to the public on a permanent basis in order to increase public access to the beach, rather than condition their permit to rebuild their house on their agreeing to do so, we have no doubt there would have been a taking." (*Id.* at 831.) The Court explained that "[g]iven, then, that requiring an uncompensated conveyance of the easement outright would violate the Fourteenth Amendment, the question becomes whether requiring it to be conveyed as a condition for issuing a land-use permit alters the outcome." (*Id.*)

The U.S. Supreme Court's decision in *Nollan* dictates that the outcome Plaintiff is urging here is unconstitutional. Without a constitutionally permissible permit condition, or the exercise of the eminent domain power, Plaintiff cannot ask the Court to impose an easement across private property for public use.

Plaintiff argues that the result should somehow be different in the case of beachfront property. In *Nollan*, the Court dismissed a similar argument that was raised by Justice Brennan in dissent. There, Justice Brennan raised a question regarding whether Article 10, section 4 of the California Constitution required a different result in the case of beachfront property based on its prohibition on "exclude[ing] the right of way to [any navigable] water whenever it is required for any public purpose." (*Id.*)

Although declining to squarely address that issue of California Constitutional law, the majority of the U.S. Supreme Court said that even if Article 10, Section 4 applied, several California cases (all of which were cited in Defendants' moving papers here) suggested that

Justice Brennan's interpretation of the effect of Article 10, section 4 was "erroneous" and instead held that "to obtain easements of access across private property the State must proceed through its eminent domain power." (*Id. citing Bolsa Land Co. v. Burdick* (1907) 151 Cal.254, 260; *Oakland v. Oakland Water Front Co.* (1897) 118 Cal.160, 185; *Heist v. County of Colusa* (1984) 163 Cal.App.3d 841, 851; *Aptos v. Seascape Corp. v. Santa Cruz* (1982) 138 Cal.App.3d 484, 505-506.)

The U.S. Supreme Court said that while none of the above cited cases "specifically addressed" the argument that Article 10, section 4 allowed the public to cross private property to get to navigable water, if that section meant that such crossings were allowed, it is "hard to see" why that express State constitutional provision was not invoked in those cases. (*Id.*)

The Court also cited the California Attorney General's opinion, 41 Op.Cal.Atty.Gen. 39, 41 (1963), stating "[i]n spite of the sweeping provisions of [Art. 10, sect.4] and the injunction therein to the Legislature to give its provisions the most liberal interpretation, the few reported cases in California have adopted the general rule that one may not trespass on private land to get to navigable tidewaters for the purpose of commerce, navigation or fishing."

This Court also recognizes that in *Kelo v. City of New London* (2005) 545 U.S. 469, a closely divided United States Supreme Court held (in a five-to-four ruling) that New London, Connecticut could properly exercise eminent domain power to acquire private property in furtherance of an economic development plan devised by a private entity, the New London Development Corporation, to construct a resort waterfront hotel and conference center, a new state park, new residences, and various research, office and retail spaces.

In *Kelo,* the U.S. Supreme Court had granted certiorari to consider the question of "whether the [c]ity's proposed disposition of this property qualifies as a 'public use' within the meaning of the Takings Clause of the Fifth Amendment to the Constitution." The Supreme Court upheld the Connecticut Supreme Court's ruling, holding that because New London's proposed disposition of the subject property did qualify as a public use, it was a legitimate taking. Justice Stevens, who wrote for the majority, noted that "[t]he [c]ity has carefully formulated an economic

development plan that it believes will provide appreciable benefits to the community, including -- but by no means limited to -- new jobs and increased tax revenue."

The *Kelo* ruling is important here, in this Court's opinion, because it recognizes the significance and importance of the requirement of eminent domain and that there be just compensation for the taking of private property.

The Court is, therefore, granting summary adjudication on the fourth, second, and seventh causes of action. To do otherwise would be contrary to the usual mandates of eminent domain law, and would render the Fifth Amendment of the U.S. Constitution and Article 1, Section 19 of the California Constitution meaningless.

B. Summary Adjudication is Granted in Favor of Defendants On The Third Cause of Action in Plaintiff's First Amended Verified Complaint

The third cause of action in the complaint is for "quiet title for a public easement to Martin's Beach Road and for recreational use of the inland dry sand and parking area by express dedication." (MB MSJ RJN, Exh. J at p. 6.) Specifically, in connection with the third cause of action, Plaintiff argues, in part, that Defendants' "predecessors in interest *expressly offered* and through their actions offered to the public access to the Tidelands via Martin's Beach Road over a period of decades..." (MB MSJ RJN, Exh. J at ¶33.) Plaintiff further argues that Defendants' "predecessors expressly offered use of Martin's Beach Road to the public to access the Tidelands by writing on a large billboard along a public road for many decades..." (*Id.* at ¶35.) And, based on these arguments, Plaintiff calls upon this Court to reach the conclusion that "the Public, through express dedication, is entitled to quiet title to an easement for ingress and egress along Martin's Beach Road and for an easement to use the historical parking area and the dry sand inland for recreational use and fishing." (*Id.* at ¶39.)

A "dedication" is a voluntary transfer of an interest in land effected by: (1) an offer clearly and unequivocally indicated by the landowner's words or acts, to dedicate the land to a public use and (2) an acceptance by the public of the offer. (*Union Transp. Co. v. Sac. County* (1954) 42 Cal.2d 235, 240.) The offer of dedication and acceptance by the public may be express or

implied in fact. Friends of Martin's Beach plead an "express" dedication. (MB MSJ UMF Nos. 6, 7; FOMB MSJ Opp. UMF Nos. 6, 7.)

There are very specific requirements that must be met for an "express dedication." An "express" offer of dedication may be made by an express grant to a public or governmental agency in the form of a recorded grant deed. (*See Big Sur Properties v. Mott* (1976) 62 Cal.App.3d 99, 103 [terms of gift deed to public strictly construed]; *see also County of Sacramento v. Lauszus* (1945) 70 Cal.App.2d 639, 644.) An "express" offer of dedication may also take the form of a transfer for a specific purpose (*see e.g. Slavich v. Hamilton* (1927) 201 Cal. 299, 303), or a grant of easement (*see e.g. Los Angeles v. Pacific Elec. Ry. Co.* (1959) 168 Cal.App.2d 224, 227-233.). An express dedication of roads may also be effected by recording a map of a subdivision. (*See Wright v. City of Morro Bay* (2006) 144 Cal.App.4th 767, 770.) In that circumstance, the act of filing or recording a map showing lots separated by defined areas named as streets or parks is an offer to dedicate those areas to public use, and sales of lots by reference to the recorded map will repeat and reinforce the offer. (*Id.*, *see also Archer v. Salinas City* (1982) 93 Cal. 43, 49, 50; *Tischauser v. Newport Beach* (1964) 225 Cal.App.2d 138, 144.)

In addition to an express offer, the conveyance must reserve specific uses to the grantor and there must be an acceptance by a public entity of the offer to dedicate. (*City of Palos Verdes Estates v. Willett* (1946) 75 Cal.App.2d 394, 398; *Baldwin v. City of Los Angeles* (1999) 70 Cal. App. 4th 819, 837; *City of Anahein v. Metropolitan Water Dist. Of So. Cal.* (1978) 82 Cal.App.3d 763, 770 ["acceptance by the public entity is essential to complete a dedication."].) Acceptance of a public offer to dedicate occurs when formal acceptance is made by the proper public authorities. (*Baldwin*, 70 Cal.App.4th at 837.) Thus, an express dedication is said to have the characteristics of a contract, in that it requires both an offer and acceptance and is not binding until there has been an acceptance. (*Id.*)

Here, Plaintiff argues that Defendants' predecessor-in-interest expressly dedicated an easement to the public by "writing on a large billboard along a public road for many decades." (MB MSJ UMF No. 6; FOMB MSJ Opp. UMF Nos. 6.) Plaintiff further alleges that Defendants'

predecessor-in-interest "expressly" dedicated an easement by "constructing a parking lot, providing toilets, and opening a convenience store on the beach that catered almost exclusively to the public that came to use the Tidelands."(MB MSJ UMF No. 7; FOMB MSJ Opp. UMF No. 7.)

This Court agrees with the Plaintiff's position that the billboard can reasonably be taken as a writing and it is clear that Defendants' predecessor-in-interest, the Deeneys, consented to having the public enter the property for permissive recreational use. The Deeneys built facilities such as a convenience store and public toilets for the public use. These facts are undisputed. These facts, however, do not constitute an "express dedication" which normally requires a recorded grant deed and is ordinarily based on a history of use and access that is not on a permissive basis and not given, as this one, pursuant to the payment of a fee. (*See Big Sur Properties, supra* 62 Cal.App.3d at 103; *see also County of Sacramento v. Lauszus, supra* 70 Cal.App.2d at 644.)

Based on the authorities cited in the moving, opposition, and reply briefs, this Court concludes that by doing the things alleged by the Plaintiff, including maintaining the billboard on their property, the public toilets, and the convenience store, the Deeneys were engaging in commercial advertising in furtherance of their private ownership rights that go back to the United States land patent discussed above. That commercial advertising did not constitute an express dedication of the road or of any form of public access from the ocean.

In addition to the authorities cited above, the Court is also basing its decision on *City of Watsonville v. Mike Resetar*, 1 Civil 26538 (1st District, January 23, 1971), unpublished (Calif. Supreme Court Case No. 37612 [Petition for Hearing Denied Sept. 30, 1971]), a copy of which is attached hereto as **Exhibit 2.**[9] The *City of Watsonville* case supports the idea that the Deeneys' commercial advertising, and the public's resulting use of Martins Beach Road during the Deeneys' ownership, does not constitute an express dedication.

In *City of Watsonville*, the City filed suit to quiet title to the Pinto Lake area, in the Eastern part of Santa Cruz County, that had been earlier purchased from the Watsonville Water &

[9] The Court has requested the publication of this appellate decision so that it may be relied on here.

Light Company. Pinto Lake was originally part of a large parcel known as the Rancho Corralitos. As is the case here, Watsonville Water & Light Company's predecessor-in-interest had obtained its title to the Rancho Corralitos (including Pinto Lake) from a Mexican land grant.[10]

In the years prior to the filing of the quiet title action in *City of Watsonville v. Mike Resetar,* the Watsonville Water & Light Company sold water from Pinto Lake to nearby farmers in the area who used the water for crop irrigation. The issue in the case was whether there was a prior abandonment of the City's Mexican land grant rights because the earlier sales of water constituted an "express dedication" of the Pinto Lake to private use.

The trial court, Santa Cruz County Superior Court Judge Charles S. Franich, decided that there was no such express dedication. The First District Court of Appeal affirmed. Subsequently, the defendant farmers' Petition for Hearing to the State Supreme Court was denied. Judge Franich's decision became final and the Pinto Lake was quieted for public use as a recreation area.

If that was the result for a public entity holding title under a Mexican land grant, the same result should follow for private owners who have the same kind of ownership. In other words, the commercial advertising here, just as the commercial sale of water in *City of Watsonville v. Mike Resetar*, does not establish an express dedication.

For these reasons, the Court is granting summary adjudication in favor of the Defendants on Plaintiff's third cause of action for express dedication.

C. Summary Adjudication is Granted in Favor of Defendants On The First, Fifth, and Sixth Cause of Action in Plaintiff's First Amended Verified Complaint

The Court finds that, for the reasons stated above, its rulings on the fourth, second, and

[10] The Watsonville Water & Light Company acquired its title to Pinto Lake from Carmen Amesti de McKinlay. See *Duckworth v. Watsonville Water & Light Co.* (1915) 170 Cal. 425. Carmen Amesti (who married James McKinley of Monterey, California, in 1848) was a daughter of Jose Amesti, the Mexican Alcalde of Monterey. As his daughter, Carmen Amesti had title to the portion of the Rancho Corralitos that included Pinto Lake, the Rancho Corralitos having been given to her father Jose Amesti by a Mexican land grant of 15,440 acres in 1823. As the Alviso family who owned the property did in this case, after the Mexican-American war the Amesti family obtained a U.S. land patent that confirmed Jose Amesti's pre-existing Mexican land grant to the Rancho Corralitos. See *Wikipedia, Rancho Los Corralitos*, at en.wikipedia.org/wiki/Ranco_Los_Corralitos [article #491625774]. See also *Amesti v. Castro* (1874) 49 Cal. 325.

seventh causes of action in Plaintiff's First Amended Verified Complaint are completely dispositive of the first cause of action for a permanent injunction against "interference with access to and use of Martin's Beach.", the fifth cause of action to quiet title to the inland dry sand above high tide pursuant to "a claim of pre-existing right of use and or ownership", and sixth cause of action for declaratory relief. On that basis, this Court grants Defendants' motion for summary adjudication on the first, fifth, and sixth causes of action in Plaintiff's First Amended Verified Complaint.

D. Summary Adjudication is Granted in Favor of Defendants On The First and Second Causes of Action in Defendants' Verified First Amended Cross-Complaint

In their Verified First Amended Cross-Complaint, Defendants seek to quiet title to their Property, including their interest in the private road across the Property and the off-shore submerged tidelands, and also seek an order declaring that Plaintiff has no interest in the Property, including but not limited to, any right of public access or any easement for the public to use or access the Property for any purpose whatsoever.[11] (RJN, Exh. L.)

It is undisputed that Defendants are the fee title owners of the Property. (MB MSJ UMF No. 1; FOMB MSJ Opp. UMF No. 1.) As explained in detail above, Plaintiff has no right to use or access the Property under any theory. Plaintiff admits in its verified discovery responses that it has no express easements, easements by implication, easements by necessity, or easements by prescription in connection with the Property. (MB MSJ UMF No. 3; FOMB MSJ Opp. UMF No. 3.) Further, for the reasons explained above, Plaintiff has no constitutional right of access to the Property under Calif. Const., Article 10, Section 4, and there was no express dedication of any easement. Accordingly, Defendants are entitled to summary adjudication and an order declaring that Plaintiff has no interest in the Property, including but not limited to, any right of public access or easement for the public to use or access the Property for any purpose whatsoever.

Additionally, Defendants met all the requirements of Code of Civil Procedure sections

[11] On December 19, 2013, Defendants filed a dismissal, without prejudice, of the third cause of action for injunctive relief in their Verified First Amended Cross-Complaint. This was the only remaining cause of action in Defendants' Verified First Amended Cross-Complaint.

415.50 and 763.010 *et seq.* for publication of summons on "all persons unknown, claiming any legal or equitable right title, estate, lien, or interest in the cross-complaint adverse to Cross-Complainant's Title, or Any Cloud on Cross-Complainant's title thereto."[12] Accordingly, pursuant to Code of Civil Procedure section 763.030(b), the judgment for quiet title and declaratory relief shall be conclusive against all persons unknown, claiming any legal or equitable right title, estate, lien, or interest adverse to Defendants' title, or any cloud on Defendants' title thereto.

E. The Requests for Judicial Notice Are Granted

The following Requests for Judicial Notice are GRANTED in their entirety.

- Request for Judicial Notice in Support of Martins Beach 1, LLC and Martins Beach 2, LLC's Motion for Summary Judgment or Alternatively, Summary Adjudication
- Plaintiff's Request for Judicial Notice in Opposition to Defendants' Motion for Summary Judgment or Summary Adjudication
- Second Request for Judicial Notice in Support of Martins Beach 1, LLC and Martins Beach 2, LLC's Motion for Summary Judgment or Alternatively, Summary Adjudication
- Plaintiff's Second Request for Judicial Notice in Opposition to Defendants' Motion for Summary Judgment or Summary Adjudication
- Request for Judicial Notice in Support of Plaintiff's Motion for Summary Adjudication
- Request for Judicial Notice in Support of Defendants Martins Beach 1, LLC and Martins Beach 2, LLC's Opposition to Plaintiff's Motion for Summary Adjudication

F. Objections to Evidence

The Court's rulings on the following Objections to Evidence are set forth in a separate order, which is attached hereto as **Exhibit 3.**

- Friends of Martin's Beach Objections to Evidence Submitted by Defendants in Support of Motion for Summary Judgment
- Defendants Martins Beach 1, LLC and Martins Beach 2, LLC's Objections to Evidence Submitted by Plaintiff in Support of Their Opposition to Motion for Summary Judgment or Alternatively, Summary Adjudication

[12] *See* Request for Judicial Notice in Support of Martins Beach 1, LLC and Martins Beach 2, LLC's Motion for Summary Judgment or Alternatively, Summary Adjudication filed on October 16, 2013 at Exh. A and B.

- Defendants and Cross-Complainants Martins Beach 1, LLC and Martins Beach 2, LLC's Objections to Evidence Submitted By Plaintiff Friends of Martins Beach in Support of its Motion for Summary Adjudication
- Plaintiff Friends of Martins Beach's Objections to Declaration of Bill Lott

ORDER

For the reasons set forth above, the Court hereby:

(1) Grants Defendants' motion for summary judgment on all causes of action in Plaintiff's First Amended Verified Complaint, grants Defendants' motion for summary adjudication on the first and second causes of action in Defendants' Verified First Amended Cross-Complaint, and denies Plaintiff's motion for summary adjudication on Plaintiff's second cause of action;

(2) A Summary Judgment of Dismissal With Prejudice on the Complaint herein to be entered in favor of Defendants Martins Beach 1, LLC and Martins Beach 2, LLC and against Plaintiff Friends of Martins Beach;

(3) A Summary Adjudication Quieting Title and Granting Declaratory Relief, consistent with this Memorandum Decision and Order, to be entered in favor of Defendants/ Cross-Complainants Martins Beach 1, LLC and Martins Beach 2, LLC, on their Cross-Complaint herein, and against Plaintiff/Cross-Defendant Friends of Martins Beach.

(4) Defendants/Cross-Complainants Martins Beach 1, LLC and Martins Beach 2, LLC to have and recover their costs of suit herein subject to Application by the filing of a Memorandum of Costs.

IT IS SO ORDERED.

Dated: April 30, 2014.

Hon. Gerald J. Buchwald
Judge of the Superior Court

END OF ORDER

APPROVED AS TO FORM:

Redenbacher & Brown, LLP

Plaintiff's Objections and Proposed Alternate Memorandum of Decision have been reviewed and noted by the Court. These Objections and Proposed Alternate contents are Sustained in part and Overruled in part.[13] 4/30/14

By: _____
Gary F. Redenbacher
Counsel for Plaintiff

13 / Plaintiff's Objection as to the Decision's section on Undisputed Facts (stated at Plaintiffs' Counsel's January 31, 2014 Letter, page 1, fourth paragraph) is Sustained. The Court has modified the Proposed Decision accordingly, to clarify that Plaintiff contends that the Alviso family's Mexican land grant was provisional and not final. However, as further stated in this Decision above, this Court is of the opinion that this is a distinction without a difference under the cited U.S. Supreme Court cases that control here.

Plaintiff's Objections as to the Legal Conclusions (stated at Plaintiffs' Counsel's January 31, 2014 Letter, pages 1 and page 2, first, second, and third paragraphs) are Overruled.

Plaintiff's Alternate contents (stated in the Proposed Alternate Memorandum of Decision, filed February 4, 2014), are rejected for the most part and adopted in some part as reflected in the revisions to the Proposed Decision that the Court has made above.

Exhibit 1

List of Documents and Evidence Considered by the Court

The Court has reviewed and considered the following Motion, Opposition, and Reply Papers that were filed and/or submitted by the respective Parties in this case:

Martins Beach 1, LLC and Martins Beach 2, LLC's Motion for Summary Judgment or Alternatively, Summary Adjudication

1. Martins Beach 1, LLC and Martins Beach 2, LLC's Amended Notice of Motion and Motion for Summary Judgment or Alternatively, Summary Adjudication (Filed: July 12, 2013)

2. Memorandum of Points and Authorities in Support of Martins Beach 1, LLC and Martins Beach 2, LLC's Motion for Summary Judgment or Alternatively, Summary Adjudication (Filed: July 12, 2013)

3. Separate Statement of Undisputed Material Facts in Support of Martins Beach 1, LLC and Martins Beach 2, LLC's Motion for Summary Judgment Or Alternatively, Summary Adjudication (Filed: July 12, 2013)

4. Request for Judicial Notice in Support of Martins Beach 1, LLC and Martins Beach 2, LLC's Motion for Summary Judgment or Alternatively, Summary Adjudication (Filed: July 12, 2013)

5. Declaration of Debbie Dodge in Support of Defendants Martins Beach 1, LLC and Martins Beach 2, LLC's Motion for Summary Judgment or Alternatively, Summary Adjudication (Filed: July 12, 2013)

6. Declaration of Dori L. Yob in Support of Martins Beach 1, LLC and Martins Beach 2, LLC's Motion for Summary Judgment Or Alternatively, Summary Adjudication (Filed: July 12, 2013)

7. Declaration of Maria A. Sanders (Filed: July 12, 2013)

8. Declaration of Amy Ingram in Support of Martins Beach 1, LLC and Martins Beach 2, LLC's Motion for Summary Judgment or Alternatively, Summary Adjudication (Filed: July 12, 2013)

9. Proof of Service Re Motion for Summary Judgment or Alternatively, Summary Adjudication (Filed: July 12, 2013)

10. Plaintiff's Opposition to Defendants' Motion for Summary Judgment Or, Alternatively, Summary Adjudication (Filed: September 13, 2013)

11. Plaintiff's Separate Statement of Undisputed Material Facts in Opposition to Defendants' Motion for Summary Judgment or Summary Adjudication and Additional Undisputed Material Facts (Filed: September 13, 2013)

12. Plaintiff's Request for Judicial Notice in Opposition to Defendants' Motion for Summary Judgment or Summary Adjudication (Filed: September 13, 2013)

13. Friends of Martin's Beach Objections to Evidence Submitted by Defendants in Support of

Motion for Summary Judgment (Filed: September 13, 2013)

14. Declaration of Paul Jensen, Land Surveyor, in Opposition of Defendants' Motion for Summary Judgment or Adjudication (Filed: September 13, 2013)

15. Declaration of Gary Redenbacher in Opposition of Defendants' Motion for Summary Judgment or Adjudication (Filed: September 13, 2013)

16. Declaration of John Brown in Opposition of Defendants' Motion for Summary Judgment or Adjudication (Filed: September 13, 2013)

17. [Proposed] Order Ruling on Plaintiff's Objections to Evidence Submitted By Defendants in Support of its Motion for Summary Judgment (Filed: September 16, 2013)

18. Reply in Support of Martins Beach 1, LLC and Martins Beach 2, LLC's Motion for Summary Judgment or Alternatively, Summary Adjudication (Filed: September 20, 2013)

19. Defendants Martins Beach 1, LLC and Martins Beach 2, LLC's Response to Plaintiff's Additional Undisputed Material Facts (Filed: September 20, 2013)

20. Defendants Martins Beach 1, LLC and Martins Beach 2, LLC's Objections to Evidence Submitted by Plaintiff in Support of Their Reply to Motion for Summary Judgment or Alternatively, Summary Adjudication (Filed: September 20, 2013)

21. [Proposed] Order re Defendants Martins Beach 1, LLC and Martins Beach 2, LLC's Objections to Evidence Submitted by Plaintiff in Support of Their Reply to Motion for Summary Judgment or Alternatively, Summary Adjudication (Filed: September 20, 2013)

22. Proof of Service (Filed: September 20, 2013)

23. Request for Judicial Notice in Support of Martins Beach 1, LLC and Martins Beach 2, LLC's Motion for Summary Judgment or Alternatively, Summary Adjudication (Filed: October 16, 2013)

24. Plaintiff's Second Request for Judicial Notice in Opposition to Defendants' Motion for Summary Judgment or Summary Adjudication (Filed: October 18, 2013)

25. Objection to Second Request for Judicial Notice in Opposition to Defendants' Motion for Summary Judgment or Summary Adjudication (Filed: October 22, 2013)

Plaintiff's Motion for Summary Adjudication

26. Plaintiff's Notice of Motion for Summary Adjudication (Filed: June 26, 2013)

27. Points and Authorities in Support of Plaintiff's Motion for Summary Adjudication (Filed: June 26, 2013)

28. Declaration of Paul Jensen, Land Surveyor, In Support of Motion for Summary Adjudication (Filed: June 26, 2013)

29. Declaration of Kenneth Adelman in Support of Motion for Summary Adjudication (Filed: June 26, 2013)

30. Declaration of Gary Redenbacher in Support of Motion for Summary Adjudication (Filed: June 26, 2013)

31. Request for Judicial Notice (Filed: June 26, 2013)

32. Plaintiff's Separate Statement in Support of Motion for Summary Adjudication (Filed: June 26, 2013)

33. Defendant and Cross-Complainants Martins Beach 1, LLC and Martins Beach 2, LLC's Opposition to Plaintiff's Motion for Summary Adjudication (Filed: September 5, 2013)

34. Request for Judicial Notice in Support of Defendants Martins Beach 1, LLC and Martins Beach 2, LLC's Opposition to Plaintiff's Motion for Summary Adjudication (Filed: September 5, 2013)

35. Defendant and Cross-Complainant Martins Beach 1, LLC and Martins Beach 2, LLC's Separate Statement of Undisputed Material Facts in Opposition to Plaintiff's Motion for Summary Adjudication (Filed: September 5, 2013)

36. Defendants and Cross-Complainants Martins Beach 1, LLC and Martins Beach 2, LLC's Objections to Evidence Submitted By Plaintiff Friends of Martins Beach in Support of its Motion for Summary Adjudication (Filed: September 5, 2013)

37. Declaration of Bill Lott in Support of Defendants Martins Beach 1, LLC and Martins Beach 2, LLC's Opposition to Plaintiff's Motion for Summary Adjudication (Filed: September 5, 2013)

38. [Proposed Order] Re Defendants and Cross-Complainants Martins Beach 1, LLC and Martins Beach 2, LLC's Objections to Evidence Submitted By Plaintiff Friends of Martins Beach in Support of its Motion for Summary Adjudication (Filed: September 5, 2013)

39. Proof of Service (Filed: September 5, 2013)

40. Plaintiff's Reply to Opposition to Motion for Summary Adjudication (Filed: September 13, 2013)

41. Plaintiff's Response to Defendants' Separate Statement of Additional Undisputed Material Facts in Support of Opposition to Motion for Summary Adjudication (Filed: September 13, 2013)

42. Friends of Martin's Beach Response to Objections to Evidence Submitted by Defendants in Relation to Evidence Submitted by Friends in Support of its Motion for Summary Judgment (Filed: September 13, 2013)

43. [Proposed] Order Ruling on Defendants' Objections to Evidence Submitted by Plaintiff in Support of its Motion for Summary Judgment (Filed: September 16, 2013)

44. Plaintiff's Objections to Declaration of Bill Lott (Filed: September 20, 2013)

Exhibit 2

***City of Watsonville v. Mike Resetar*, 1 Civil 26538 (1st District, Div. 3, 1971)**
And Related Court Records

(1) Decision of the Calif. Court of Appeal, First District (Case No. 26538), filed July 20, 1971;

(2) Judgment of the Superior Court of Santa Cruz County (Case No. 37612), filed Aug. 7, 1968 [Hon. Charles S. Franich];

(3) Memorandum Decision of the Superior Court of Santa Cruz County (Case No. 37612), filed Jun. 22, 1967 [Hon. Charles S. Franich];

(5) Records of the Denial of Petition For Hearing in the Calif. Supreme Court on September 30, 1971, and notation of Order thereon filed Oct.1, 1971.

Cruz

COPY Remittitur

NOT TO BE PUBLISHED
IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION THREE

FILED

JUL 20 1971

Court of Appeal - First App. Dist.
CLIFFORD C. PORTER, Clerk
BY.....
Deputy

CITY OF WATSONVILLE, a municipal corporation,

Plaintiff, Cross-Defendant and Respondent,

vs.

ANTHONY RESETAR, Executor of the Estate of Mike Resetar, Deceased, et al.,

Defendants, Cross-Complainants and Appellants.

1 Civil No. 26538

(Sup. Ct. No. 37612)

Respondent, City of Watsonville (City) filed a complaint to quiet title to Pinto Lake (Pinto). Certain defendants, including appellants, filed a cross-complaint seeking an injunction ordering the City to sell water, at reasonable rates, for irrigation purposes. Following a non-jury trial, judgment was entered in favor of the City, on the complaint and cross-complaint. Appellants appeal from the judgment.

The trial court in its findings of fact found that the sales of water from Pinto for irrigation were on a casual and sporadic basis as contrasted with the supply of domestic water. From 1901 to 1922 Watsonville Water & Light Company sold water to customers from Pinto directly or from the Green Valley Road pipeline for irrigation, and some of the customers built and maintained their own pumps and pipe-

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lines. None of these sales were on a systematic basis, but only as requested or contracted by the farmers. Watsonville Water & Light Company was subject to Railroad Commission regulation, and in a 1919 decision of that Commission relative to Pinto the Commission held (1) that Pinto was entirely separate from the system supplying water to the City; (2) Watsonville Water & Light Company occasionally permitted ranchers in the vicinity to pump water from Pinto, and (3) that this use was occasional. The trial court further found that in Duckworth v. Watsonville W. etc. Co., 158 Cal. 206 (1910), the court found that Duckworth (appellants' predecessor in interest) had no right to the water from Pinto except for domestic use and watering livestock.

The trial court further found that the City agreed to assume all existing obligations of Watsonville Water & Light Company; that the City was not using Pinto water in its system, and there was no service of irrigation water to the appellants, each appellant pumping their own water from Pinto. In 1930 the City and Resetar entered into a 20-year agreement for the sale of water, and in 1939 the City and Pista's predecessor made a similar 10-year agreement. In 1947 the City was selling Pinto water to at least 28 consumers, including Resetar and Pista's predecessor. During that year a pipeline broke and was not replaced. The City gave written notice to consumers it would not sell Pinto water for irrigation after January 1, 1948. Pinto water was sold to consumers, who supplied their own pumps and pipelines, up to the end of 1950, except in the case of Resetar. The City refused to sell water to Resetar after 1949. Since 1949, Resetar has exercised

"self help" and diverted water from Pinto. Since 1950 Pista has done the same. The City has not billed Resetar for water since 1949 and has not billed Pista for water since 1950. The trial court further found that no service area was ever created by the City or its predecessor for supplying irrigation water to appellants. Nor was the conduct of the City, or its predecessor, such as to agree to provide water from Pinto continuously for irrigation or to induce appellants to rely upon water from that source.

The appellants concede that the trial court's findings of fact are correct. Appellants maintain, however, that the trial court drew the wrong conclusions of law. The appellants point out that the pretrial order framed the following two issues: (1) the right (if any) of appellants to take water from Pinto for irrigation purposes, based upon riparian rights, prescriptive rights or irrevocable license, (2) the right (if any) of appellants to the waters of Pinto for irrigation purposes as beneficiaries of a public trust and use declared by the City's predecessor in interest and by the City.

On the first issue the trial court found for the City and appellants do not contest this finding on appeal. On the second issue, it is appellants' position that the trial court found for the appellants, in the findings of fact, but erroneously concluded that Pinto was not dedicated to a public use for irrigation purposes, and further that respondent was not entitled to discontinue irrigation service which had been furnished for half a century. The appeal is based only on this second issue.

The appellants contend that the City has a legal title to the

entire water system, including Pinto, but its legal title is impressed with a trust in favor of appellants, who own a right of service. This right of service fastened on the entire water system of the City, and the appellants are entitled to water from any source within the system. The appellants further contend that the City made a binding submission to the jurisdiction of the Railroad Commission in 1922 when the water system was transferred to the City, and the City expressly promised to assume all of the then existing obligations of the transferor relative to present and prospective users of water. As a result of this assumption of obligation the City is powerless to discontinue service to the appellants without prior approval of the Public Utilities Commission. The question thus presented is what were the then existing obligations, if any, owed to appellants that the City assumed from Watsonville Water & Light Company?

Considering first the contention that the City was without power to discontinue service, the law is well settled that a public utility cannot go out of business or discontinue its service to the public, in whole or in part, without proper authority. Once the public use attaches, the public utility loses all right to discontinue service on its own motion. (See Pacific Tel. & Tel. Co. v. Superior Court, 60 Cal.2d 426.) There is no question that the supplying of water for domestic purposes was a public use and that the Watsonville Water & Light Company could not discontinue this service without Railroad Commission authorization. The problem here, however, relates to the classification of Pinto water for irrigation purposes. A company having a single and undivided water supply may devote its properties and part

of its water supply to public service and may retain part of it for private sale, and it does not become a public service corporation as to all by dedicating a part. (McIntyre v. Consolidated Water Co., 205 Cal. 231; see also Del Mar Water, etc. Co. v. Eshleman, 167 Cal. 666.)

Thus the basic issue as stated by appellants is whether Pinto was dedicated to a public use for irrigation purposes. If Pinto was dedicated to a public use then when did this dedication take place? There had been no dedication by 1910 as the court in Duckworth v. Watsonville W. etc. Co., supra, 158 Cal. 206 found the appellants' predecessor[1] had no right to take water from Pinto except for domestic use or to water livestock, and perpetually enjoined Duckworth from taking water for irrigation purposes. A later Duckworth case (170 Cal. 425) made no change as to the status of Pinto.

In 1919 a Railroad Commission decision found that Pinto Lake was an entirely separate system (from the systems supplying domestic water); that occasionally permits were granted to ranchers to pump water from Pinto. The Commission termed this use "occasional". The Railroad Commission decision did not find that these sales or the use of Pinto water constituted a public use. Thus by 1919 there had been no dedication. In fact, the trial court found that none of the sales of Pinto water for irrigation prior to 1922 were on a systematic basis, but were made only as requested or contracted for by certain farmers. Such sales would not constitute a public use. (See Allen v. Railroad Commission, 179 Cal. 68; Thayer v. California Development Co., 164

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1. Predecessor in interest of appellants.

Cal. 117.)

The appellants have not cited any circumstances occurring during the period 1919 to 1922 that would constitute a dedication. As there had been no dedication by 1922 the City, in assuming all the "then existing obligations of" the Watsonville Water & Light Company obviously did not assume an obligation to supply Pinto water for irrigation purposes. Any right possessed by the appellants to this water must therefore have been acquired from the City after 1922.

In 1930 the City and appellants Resetar entered into a 20-year contract for the sale of water. In 1939 the City and appellant Pista's predecessor in interest entered into a similar 10-year contract. Water sold under contract does not constitute a public use. (See Sutter Butte Canal Co. v. Railroad Com., 202 Cal. 179, 190.) Furthermore, if a public use existed, a contract would not have been necessary. After 1947 the City ceased selling Pinto water to consumers as the pipelines became unservicable. An exception was made to consumers who supplied their own pump and pipeline until the end of 1950, except in the case of appellants Resetar. The City refused to sell water to the Resetars after 1949. Since 1949 the Resetars, and since 1950, Pista, have exercised "self help" and diverted water from Pinto, but this "self help" could not be made the basis of any right against the City. The City has not billed the Resetars since 1949 or Pista since 1950. From these facts it is clear that the appellants did not

acquire a right to be supplied with water from Pinto after 1922.

Finally, no service area was ever created for supplying irrigation water to the appellants. Nor was the conduct of the City (or its predecessors) such as to constitute an agreement to provide water from Pinto or to induce appellants to rely upon water from that source.

As the City was under no obligation to supply water from Pinto to the appellants, the other contentions raised by the parties need not be discussed.

The judgment is affirmed.

CERTIFIED FOR NONPUBLICATION.

Caldecott, J.

We concur:

Draper, P.J.

Brown (H.C.), J.

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Attorneys for Plaintiff
and Cross-Defendant

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CRUZ

CITY OF WATSONVILLE, a municipal corporation,

Plaintiff and Cross-Defendant,

vs.

MIKE RESETAR, LOUIS RESETAR and MITCHELL RESETAR, individually, and as co-partners doing business as RESETAR BROTHERS; MITCHELL RESETAR, SR., A. L. RESETAR and MITCHELL RESETAR, JR., general partners in a limited partnership doing business as WEST COAST FARMS; WEST COAST FARMS, a limited partnership; LOUIS MITCHELL PISTA, JOHN CHARLES PISTA, STEPHEN PETER PISTA, individually, and as co-partners; KATHERINE PISTA as Executrix of the Last Will and Testament of BLAS PISTA; KATHERINE PISTA, and MARIE PISTA, individually; WATSONVILLE EXCHANGE, INC., a corporation; Estate of M. V. PISTA, LOUIS M. PISTA, Executor of the Last Will of M. V. PISTA; T.J. RESETAR, MARY RESETAR KANE and MITCHELL L. RESETAR as Executors of the Last Will and Testament of MITCHELL RESETAR, SR., deceased; KATHERINE PISTA, Executrix of the Last Will and Testament of LOUIS R. PISTA, deceased,

Defendants and Cross-Complainants.

NO. 37612

JUDGMENT

This action came on regularly to be heard before this Court sitting without a jury on ~~July ——, 1968~~ March 13, 1967. Plaintiff and defendant were present and represented by John L. McCarthy for plaintiff and Philip T. Boyle and Richard Kessell for defendants.

Evidence oral and documentary was introduced on behalf of the plaintiff and defendants, respectively, upon the pleadings on file herein.

The cause having been submitted and the Court having made and filed its Findings of Fact and Conclusions of Law:

IT IS HEREBY ORDERED AND DECREED as follows:

1.

That plaintiff have judgment on its First Cause of Action against the above-named defendants and its fee simple title to the lands described in the Exhibit attached hereto and incorporated herein by reference is hereby quieted.

2.

That plaintiff's riparian rights in and to the waters of Pinto Lake are hereby quieted as against the above-named defendants, their successors and assigns.

3.

That plaintiff has appropriated for beneficial uses all waters of Pinto Lake Santa Cruz County, California, which are subject appropriation.

4.

That none of the above-named defendants has any right to take water from Pinto Lake for any purpose or in any amount.

5.

That the above-named defendants, and each of them, together with their agents, servants, tenants, employees, successors and assigns are hereby forever debarred, restrained and permanently enjoined from taking directly or indirectly, by pumping or other means, any water whatsoever from Pinto Lake in Santa Cruz County, California.

6.

That the above-named defendants, and none of them, acquired any rights whatsoever in the waters of Pinto Lake by reason of the

stipulated judgment in Santa Cruz County Superior Court, case number 30,747.

7.

That the above-named defendants and cross-complainants take nothing by reason of their First Cause of Action by way of cross-complainant.

8.

That said defendants and cross-complainants take nothing by reason of their Second Cause of Action by way of Cross-Complaint.

9.

That the above-named defendants and cross-complainants take nothing by reason of their Third Cause of Action by way of Cross-Complaint.

10.

That said defendants and cross-complainants take nothing by reason of their Court Cause of Action by way of Cross-Complaint.

11.

That each party bear its own costs.

DONE in open Court this 30 day of July, 1968.

Judge of the Superior Court

EXHIBIT A VOL 94 PAGE 191

PINTO LAKE
Lands of the City of Watsonville

SITUATE in the Rancho Corralitos, County of Santa Cruz, State of California.

BEING a portion of the lands conveyed by the Watsonville Water and Light Company to the City of Watsonville by deed recorded in Volume 8, Page 2, Official Records of Santa Cruz County and also being a portion of Lot 2 of the Corralitos Rancho as the same is designated upon the map thereof recorded in Volume 8 of Deeds at page 49, Santa Cruz County Records, and described as follows:

BEGINNING at a station on the Southerly boundary of lands now or formerly of Henderson near the Easterly side of Pinto Lake, and at the Northwest corner of lands conveyed by Watsonville Water and Light Company to Andrew Cunningham by deed recorded January 28, 1901 in Volume 136 of Deeds at page 402, Santa Cruz County Records; thence along the Western line of the lands so conveyed to Cunningham, South 1° East 2.21 chains; South 23° 30' East 2.77 chains; South 4° 50' East 2.36 chains; South 35° East 1.00 chains; South 50° East 1.12 chains; South 39° 45' East 1.33 chains; South 38° East 1.52 chains; South 48° 45' East 2.30 chains; South 20° 45' East 3.32 chains; South 25° 15' East 1.48 chains; South 31° East 2.40 chains; South 13° 45' East 2.07 chains; South 16° 30' East 2.20 chains; South 6° 45' East 4.00 chains; South 11° 30' West 3.54 chains; South 26° East 5.11 chains; South 10° West 2.46 chains; and South 39° 30' West 1.26 chains to the most Northern corner of lands conveyed by Andrew Cunningham, et ux, to Watsonville Water and Light Company, by deed recorded December 18, 1902 in Volume 146 of Deeds at page 370, Santa Cruz County Records; thence along the Northern line of said lands South 60° 30' East 1.21 chains; South 76° East 4.47 chains to a telephone pole and South 75° 45' East 4.77 chains to the West side of the Green Valley Road; thence along the West side of said road South 0° 35' East 3.00 chains to a post W and South 23° 20' West 6.70 chains to a post from which a 3 x 6 redwood post marked W. P. T. 6 bears South 23° 30' West 20 foot distant; thence leaving said road North 39° 20' West 15.38 chains and South 87° 45' West 2.0 chains to a stake marked S. T. near the South end of Pinto Lake; thence following the margin of said Lake North 9° 15' West 0.75 chains; South 87° 30' West 7.39 chains; North 2° 15' West 1.44 chains; North 36° 15' West 2.30 chains; North 42° West 2.00 chains; North 21° 30' West 1.00 chains; North 36° West 0.34 chains; North 81° West 0.75 chains; North 19° West 1.00 chains; North 46° 30' East 1.00 chains; North 26° 30' East 1.30 chains; North 46° 15' West 1.79 chains; South 39° 50' West 0.46 chains; North 52° West 3.00 chains; North 46° West 5.46 chains; North 45° 45' East 3.00 chains; North 19° East 1.40 chains; North 35° 15' West 1.00 chains; North 65° 30' West 1.00 chains; North 56° 30' West 1.20 chains; North 24° 45' West 2.17 chains; North 50° 15' West 2.00 chains; North 64° 45' West 3.16 chains; and North 30° 15' West 1.35 chains; to a 4 x 4 redwood post marked W. P. T. on the Easterly boundary of Lot 1 of said Corralitos Rancho; thence along said boundary due North 6.49 chains to the most Southerly corner of lands now or formerly of St. John; thence along the Southern line of said lands North 66° 20' East 10.35 chains; North 1.00 chains and North 89° 30' East 6.25 chains to the point of beginning.

CONTAINING 76.512 Acres, more or less.

TOGETHER with all riparian rights, and rights by acquired by appropriation appurtenant and relating to said premises and in the waters of Pinto Lake near Watsonville, Santa Cruz County, California.

The foregoing Judgment
entered this 1st day of Aug 1968
ATTEST: TOM M. KELLEY, Clerk
By [signature] Deputy Clerk

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FILED

JUN 2 2 1987

TOM M. KELLEY, CLERK

BY Jean Moran DEPUTY

SANTA CRUZ COUNTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CRUZ

CITY OF WATSONVILLE, a municipal corporation,

Plaintiff

vs.

MIKE RESETAR, ET AL.,

Defendants

No. 37612

MEMORANDUM DECISION

The question in this action is whether defendants Resetar and Pista (hereinafter referred to as Resetar-Pista) have any rights to the waters of Pinto Lake in Santa Cruz County. Plaintiff City, owner of approximately 70 acres of the lake, seeks to maintain said lake for recreation purposes.

The basic issue is whether plaintiff or its predecessors in interest, Watsonville Water and Light Company (acquired by the City in 1922), has by dedication created a right in said defendants to the use of water from said lake, particularly for irrigation purposes.

A number of other questions were included in the pre-trial order but were not urged in oral argument or extensively in the briefs submitted. It is to these questions that the Court will

address itself first.

The lands of defendants here involved were a portion of the lands originally owned by S. J. Duckworth. In the case of Duckworth v. Watsonville Water and Light Company, 170 Cal. 425, it was held that the Duckworth lands had been divested of both riparian rights (except for domestic uses) and rights of appropriation and the Company could dispose of the water as it saw fit. The evidence in the instant case further reflects that the lands of Resitar-Pista do not border on the lake; are in a different watershed; and it would, therefore, appear did not any time have riparian rights. (Bathgate v. Irvine, 126 Cal. 135) Since the lands have no riparian rights, defendants would have no right to use water for domestic purposes. The reservation of domestic water rights in the conveyance from McKinlay to Smith and Montague, September 27, 1884, would attach only to the remaining Duckworth lands still riparian.

Defendants also claim an irrevocable license but the Court could find no doctrine justifying the acquisition of water rights in this manner. It would appear that the contention would have to be identical to the doctrine of appropriation. Apparently, this contention applied only to the question of the possible location of defendants Resetar's pump on City property and the location of the pipe lines of all defendants. The evidence appears uncontradicted that the pump of Pista is located on Marmo property and the pump of Resetar on Resh property. Necessarily, the pipe lines extend to City property and the Court is of the opinion that defendants do not have an irrevocable license to maintain them on City property. The contractual arrangements with the City make it clear that there was no such intent.

As to acquisition of rights by prescription, the evidence is insufficient to show that the defendants ever acquired any rights as to the Watsonville Water and Light Company or the City

and since the amendment of Civil Code Section 1007 have been precluded from doing so.

Further, it is the conclusion of the Court that the final judgment of this Court on August 9, 1915, Action No. 3898, S. J. Duckworth, et al, vs. Watsonville Water and Light Company, et al, established no rights in defendants nor did it create any estoppel as to plaintiff.

Plaintiff's claim that defendants' causes of action in their cross-complaint are barred by Code of Civil Procedure sections 343, 321, 328(3) [apparently an erroneous citation], 319, and 312; Government Code section 910; and laches are without merit.

Defendants Resetar have also expressed the possibility of having rights to this water arising out of the agreement dated May 17, 1899, between Luke and Steve Scurich and the Watsonville Water and Light Company. However, if such document carries any water right, there is nothing in the record to show that defendants Resetar succeeded to it. The agreement between Resh and Resetar dated November 12, 1929, by which Resetar obtained the easement for a pump and pipe line expressly reserves the rights of Resh, if any, to take water from the lake. Noted in passing is the statement in paragraph 1e: "It is understood, however, that first parties do not warrant that they have any right to grant to second parties the use of any water from said lake." It would appear, moreover, that the intent and purpose of the Scurich agreement was to permit the use of land otherwise unusable and not to convey any water rights. No evidence was introduced to show that Scurich ever claimed any right to water.

The principal issue, then, is whether defendants have acquired any rights to the water on the theory of a public trust and dedication. There appears to be no doubt that a public utility concerned with water, as well as a City, holds such water as a public trust. Defendants correctly assert that the Watsonville

Water and Light Company stated it held the water as a public trust for the purposes of emergency supply of water for the City of Watsonville and for irrigation. It appears to the Court, however, that the significant question is whether the conduct of the City and its predecessor has been such as to dedicate the waters of the lake for a specific use and not merely a question of whether the water was held as a public trust. If it has not been so dedicated, then it would appear that the City may use such water for any beneficial use consistent with its public trust.

At the outset it should be noted that at least as to these defendants, no service area or district was ever created by either the City or its predecessor. The sales were casual sales and on a contractual basis. Therefore, Fellows v. City of Los Angeles, 151 Cal. 52, Durant v. City of Beverly Hills, 39 C.A. 2d 133, People ex rel. City of Downey v. Downey County Water District, 202 C.A. 2d 786, and San Bernardino Valley Municipal Water District v. Meeks and Daley Water Company, 226 C.A. 2d 216, cited by defendants, all of which concerned well-defined service areas, do not answer the question. In these cases water had been furnished for domestic use and the users were led to believe and reasonably relied upon a continuation of such service.

On the other hand, in relation to service by the Watsonville Water and Light Company, the Railroad Commission in its decision No. 6539, August 1, 1919, stated: "In addition to the system above described, the company owns a body of water known as Pinto Lake, about three miles north of the city, and occasionally permits ranchers in the vicinity to pump water from it. This use, however, is occasional, and the Pinto Lake system is entirely separate from the system supplying water to the City of Watsonville. The Pinto Lake system therefore is not in use and will not be considered as a part of the system for the purpose of this proceeding." It appears that the Pinto Lake water supply has never

been regarded as an integral part of the City system but rather a storage area. Officials of the Watsonville Water and Light Company have referred to the sale of "surplus water" for irrigation purposes, although admittedly this position was not always clear.

It does not appear that any significant change in procedure was adopted by the City from that of its predecessor. The City did not deliver water; each of the defendants had pump locations adjacent to the lake from which they pumped water; each had a contract with the city; and none of the lands are within the corporate limits of the City. Neither the City nor its predecessor can be said to have so conducted its operations in regard to Pinto Lake as to expressly or impliedly agree to provide continuous service therefrom for irrigation purposes, or to induce defendants in any fashion to rely thereon.

It must be noted that Pinto Lake is a small body of water, varying in size from approximately seventy to one hundred sixty-five acres depending upon dry and wet years. It must also be observed that one of the stated purposes of the Watsonville Water and Light Company in acquiring the lake was to use it for a source of emergency supply for the City of Watsonville. In addition, the rights of several riparian owners must be recognized. Necessarily, therefore, the City and its predecessor had to exercise discretion and restraint in the sale of this water. On the other hand, defendants contend they have the right to take all the water from the lake, prexumably excepting the rights of riparian owners, for irrigation purposes. The practical effect would be that the City would be holding the lake for the benefit of a limited few and, therefore, as a public trust in only a very restricted sense.

For several years the City has progressively developed the lake into a recreation area, including boating and fishing. It now has extensive plans for further development. Nevertheless,

defendants assert that pursuant to section 106 of the Water Code it is the policy of this state that the highest use of water is for domestic purposes and the next highest use is for irrigation. The question then is whether or not this policy precludes any other use of the water.

The Constitutional Amendment of 1928 has provided the basis for the water policy of the state. However, this amendment did not delineate what are beneficial uses. Subsequent to the enactment of section 106, the state enacted section 1243, which provides that the use of water for recreation and the preservation and enhancement of fish and wildlife resources is a beneficial use. This section further directs the State Water Rights Board to take into account, whenever it is in the public interest, the amounts of water required for recreation and the preservation and enhancement of fish and wildlife resources. Further, it has been held that owners of land riparian to lakes have the right to have the water level maintained for recreation purposes, inasmuch as reasonable beneficial purposes comprise other uses of water as well as irrigation and household use. City of Elsinore v. Temescal Water Co., 36 Cal. App. 2d 692, Los Angeles v. Aitken, 10 Cal.App. 2d 460. In reference to the 1928 Constitutional Amendment, the Supreme Court in Gin S. Chow v. Santa Barbara, 217 Cal. 673, at page 700, stated: "The purpose of the amendment was stated to be 'to prevent the waste of waters of the state resulting from an interpretation of our law which permits them to flow unused, unrestrained and undiminished to the sea'." In City of Elsinore, supra, the Court stated that a contention that the standing water of a lake is waste was without merit and that the "maintenance of health-giving recreational opportunities" can not "be held to be against the public policy of the state".

It is, therefore, the opinion of the Court that the conduct of the City and its predecessor has not been such as to

dedicate the waters of the lake for irrigation purposes, nor have the defendants been misled by the policy of the City; and further, that because of the size of the lake, its use for recreation purposes would be the highest beneficial use in furtherance of its public trust.

The Court is constrained to add that defendants Resetar have a well upon their property and that defendants Pista have a supply of water from a joint well. Defendants Resetar have not used lake water for several years; and although defendants Pista claim they need supplementary water, the Mitchell V. Pista branch of the family has a well upon its property which has never been used. It appears that it has never been able to obtain a right of way for power purposes from the other defendants and hence has not had power to pump water. It must also be noted that the City presently has a pipe line of its regular system available to defendants from which a 500 gallon per minute supply can be furnished. None of the defendants has applied for this water. While it is contended that this supply would be insufficient, this contention is based on the failure to use all the water resources available to them and the fears of a drought or loss of the wells. If a drought should occur, it is hardly likely that the waters of the lake would be of any material help to all the demands which would be made upon it; presumably the first would be for domestic purposes. The fear that the wells might give out is a concern which has existed for farmers from time immemorial. The foregoing circumstances would seem to belie any equitable claim by defendants for water.

One other point needs consideration. It has never been clear as to how much water the City and its predecessor have actually appropriated. It has been variously claimed by them that 40 miner's inches were appropriated; that all of the water of the lake subject to appropriation was appropriated as a storage for

emergency use of the city; that all of such water has been appropriated for storage for irrigation. If there is any doubt, it is the opinion of the Court that all of the water subject to appropriation has been appropriated at one time or another for storage for emergency use of the City, for irrigation, and for recreation. Consequently, plaintiff's contention that the City would need to condemn water rights to supply water for irrigation purposes is without merit, and moreover, if the Court had found a dedication it would not have been an "idle act" to require water to be furnished to defendants. Defendants do not seriously contend that the riparian rights of others in the lake must be ignored.

Judgment, therefore, is for plaintiff, but each party is to bear its own costs. Counsel for plaintiff is requested to prepare findings and judgment consistent with the foregoing.

Dated: June 21, 1967

Charles S. Franich
Judge

SUPREME COURT MINUTES
THURSDAY, SEPTEMBER 30, 1971
SAN FRANCISCO, CALIFORNIA (Continued)

Orders were filed in the following matters denying petitions for writs of habeas corpus:

Crim. 15642 - Sexton on Habeas Corpus.

Crim. 15676 - Smith and Bronson on Habeas Corpus.

Crim. 15768 - Rouw on Habeas Corpus.

Crim. 15772 - Chamberlain on Habeas Corpus.

Crim. 15802 - Small on Habeas Corpus.

Crim. 15805 - Warren on Habeas Corpus.

1 Civ. 26538 Div. 3 City of Watsonville, etc. v. Resetor, etc., et al. Appellants' petition for hearing DENIED.

1 Civ. 27108 Div. 4 Atkins v. Southern Monterey County Memorial Hospital, Incorporated, et al. Appellant's petition for hearing DENIED.

1 Civ. 29884 Div. 3 Dickson v. Workmen's Compensation Appeals Board, etc., et al. Petition for hearing DENIED.

1 Civ. 29912 Div. 4 Westerby v. Workmen's Compensation Appeals Board, etc., et al. Petition for hearing DENIED.

1 Civ. 30165 Div. 4 LaFlamme v. The Superior Court of Marin County Petition for hearing DENIED.

1 Civ. [illegible] Div. 4 Simmonds et al. v. The Superior Court of Alameda County Petition for hearing DENIED.

1 Civ. [illegible] Div. 2 Arbaugh v. The Superior Court of San Mateo County Petition for hearing DENIED.

1 Crim. [illegible] Div. 3 McCann On Habeas Corpus Petition for hearing DENIED.

Perrine
v.
Municipal Court for the East Los Angeles Judicial District
of Los Angeles County
Let a peremptory writ of prohibition issue as prayed.
Wright, C.J.

We Concur:
Peters, J.
Tobriner, J.
Mosk, J.
Sullivan, J.
Dissenting opinion by Burke, J.
I Concur:
McComb, J.

Baker
v.
Municipal Court for the East Los Angeles Judicial District
of Los Angeles County
Let peremptory writs of prohibition issue as prayed for.
Wright, C.J.

We Concur:
Peters, J.
Tobriner, J.
Mosk, J.
Sullivan, J.
Dissenting opinion by Burke, J.
I Concur:
McComb, J.

Orders were filed in the following causes extending the time within which to grant or deny a hearing, as indicated:

Crim. 9526	People v. Barksdale	October 20, 1971
Civ. 38760	Becker v. Workmen's Compensation Appeals Board	October 15, 1971
Civ. 37475	Bell v. Great Western Escrow Company	October 15, 1971
Crim. 4253	People v. Caulk	October 20, 1971
Civ. 30222	Callison v. Superior Court, Alameda County	October 15, 1971
Crim. 9195	People v. Cherones	October 19, 1971
Civ. 29521	Clarke v. Workmen's Compensation Appeals Board	October 19, 1971
Civ. 38888	Cossack v. Superior Court, Los Angeles County	October 15, 1971

(Continued)

4 Crim. 4358	People v. Potter	October 18, 1971
1 Civ. 30147	Procunier v. Superior Court, Marin County	October 15, 1971
5 Civ. 1412	Estate of Ritter; Jones v. Goodwin	October 18, 1971
2 Civ. 37353-4	George S., a Juvenile	October 15, 1971
2 Civ. 38979	Sanchez v. Superior Court, Los Angeles County	October 15, 1971
2 Crim. 18196	People v. Silva	October 20, 1971
3 Crim. 6013	People v. Tallerico	October 15, 1971
1 Civ. 26538	City of Watsonville v. Resetor	October 18, 1971 ←
4 Civ. 10180	Willis v. State Board of Control	October 15, 1971
3 Civ. 13188	Wilmhurst v. San Andreas Judicial District	October 15, 1971
3 Crim. 6095	People v. Wright	October 15, 1971

26538

First Appellate District, Civil No. 26538 Santa Cruz County

37612

DIVISION THREE

JUDGE Hon. Charles S. Fronicek

d/c

11-7

City of Watsonville, Plaintiff and Respondent,

v.s.

Anthony Lucchesi, executor of the Estate of Mike Lucchesi, deceased, et al., Defendants and Appellants.

John L. McCarthy, 250 Main St., Watsonville, Bodkin, Skillicorn & Watsonville, 417 Lettunich Bldg., Watsonville

Wyckoff, Gilbert, Boyle & Pope, P.O. Box 760, Watsonville

EXHIBITS LODGED MAR 15 19[illegible]

50

1969	
Feb 11	FILED RECORD ON APPEAL C 1, R 2
June 26	" Application for Charles Fronicek to appeal.
July 14	" Petition for writ of supersedeas, p/H
Aug 1	FILED APPELLANT'S OPENING BRIEF
5	FILED ORDER DENYING PETITION
Dec 31	[illegible]
[illegible] 1970	
JUN 1[illegible] 1970	FILED PETITION FOR WRIT OF Supersedeas p/H
JUN 29 1970	[illegible]
APR 19 1971	Filed affidavit for an order substituting a party
SEP 20 1971	CAUSE ARGUED AND SUBMITTED
[illegible] 1971	Filed order that Anthony Lucchesi, executor of the estate of Mike Lucchesi, deceased, be substituted in the place & stead of Mike Lucchesi as party defendant, pursuant to both the judgment is affirmed. Caldecott, P.J.; We concur: Draper, P.J.; Brown (W.C.), J.; (CA
AUG 3 - 1971	FILED PETITION FOR REHEARING
AUG 1[illegible] 1971	[illegible] PETITION FOR REHEARING
AUG 19 1971	[illegible]
AUG 27 1971	[illegible] SUPREME COURT
SEP 2 - 1971	[illegible] FILING FEE
SEP 3 - 1971	Filed [illegible]
OCT 1 - 1971	PETITION FOR HEARING DENIED IN SUPREME COURT
OCT 19 1971	Remittitur to County Clerk
OCT 19 1971	EXHIBITS RETURNED TO COUNTY CLERK

(916) 653-2246

Exhibit 3

This Court's Rulings On Evidentiary Objections

The Court hereby rules on the Parties' respective Objections to Evidence, as follows:

Plaintiff Friends of Martins Beach's Objections to Evidence Submitted by Defendants in Support of Motion for Summary Judgment:

Objection To Fact #2 [reference to "private road"]. Overruled, not vague or ambiguous.

Objection To Fact #10 [lack of translated copy of land grant]. Overruled, the cited Code section does not require a translation for admissibility; such translation is only an option made available as an alternative for admissibility.

Objection To Fact #11 [Ms. Dodge's lack of expertise for opinion that Martins Beach lies within the Rancho Canada land grant]. Overruled, Ms. Dodge was adequately qualified to render such an opinion.

Objection To Fact #22 [Ms. Dodge's lack of expertise for opinion that Martins Beach lies within the Rancho Canada land grant and did not pass to the State of Calif.]. Overruled, Ms. Dodge was adequately qualified to render such an opinion.

Defendants Martins Beach 1, LLC and Martins Beach 2, LLC's Objections to Evidence Submitted by Plaintiff in Support of Their Opposition to Motion for Summary Judgment or Alternatively, Summary Adjudication:

- **Objections to Declaration of Paul Jensen**

Objections #1, #2,#3,#4,& #5 [re: seaward Western boundary of the property within the Mexican land grant]. Sustained, lacks foundation, is vague & ambiguous, is outside the scope of Mr. Jensen's expertise, is unsupported by a survey, and, as a matter of law, is contrary to the use of mean high tide as the Western boundary under the applicable precedent appeals court cases cited by the Defendants.

Objections #6 & #7 [re: U.S. Survey Land as inland boundary of the property within the Mexican land grant]. Sustained, lacks foundation, is vague & ambiguous, is outside the scope of Mr. Jensen's expertise, is unsupported by a survey, and, as a matter of law, is contrary to the use of mean high tide as the Western boundary under the applicable precedent appeals court cases cited by the Defendants.

Objections #8 & #9 [re: that deed calls for use of bluff meander line as boundary]. Sustained, lacks foundation, is vague & ambiguous, is outside the scope of Mr. Jensen's expertise, is unsupported by a survey, and, as a matter of law, is contrary to the use of mean high tide as the Western boundary under the applicable precedent appeals court cases cited by the Defendants.

- **Objections to Declaration of Gary Redenbacher**

Objection #1 [members of the public made frequent day trips to coastline beaches sinc 1965]. Overruled, this evidence is relevant, sufficiently unambiguous, and does not lack foundation.

Objection #2 [declarant in the 1960's and after saw a billboard advertising access to Martins Beach]. Overruled, this evidence is relevant, sufficiently unambiguous, and does not lack foundation.

Objection #3 [many members of the public visited Martins Beach since 1965]. Overruled, this evidence is relevant, sufficiently unambiguous, and does not lack foundation.

- **Objections to Declaration of John Brown**

Objection #1 [Martins Beach was opened to public use]. Overruled, this evidence is relevant, sufficiently unambiguous, and does not lack foundation.

Objection #2 [there was a convenience store and parking lot]. Overruled, this evidence is relevant, sufficiently unambiguous, and does not lack foundation.

Objection #3 [declarant and others used the dry island sand]. Overruled, this evidence is relevant, sufficiently unambiguous, and does not lack foundation.

Objection #4 [the public users legally accepted Martins Beach Road for public use]. Sustained, lacks foundation, is irrelevant, is inadmissible hearsay, and is contrary to Plaintiff's admission in its verified pleadings and discovery responses that access was provided on payment of a per diem fee. There was only permissive use, and no claim for imposition of an implied easement can be made.

Defendants and Cross-Complainants Martins Beach 1, LLC and Martins Beach 2, LLC's Objections to Evidence Submitted By Plaintiff Friends of Martins Beach in Support of its Motion for Summary Adjudication:

Objection #1 [photograph of gate/signs]. Overruled, an adequate foundation has been laid.

Objection #2 [no other roads exist]. Overruled, an adequate foundation has been laid.

Objection #3 [lack of horizontal access]. Sustained, lacks adequate foundation and is vague, is also improper expert opinion without adequate foundation. Only vertical access and lateral access are defined legal terms.

Plaintiff Friends of Martins Beach's Objections to Declaration of Bill Lott:

Objection #1 [Mr. Lott's lack of expertise for opinion that no public trust easement was reserved]. Overruled, Mr. Lott has sufficient expertise to render such an opinion.

Objection #2 [opinion that no public trust easement was reserved is irrelevant]. Overruled, the opinion is relevant to the scope and validity of the U.S. land patent.

4/30/14

IT IS SO ORDERED

Gerald J. Buchwald

GERALD J. BUCHWALD, Judge

Exhibit 4

This Court's Oral Statement of Ruling, October 24, 2013

Reporter's Transcript Of Proceedings

Before The Honorable Gerald J. Buchwald, Judge

Department 10

October 24, 2013

IN THE SUPERIOR COURT

STATE OF CALIFORNIA, COUNTY OF SAN MATEO

SOUTHERN BRANCH

FRIENDS OF MARTINS BEACH CIV517634

PLAINTIFF,

VS.

MARTINS BEACH 1, LLC &
MARTINS BEACH 2, LLC

RESPONDENT.
----------/

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE GERALD J. BUCHWALD, JUDGE

DEPARTMENT 10

OCTOBER 24, 2013

A P P E A R A N C E S:

FOR THE PLAINTIFF: GARY F. REDENBACHER
ATTORNEY AT LAW

FOR THE DEFENDANT: JEFFREY E. ESSNER
DORI YOB
ATTORNEYS AT LAW

REPORTED BY: ROSA M. DE NOLA
C.S.R. NO. 8893

PROCEEDINGS

THE COURT: I AM GOING TO CALL LINE 7 THE MARTINS BEACH MATTER THEN. GOOD MORNING.

MR. STPHAO: GOOD MORNING, YOUR HONOR. LIKE MCARTHUR AND WE HAVE RETURNED.

THE COURT: ALL RIGHT. SO DID YOU WANT TO ENTER YOUR APPEARANCES AGAIN? I KNOW YOU HAVE DONE THAT BEFORE BUT I THINK WE SHOULD HAVE, YOU KNOW, A COMPLETE RECORD.

MR. REDENBACHER: GARY REDENBACHER ON BEHALF OF FRIENDS OF MARTINS BEACH.

MR. ESSNER: GOOD MORNING, YOUR HONOR. JEFF ESSNER AND MY PARTNER DORY YOB WITH THE LAW FIRM OF HOPKINS AND CARLEY ON BEHALF OF MARTINS BEACH 1 AND MARTINS BEACH 2.

THE COURT: ALL RIGHT. SO THERE ARE THREE MOTIONS ON TODAY. ONE OF THEM IS TO DO WITH THE PROTECTIVE ORDER FOR SOME DISCOVERY AND I AM GOING TO JUST LEAVE THAT TO BE ADDRESSED AFTER RULING ON THE OTHERS AND TAKE UP THE PENDING MOTIONS FOR SUMMARY JUDGEMENT AND OR SUMMARY ADJUDICATION HERE AND GIVE YOU A RULING AND DECISION ON THOSE. I DID ASK LISA CHO WHO IS SITTING IN THE JURY BOX SHE IS THE RESEARCH ATTORNEY WHO HAS WORKED ON THIS AND HELPED ME ALL THE WAY THROUGH THESE VARIOUS HEARINGS THAT WE HAVE HAD AND I THOUGHT THAT I SHOULD, YOU KNOW, ACKNOWLEDGE THAT A LOT HAS GONE INTO INTO THIS BY BOTH, YOU KNOW, RESEARCH HELP AND A LOT OF TIME THAT I SPENT ALSO AND SO, YOU KNOW, SOMETIMES THESE MOTIONS FOR SUMMARY JUDGEMENT

WHEN THEY ARE BEING CONSIDERED IN THE MIDST OF A COMPLETELY FULL DAY TO DAY 15 TO 18 LINE LAW AND MOTION CALENDAR IT'S VERY DIFFICULT TO DO AND GIVE MOTIONS LIKE THIS THE ATTENTION THAT THEY SHOULD HAVE AND CLEARLY WARRANT. SO I HAVE DONE MY BEST TO DO THAT AMID WHAT'S BEEN A PRETTY BUSY CALENDAR.

I AM GOING TO APPROACH THIS IN TERMS OF THE MOTIONS FOR SUMMARY ADJUDICATION AND DECIDE IT MOTION-BY-MOTION IN THAT FASHION BECAUSE I THINK IT WILL CREATE A CLEARER RECORD AS TO WHAT MY THINKING AND REASONS ARE. AND THE END RESULT OF THAT IS GOING TO BE, TAKEN COLLECTIVELY, THAT THERE WILL BE A SUMMARY JUDGEMENT FOR THE DEFENDANTS. BUT I THINK TO GET THERE THAT I SHOULD RULE ON EACH OF THE MOTIONS FOR SUMMARY ADJUDICATION BECAUSE IT WILL GIVE YOU I THINK, AND ANY REVIEWING COURT, A CLEARER STATEMENT OF WHY I HAVE REACHED THAT CONCLUSION.

AND I WILL TELL YOU THAT IT'S A VERY INTERESTING CASE. YOU KNOW, SOMETIMES WHEN IN AN ADVOCATE'S CHAIR AND I DIDN'T REALIZE THIS UNTIL I CAME HERE THINGS ARE MORE CLEAR CUT I THINK WHEN YOU ARE THE ADVOCATE. WHEN YOU ARE IN THIS CHAIR IT IS HARDER AND THERE IS MORE GRAY AND SOMETIMES, YOU KNOW, THERE ARE CASES WHERE YOU HAVE SOME DIFFICULTY DECIDING WHAT TO DO. SO I AM GOING TO -- IT'S GOING TO TAKE ME AWHILE TO STATE THIS SO WE WILL HOPE THAT I CAN DO THIS PRETTY EFFICIENTLY.

SO I AM GOING TO START BY NOTING THAT THE LAWSUIT,

IF YOU STEP BACK AND LOOK AT IT FROM A LITTLE BIT OF A DISTANCE, REALLY PRESENTS A CLASH BETWEEN THE RIGHT OF A PRIVATE LAND OWNER OF BEACH FRONT PROPERTY TO EXCLUDE OTHERS FROM THEIR PROPERTY VERSUS THE RIGHT OF THE PUBLIC TO ACCESS TO THE BEACH THAT'S INVOLVED HERE FOR RECREATION AND ENJOYMENT. AND FROM THAT STANDPOINT IT'S REALLY AT THE FOREFRONT OF A TENSION THAT WE HAVE IN THE STATE AND ELSEWHERE IN THE COUNTRY THESE DAYS, IN THE WAKE OF THE ENVIRONMENTAL PROTECTION ACT OF SOME YEARS AGO, NOW BETWEEN ENVIRONMENTAL PROTECTION AND PRIVATE OWNERSHIP OF PROPERTY AND HERE THE -- YOUR CLIENT, MR. REDENBACHER, THE FRIENDS OF MARTINS BEACH. IN EFFECT YOU ARE LIKE A MINI SIERRA CLUB IN A WAY. YOU BRING SUIT ON BEHALF OF THE GENERAL PUBLIC AND CLAIM ON BEHALF OF THE GENERAL PUBLIC RIGHTS AND INTERESTS IN ACCESS TO THE BEACH, THE DRY SAND INLAND AREA, THE PARKING LOT AND SO FORTH. AND REALLY FROM TWO DIRECTIONS IN MY VIEW; ONE ACCESS ALONG MARTINS BEACH ROAD AND THE OTHER BEING ACCESS FROM THE OCEAN ON A THEORY OF EASEMENTS THAT OPERATE OFF OF THE PUBLIC OWNERSHIP OF TIDELANDS OFF OF THE COAST.

I THINK THAT THE -- IT'S FAIR TO SAY THAT IT'S UNDISPUTED IN MY VIEW THAT IN 2008 THAT THE DEFENDANTS HERE MARTINS BEACH 1 AND BEACH 2, THE TWO LLC'S, PURCHASED TWO LARGE TRACKS OF LAND THAT ARE SOUTH OF HALF MOON BAY ALONG THE COAST. I THINK IT'S ALSO UNDISPUTED THAT MARTINS BEACH IS FAIRLY DESCRIBED AS A COVE THAT'S LOCATED ON THE

PROPERTY, THAT IT'S SHELTERED FROM THE NORTH AND SOUTH BY 75 FOOT CLIFFS THAT STRETCH OUT INTO THE OCEAN AND THAT YOU CAN'T COME ALONG, YOU KNOW, ADJACENT BEACH AREAS AND GET ACCESS THAT WAY AND THE ONLY WAY TO GO IN THERE IS EITHER BY BOAT FROM THE OCEAN, REPEL DOWN THESE CLIFFS OR WALK IN ALONG MARTINS BEACH ROAD INTO THE BEACH. THE PLAINTIFF ALLEGES HERE THAT MARTINS BEACH'S FORMER OWNERS -- A FAMILY BY THE NAME OF DEENEY WELCOMED THE BEACH -- WELCOMED THE PUBLIC TO THE BEACH WITH OPEN ARMS I THINK IS HOW IT'S BEEN PUT EITHER IN THE PAPERS OR IN THE PLEADINGS, THAT THEY CHARGED AN ENTRY FEE TO USE THE ROAD THAT WAS INITIALLY 25 CENTS, PROVIDED A GENERAL STORE AND PUBLIC RESTROOMS. AND I THINK IT'S FAIR TO SAY THAT IT'S NOT DISPUTED HERE THAT THE BEACH WAS A POPULAR COMMUNITY BEACH THAT'S BEEN USED FOR PICNICKING, FISHING, SURFING AND OTHER RECREATIONAL USES UNDER THE TYPE OF OPERATION THAT THE DEENEY FAMILY CONDUCTED WHERE THERE WERE FEES FOR ENTRY.

THE PLAINTIFF ALLEGES THAT THIS HAS ALL CHANGED WHEN THE DEFENDANTS WHOSE PRINCIPAL OWNER IS A VENTURE CAPITALIST WHO PURCHASED THE PROPERTY GATED THE ROAD AND PUT SECURITY GUARDS THERE AND THERE ARE ALLEGATIONS THAT THEY HAVE MADE ATTEMPTS TO SUPPORT CRIMINAL PROSECUTION OF THOSE WHO ARE ALLEGEDLY TRESPASSING ON THE PROPERTY AND IN ANY EVENT IN RESPONSE TO THAT A GROUP OF CONCERNED CITIZENS STAGED RALLIES AND GENERATED PRESS COVERAGE IN AN EFFORT TO REGAIN PUBLIC ACCESS TO THE BEACH AND THEN THIS LAWSUIT

FOLLOWED.

AS TO THE MOTIONS THAT ARE HERE THE DEFENDANTS, MARTINS BEACH LLC'S, BRING A MOTION FOR SUMMARY JUDGEMENT OR IN THE ALTERNATIVE SUMMARY ADJUDICATION AS TO ALL OF THE SEVEN CAUSES OF ACTION THAT THE PLAINTIFFS HAVE RAISED. THE PLAINTIFF, FRIENDS OF MARTINS BEACH, BRINGS A CROSS-MOTION FOR SUMMARY JUDGEMENT OR SUMMARY ADJUDICATION MORE PROPERLY ONLY ON ITS SECOND CAUSE OF ACTION WHICH IS FOR A PUBLIC EASEMENT TO THE BEACH UNDER CALIFORNIA CONSTITUTION ARTICLE 10 SECTION 4 WHICH IS A PROVISION WHICH, GENERALLY STATED, PROVIDES THAT BY VIRTUE OF THE PUBLIC OWNERSHIP OF TIDELANDS THAT THERE HAS TO BE A APPURTENANT PUBLIC ACCESS EITHER BY THE ROAD INTO THE BEACH OR FROM THE OCEAN OR BOTH.

AS I ALLUDED TO A MINUTE AGO IN GENERAL -- LET ME BACK UP AND SAY THIS. AS I TOLD YOU INFORMALLY BEFORE WE STARTED THE HEARING I AM GOING TO TAKE UP SUMMARY ADJUDICATION MOTIONS AND IN STATING THIS DECISION AND I AM GOING TO FIRST TAKE UP THREE OF THE MOTIONS AND THOSE ARE THE DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION ON THE FOURTH CAUSE OF ACTION TO IMPOSE A PUBLIC RIGHT OF USE AND ACCESS BASED ON THE PUBLIC TRUST DOCTRINE ALONE IN WHICH PLAINTIFF SEEKS TO ASSERT ACCESS FROM BOTH THE LANDWARD SIDE AND THE OCEANSIDE OF THE BEACH. AND THEN ALSO TAKE UP AT THE SAME TIME TWO OTHER MOTIONS THAT ARE GROUNDED IN CALIFORNIA CONSTITUTION ARTICLE 10 SECTION 4. AND THOSE

ARE THE PLAINTIFF'S MOTION FOR SUMMARY ADJUDICATION ON THE SECOND CAUSE OF ACTION AND THE DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION ON BOTH THE SECOND AND THE SEVENTH CAUSES OF ACTION BOTH OF WHICH ARE GROUNDED IN CALIFORNIA CONSTITUTION ARTICLE 10 SECTION 4.

FOR THE REASONS THAT FOLLOW ON THOSE THREE INITIAL MOTIONS, THE PLAINTIFF'S MOTION FOR SUMMARY ADJUDICATION ON THE SECOND CAUSE OF ACTION TO IMPOSE ACCESS BASED ON THE STATE CONSTITUTION THAT IS DENIED. THE DEFENDANTS' MOTIONS FOR SUMMARY ADJUDICATION ON THE SECOND CAUSE OF ACTION IS GRANTED AS WELL AS THE DEFENDANTS' MOTION ON THE SEVENTH CAUSE OF ACTION. AND WITH REGARD TO THE FOURTH CAUSE OF ACTION, I AM ALSO GOING TO FIND IN FAVOR OF THE DEFENDANTS ON THAT AND THAT THERE SHOULD BE SUMMARY ADJUDICATION OF THAT. AND I BELIEVE, FOR REASONS THAT I WILL COME TO, THAT THOSE RULINGS ARE COMPLETELY DISPOSITIVE OF THE REST OF THE CASE EXCEPT FOR THE CAUSE OF ACTION THAT ALLEGES AN EXPRESS DEDICATION WHICH I THINK IS THE ONLY ONE THAT IS GOVERNED BY STATE LAW HERE AND I WILL COME TO A RULING ON THAT.

IN GENERAL, BEFORE I GET TO TALKING ABOUT WHAT I AM GOING TO FIND AS TO THE FACTS HERE THAT ARE UNDISPUTED AS TO THE LEGAL CONCLUSION THAT I AM GOING TO STATE, AND THE ONE THAT I HAVE REACHED IN GENERAL, THAT CONCLUSION IS THAT THE PLAINTIFFS WHO REFER TO THEMSELVES AS FRIENDS OF MARTINS BEACH THAT WHILE THEY HAVE -- WHILE THEY CLAIM THAT THEY HAVE A RIGHT TO TRAVERSE THE PRIVATE PROPERTY OWNED BY

THE DEFENDANTS TO ACCESS THE BEACH THAT THE PRIVATE PROPERTY AT ISSUE IS INDISPUTABLY OWNED IN FEE SIMPLE BY THE DEFENDANT LLC'S THAT ARE HERE AND THAT THE PLAINTIFFS HAVE NO COGNIZABLE LEGAL THEORY WHICH GIVES THEM THE RIGHT TO ACCESS OF THE DEFENDANTS' PRIVATE PROPERTY. THAT IS THE BASIC LEGAL CONCLUSION THAT I REACH IN THIS MATTER.

WITH REGARD TO THE FACTS HERE, THERE IS VERY EXTENSIVE EVIDENCE THAT'S BEEN PUT BEFORE ME. YOU KNOW, THERE ARE A NUMBER OF DECLARATIONS, A NUMBER OF STATEMENTS OF FACT THAT HAVE BEEN SUBMITTED BY EACH SIDE. THE DECLARATIONS GENERALLY HAVE, YOU KNOW, MULTIPLE EXHIBITS AND SO FORTH.

IN LOOKING AT ALL OF THE EVIDENCE I THINK THE MOST USEFUL STARTING POINT IS THE TITLE SEARCH THAT IS A CHART MARKED AS EXHIBIT D TO THE DECLARATION OF BILL LOFF AND ALSO THE DECLARATION OF DEBBIE DODGE WHO ALSO DID SOME REVIEW OF THE TITLE AND AS TO EACH OF THEIR DECLARATIONS THERE ARE AUTHENTICATED COPIES OF PUBLIC DOCUMENTS THAT CONSTITUTE THE CHAIN OF TITLE AS WELL. AND STARTING WITH THAT AS WHAT I THINK IS, YOU KNOW, A VERY USEFUL CLUSTER OF EVIDENCE THAT REALLY IS NOT SUBJECT TO DISPUTE HERE, I AM GOING TO FIND THE FOLLOWING TO BE MATERIALLY UNDISPUTED FACTS IN THIS CASE AND THAT IS AS FOLLOWS:

THAT THE DEFENDANTS ARE THE OWNERS OF THE REAL PROPERTY THAT'S LOCATED AT 22352 CABRILLO HIGHWAY ALSO KNOWN AS HIGHWAY 1 SOUTH OF HALF MOON BAY. THAT THE

DEFENDANTS OBTAINED THAT OWNERSHIP IN A FEE SIMPLE TITLE BY TWO SEPARATE GRANT DEEDS THAT WERE RECORDED ON JULY 22ND, 2008. THERE IS A PRIVATE ROAD ON THE PROPERTY, MARTINS BEACH ROAD, THAT LEADS FROM THE ENTRANCE ON CABRILLO HIGHWAY, ALSO KNOWN AS HIGHWAY 1, TO THE BEACH. THE DEFENDANTS' OWNERSHIP HAS ITS ORIGIN IN A SPANISH LAND GRANT TO WHICH THAT OWNERSHIP IS CLEARLY TRACED BACK IN MY OPINION BEYOND DISPUTE AND NOT MATERIALLY DISPUTED BY THE PLAINTIFFS. THE QUESTION IN THE CASE REALLY IS WHAT IS THE SCOPE AND EFFECT OF THAT OWNERSHIP AS AGAINST A CLAIMED RIGHT OF PUBLIC ACCESS.

IT'S UNDISPUTED THAT THE PROPERTY WAS ORIGINALLY PART OF A LARGER PARCEL THAT PASSED FROM THE MEXICAN GOVERNMENT INTO PRIVATE OWNERSHIP PRIOR TO THE TIME THAT CALIFORNIA WAS CEDED BY MEXICO TO THE UNITED STATES AFTER THE MEXICAN-AMERICAN WAR. IN 1838, THE GOVERNOR OF THEN SPANISH MEXICO, JUAN ALVARADO, PROVISIONALLY GRANTED AN 89 -- 8,905 -- I AM SORRY, 8,905 ACRE PARCEL OF PROPERTY THAT WAS NAMED THE RANCHO CANADA DE VERDE ARROYO DE LA PURISIMA AND THAT WAS GRANTED TO JOSE MARIA ALVISO. THE PROPERTY THAT'S INVOLVED IN THIS CASE WAS INCLUDED WITHIN THE AREA THAT WAS KNOWN AS THAT RANCHO. ON APRIL 30TH OF 1840, TWO YEARS LATER, JOSE MARIA ALVISO CONVEYED HIS INTEREST IN THE LAND-GRANTED PROPERTIES TO HIS BROTHER JOSE ANTONIO ALVISO. THEREAFTER, A DECADE LATER, THE TREATY OF GUADALUPE HIDALGO - WHICH FORMALLY ENDED THE

MEXICAN-AMERICAN WAR - RESULTED IN MEXICO CEDING A REGION OF THE PRESENT DAY SOUTHWESTERN UNITED STATES, INCLUDING CALIFORNIA, TO THE UNITED STATES. THAT TREATY ON ITS FACE REQUIRED THAT THE UNITED STATES PROTECT THE PROPERTY RIGHTS OF THE MEXICAN LANDOWNERS LIVING IN THOSE AREAS. SHORTLY AFTER THAT, IN ORDER TO IMPLEMENT THE TREATY, CONGRESS PASSED AN ACT IN MARCH OF 1851, MARCH 3RD, 1851 TO PROVIDE FOR THE ORDERLY SETTLEMENT OF MEXICAN LAND CLAIMS AND CONGRESS CREATED A SYSTEM FOR THAT. A BOARD OF COMMISSIONERS THAT WAS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA. THIS WAS COMMONLY KNOWN AS THE BOARD OF CALIFORNIA LAND COMMISSIONERS. THAT BOARD WAS DELEGATED THE AUTHORITY TO DECIDE LAND RIGHTS AND TO ISSUE LAND PATENTS WHICH WERE TO BE A CONCLUSIVE ADJUDICATION OF THE RIGHTS OF THE CLAIMANT AS AGAINST THE RIGHTS OF THE UNITED STATES AND THE PUBLIC AND CITIZENS OF THE UNITED STATES. THE NEXT YEAR IN 1852 JOSE ANTONIO ALVISO FILED A CLAIM FOR THE RANCHERO, THAT HAD BEEN GRANTED TO HIS BROTHER ORIGINALLY, WITH THAT BOARD OF CALIFORNIA LAND COMMISSIONERS AND THAT PATENT WAS ISSUED.

THE UNITED STATES THEN FILED AN APPEAL THAT WENT TO THE SUPREME COURT OF THE UNITED STATES THAT WAS RESOLVED IN A PUBLISHED OPINION IN UNITED STATES VERSUS ALVISO IN 1859 AT 64 UNITED STATES 318. IT'S A CASE THAT I WILL COME BACK TO AS TO ITS LEGAL SIGNIFICANCE FURTHER ON IN MY RULING HERE WHEN I TALK TO YOU ABOUT THE CONCLUSIONS OF LAW THAT I

HAVE REACHED, BUT AS FAR AS THE FACTS OF THE CASE, BY VIRTUE OF THAT PUBLISHED DECISION, IT'S UNDISPUTED THAT JOSE ANTONIO ALVISO'S CLAIM WAS CONFIRMED BY THE UNITED STATES SUPREME COURT AND THAT THAT WAS DONE WITHOUT ANY MENTION OF ANY PUBLIC TRUST EASEMENT. IN 1865 THE LAND GRANT FOR THE RANCHERO WAS THEN SUBJECT TO A FINAL PATENT CONFIRMING THE RIGHT OF THE ALVISO FAMILY IN THE LAND INCLUDING WHAT IS CURRENTLY MARTINS BEACH AND THE ROAD INTO MARTINS BEACH, AND TO THE EXTENT THAT THERE ARE EASEMENTS TIED TO THE TIDELANDS TO THOSE EASEMENTS. I WILL COME TO THIS IN GREATER DETAIL LATER, BUT I THINK I SHOULD NOTE HERE THAT A LAND PATENT ISSUED BY THE BOARD OF LAND COMMISSIONERS IS A QUITCLAIM DEED FROM THE GOVERNMENT OF THE UNITED STATES TO THE CLAIMANT BY WHICH ALL OTHER INTERESTS IN THE LAND THAT MIGHT BE POSSESSED BY THE UNITED STATES OR THE PUBLIC ARE RELINQUISHED AND OR EXTINGUISHED. LAND FROM TITLES NOT CONFORMED -- NOT CONFIRMED BY A LAND PATENT OF THE BOARD OF CALIFORNIA LAND COMMISSIONERS THEN BECAME PART OF THE PUBLIC DOMAIN AND CLEARLY I THINK I CAN JUDICIALLY NOTICE THIS THAT SOME OF THAT LAND OVER THE YEARS REMAINED IN PUBLIC AND SOME WENT TO PRIVATE OWNERSHIP AND THERE IS A MIX OF WHAT ACTUALLY HAPPENED TO IT, BUT THE POINT HERE IS THAT AT THE TIME IN THE 1865 WHEN THE PATENT BECAME FINAL IT CONFIRMED THE ALVISO FAMILY'S INTEREST AND AT NO POINT WAS THERE ANY CONVEYANCE OF THE PROPERTY HERE TO THE STATE OF CALIFORNIA.

THERE ARE ALSO SOME FACTS HERE THAT THE DEFENDANTS, MR. ESSNER AND MS. YOB, YOU HAVE A FOOTNOTE IN ONE OF YOUR MEMOS OF POINTS AND AUTHORITIES IN WHICH YOU RESERVE THE RIGHT TO CONTEST THESE FACTS AT TRIAL. BUT AS A PRACTICAL MATTER I BELIEVE A FAIR READING OF YOUR PAPERS IS THAT YOU DID NOT FOR THE PURPOSES OF THIS MOTION OR THESE MOTIONS DISPUTE THEM AND THESE ARE THE FACTS THAT RELATE TO THE THIRD CAUSE OF ACTION FOR EXPRESS DEDICATION THAT I WILL COME TO LATER. FOR THE PURPOSES OF MY RULING HERE I AM GOING TO ACCEPT CERTAIN FACTS THAT THE PLAINTIFFS HAVE PUT BEFORE THE COURT AS MATERIALLY UNDISPUTED FOR THE PURPOSES OF THESE MOTIONS BASED ON MOSTLY PLAINTIFF'S EVIDENCE AND THOSE ARE AS FOLLOWS; THAT -- AND CONSISTENT WITH ALLEGATIONS THAT WERE MADE IN YOUR PLEADINGS, MR. REDENBACHER, FOR THE PLAINTIFFS - THAT THE DEENEY FAMILY, THE DEFENDANTS' PREDECESSORS-IN-INTEREST, HAD A LARGE BILLBOARD ALONG HIGHWAY 1 A PUBLIC HIGHWAY FOR MANY YEARS AND IT ADVERTISED MARTINS BEACH AND AS HAS BEEN ARGUED HERE IN EFFECT SAID, YOU KNOW, COME ON INTO OUR BEACH. ALTHOUGH I AM GOING TO FIND THAT IT'S ALSO UNDISPUTED THAT THEY CHARGED A FEE FOR THAT. BUT THAT BILLBOARD WAS THERE ADVERTISING AND GIVING A PERMISSIVE ACCESS ALONG MARTINS BEACH ROAD TO USE THE PARKING AREA AND THE DRY SAND BEACH FOR RECREATIONAL USE AND FISHING AND I BELIEVE THAT THOSE FACTS TO THAT EXTENT ARE NOT DISPUTED HERE. THE DEENEYS DID CONSTRUCT A PARKING LOT. THEY DID CONSTRUCT SOME

PUBLIC TOILETS AND THEY OPENED A CONVENIENCE STORE ON THE BEACH THAT CATERED TO THE PUBLIC THAT CAME TO USE THE TIDELANDS. AND THE BILLBOARD OUT IN FRONT ADVERTISED THAT PERMISSIVE USE OF THE PROPERTY AND I BELIEVE AND I AM GOING TO SO FIND THAT THOSE FACTS ARE NOT DISPUTED HERE. BASED ON THOSE FACTS I BELIEVE -- EXCUSE ME. THIS CAN BE OFF THE RECORD FOR A SECOND.

(BRIEF PAUSE).

THE COURT: SO AS I WAS SAYING, BASED ON THESE UNDISPUTED FACTS THAT I HAVE JUST RECITED, MY LEGAL CONCLUSIONS ARE THAT THE CASE MAY BE SUMMARILY DECIDED AS A MATTER OF LAW BECAUSE THERE ARE NO TRIABLE ISSUES RAISED HERE: AND IN THAT REGARD THE LEGAL CONCLUSIONS THAT I REACH ON THE FIRST THREE MOTIONS GENERALLY OUTLINED ARE THESE AND THERE ARE THREE MAIN POINTS TO WHAT I AM GOING TO SAY ABOUT THE LAW THAT APPLIES HERE: ONE IS IN MY OPINION AND I AM GOING TO SO FIND BASED ON THE UNDISPUTED FACTS BEFORE ME THAT CALIFORNIA STATE LAW DOES NOT CONTROL HERE BECAUSE OF A SERIES OF UNITED STATES SUPREME COURT DECISIONS THAT ARE PREEMPTIVE IN HOLDING THAT NO PUBLIC RIGHT OF ACCESS EXISTS HERE BECAUSE THE DEFENDANTS' FEDERAL LAND PATENT RIGHTS CARRY THE DAY. THE SECOND MAIN POINT IS THAT ANY COUNTERVAILING PUBLIC RIGHTS UNDER THE CALIFORNIA CONSTITUTION ARTICLE 10 SECTION 4 DO NOT AND CANNOT OVERRIDE THE FEDERAL LAND PATENT TITLE IN THE DEFENDANTS BECAUSE AS A MATTER OF FEDERAL LAW THAT PATENT ACTED AS A

QUIT CLAIM DEED THAT ENDED ANY PREEXISTING PUBLIC ACCESS RIGHTS. AND I RECOGNIZE THAT THE DEFENDANTS HAVE A POINT THAT YOU HAVE MADE THAT CONSTITUTION -- CALIFORNIA CONSTITUTION ARTICLE 10 SECTION 4 ARGUABLY DOES NOT SAY WHAT THE PLAINTIFF CONTENDS IT SAYS, HOWEVER, I DON'T THINK I NEED TO REACH THAT ISSUE. I THINK THAT EVEN IF YOU ACCEPT THAT ARTICLE 10 SECTION 4 DOES WHAT THE PLAINTIFF CONTENDS, THAT IT CANNOT OVERRIDE THE PRIVATE OWNERSHIP THAT STANDS AS A MATTER OF A FEDERAL LAND PATENT. AND THAT FOR ME TO FIND OTHERWISE WOULD BE TO DISREGARD THE CONTRARY FEDERAL LAW AS TO THOSE LAND PATENT RIGHTS. AND THEREFORE UNDER ANY SCENARIO ARTICLE 10 SECTION 4 DOES NOT GIVE THE PUBLIC RIGHTS THAT PLAINTIFF ADVOCATES FOR HERE BECAUSE THIS HAS BEEN DETERMINED AS A MATTER OF FEDERAL LAW THAT THAT CALIFORNIA CONSTITUTION SECTION DOES NOT AND CANNOT ABROGATE THE PRIVATE OWNERSHIP RIGHTS UNDER THE FEDERAL LAND PATENT. ALSO, AND THIS IS THE THIRD MAJOR POINT, FOR THE COURT -- FOR THIS COURT TO RULE OTHERWISE WOULD CONFER TO THE PUBLIC A RIGHT OF PUBLIC ACCESS WITHOUT ANY EMINENT DOMAIN PROCEEDING, WITHOUT ANY JUST COMPENSATION WHICH IS REQUIRED AS A MATTER OF BOTH FEDERAL AND STATE CONSTITUTIONAL LAW AND WOULD CONSTITUTE. IF I RULED OTHERWISE, AN UNLAWFUL TAKING OF THE DEFENDANTS' FEDERAL LAND PATENT OWNERSHIP RIGHTS.

AND THERE ARE A NUMBER OF OTHER LEGAL ISSUES THAT ARE RAISED ON ALL THREE OF THESE MOTIONS THAT I HAVE TAKEN

UP FIRST. ONE OF THEM FOR EXAMPLE IS THE ONE I MENTIONED THAT HAS TO DO WITH THE DEFENSE CONTENTION THAT ARTICLE 10 SECTION 4 DOES NOT ACTUALLY GIVE THE KIND OF PUBLIC ACCESS RIGHTS THAT THE PLAINTIFF ADVOCATES IT DOES. AND THERE ARE OTHER ISSUES LIKE THAT THAT YOU ON THE DEFENSE SIDE, MR. ESSNER AND MS. YOB THAT YOU HAVE RAISED BUT I DON'T THINK I NEED TO REACH THOSE ISSUES BECAUSE THE LEGAL CONCLUSIONS THAT I HAVE REACHED ARE COMPLETELY DISPOSITIVE OF THESE THREE MOTIONS. NOW, ON THE FOURTH CAUSE OF ACTION, ON THE PUBLIC TRUST DOCTRINE CAUSE OF ACTION THAT IS LAID TO REST IN MY OPINION AND I AM GOING TO SO FIND IN UNITED STATES VERSUS ALVISO ITSELF BECAUSE THE UNITED STATES SUPREME COURT CLEARLY CONFIRMED THE EARLIER SPANISH LAND GRANT THAT QUIETED TITLE TO THE PROPERTY IN THE ALVISO FAMILY AND IT DID SO IN THE FACE OF THE U.S. GOVERNMENT'S CLAIMS TO RETAIN A PUBLIC USE AS AGAINST THAT LAND PATENT AND, YOU KNOW, THE COURT -- UNITED STATES SUPREME COURT IN ALVISO RECITES WHAT I HAVE FOUND HERE THE FACT THAT -- THAT THE PROPERTY WHICH NOW IS MARTINS BEACH WAS WITHIN THE RANCHO CANADA DE VERDE ARROYO DE LA PURISIMA. AND IT'S INTERESTING BECAUSE THE UNITED STATES SUPREME COURT ALSO RECITES THAT IN 1838 WHEN THE LAND GRANT WAS MADE TO JOSE MARIA ALVISO THAT THERE WAS AN ADMINISTRATOR OF WHAT THEY DESCRIBED IN THE DECISION OF THE EX MISSION OF SAN FRANCISCO DE ASSIS WHO WAS DIRECTED TO MAKE A REPORT ON THE SUBJECT AND THAT HAS TO BE A REFERENCE TO MISSION DOLORES.

IT IMPLIES THAT THE ALVISOS WENT ALL THE WAY TO SAN FRANCISCO IN THOSE DAYS NO SHORT TRIP TO OBTAIN THE OWNERSHIP OF THE LAND. IN ANY EVENT, THE COURT DID NOT DISTURB THE LAND GRANT RIGHTS AS HAD BEEN CONFIRMED IN THE PATENT PROCESS ESTABLISHED BY CONGRESS AND IT LEFT THE DECREE OF THE DISTRICT COURT IN THAT REGARD IN PLACE AND THAT WAS CONFIRMED AND THAT WAS THE RESULT OF THE ALVISO CASE.

THEN YOU GET TO THE QUESTION OF WHAT IS REALLY EFFECT OF THAT HERE, YOU KNOW, WHAT DOES THAT MEAN? AND THAT IS DECIDED IN MY OPINION BY BEARD VERSUS FEDERY A UNITED STATES SUPREME COURT CASE IN 1865 AT 70 U.S. 478 WHICH HELD THAT A PATENT OPERATES AS A QUIT CLAIM DEED THAT EXTINGUISHED ANY CLAIMS OF PUBLIC RIGHT BY THE FEDERAL GOVERNMENT AND BY IMPLICATION ANY RIGHTS OF A STATE OF THE UNITED STATES AND OR ITS PEOPLE INCLUDING THE PEOPLE OF THE STATE OF CALIFORNIA. AND SIGNIFICANTLY IN BEARD THE UNITED STATES SUPREME COURT SAID THAT "A PATENT OF THE UNITED STATES ISSUED UPON A CONFIRMATION OF A CLAIM TO LAND BY VIRTUE OF A RIGHT OR TITLE DERIVED FROM SPAIN OR MEXICO IS TO BE REGARDED IN TWO ASPECTS, AS A DEED OF THE UNITED STATES AND AS A RECORD OF THE ACTION OF THE GOVERNMENT UPON THE TITLE OF THE CLAIMANT AS IT EXISTED UPON THE ACQUISITION OF CALIFORNIA. AS A DEED ITS OPERATION IS THAT OF A QUIT CLAIM OR RATHER A CONVEYANCE OF SUCH INTEREST AS THE UNITED STATES POSSESSED IN THE LAND AND IT TAKES EFFECT

BY RELATION AT THE TIME WHEN THE PROCEEDINGS WERE INSTITUTED BY THE FILING OF THE PETITION BEFORE THE BOARD OF LAND COMMISSIONERS. AS A RECORD TO THE GOVERNMENT IT IS EVIDENCE THAT THE CLAIM ASSERTED WAS VALID UNDER THE LAWS OF MEXICO AND IT WAS ENTITLED TO RECOGNITION AND PROTECTION BY THE STIPULATIONS OF THE TREATY AND MIGHT HAVE BEEN LOCATED UNDER THE FORMER GOVERNMENT AND IS CORRECTLY LOCATED NOW AS TO EMBRACE THE PREMISES THAT ARE SURVEYED AND DESCRIBED IN THIS CASE MEANING THE ALVISO CASE. AS AGAINST THE GOVERNMENT AND PARTIES CLAIMING UNDER THE GOVERNMENT THIS RECORD SO LONG AS IT REMAINS UNVACATED IS CONCLUSIVE."

AND SO AS TO THE PUBLIC TRUST DOCTRINE THEORY HERE I SUBMIT TO YOU THAT IT'S CORRECT THAT IN ALVISO AND IN THE BEARD CASE IF YOU READ THOSE TOGETHER WHAT THE SUPREME COURT WAS SAYING IS THAT A CLAIM EXACTLY LIKE THE ONE THAT'S BEING MADE HERE NOW WAS EXTINGUISHED BY VIRTUE OF THE LAND PATENT TO THE ALVISO FAMILY EXTINGUISHED AND IT DOESN'T MATTER THAT THIS CLAIM IS BEING MADE ALL THESE YEARS LATER. DOESN'T MATTER. IF THIS CLAIM HAD BEEN MADE IMMEDIATELY AFTER THE LAND PATENT WAS CONFIRMED AND ITS QUIT CLAIM EFFECT DECLARED IN THESE CASES BACK IN THOSE YEARS, IT'S CLEAR THAT THERE WOULD BE SUMMARY JUDGMENT OR IN A FEDERAL CASE A 12(B) MOTION FOR DISMISSAL AS HOW IT WAS MADE BEFORE THE RULES OF CIVIL PROCEDURE CAME INTO EFFECT IN THE FEDERAL COURT. IT'S CLEAR THAT THAT CLAIM

WOULD NOT HAVE GONE ANYWHERE AND THERE ISN'T ANY REASON WHY THESE DECISIONS FROM THE SUPREME COURT OF THE LAND THAT I AM OBLIGATED TO FOLLOW, THEY ARE NOT ADVISORY. ALL THE OTHER FEDERAL DECISIONS ARE ADVISORY. IF THE NINTH CIRCUIT SAYS SOMETHING, IF THE DISTRICT COURT SAYS SOMETHING ABOUT CALIFORNIA LAW IT'S JUST ADVISORY. BUT THIS IS BINDING ON THE STATE COURTS AND SO THERE IS AN OBLIGATION TO FOLLOW THESE DECISIONS. AND SO AS A MATTER OF FEDERAL LAW THERE CAN BE NO ACCESS HERE BY THE PUBLIC BASED ON THE PUBLIC TRUST DOCTRINE. SO THEN -- AND THAT MEANS THAT THERE IS SUMMARY ADJUDICATION AS TO THE MOTION ON THE FOURTH CAUSE OF ACTION; THAT IS GRANTED.

THEN YOU GET TO WHAT ABOUT ARTICLE 10 SECTION 4 AND THIS IS WHERE MR. REDENBACHER AND I -- YOU KNOW, I THINK ONE THING I THINK IN THIS CASE IS THAT YOUR PLEADINGS HERE ARE REALLY A MODEL OF PLEADING. THEY ARE VERY BRIEF. THEY ARE VERY SUCCINCT. THEY ARE VERY, VERY ARTFULLY DONE. YOU COULDN'T ASK FOR A BETTER CONCISE STATEMENT OF WHAT IT IS THAT THE PLAINTIFFS BELIEVE WHY THEY ARE ENTITLED TO THIS PUBLIC ACCESS. AND SO YOU BASE A RIGHT OF ACCESS ON CONSTITUTION, STATE CONSTITUTION ARTICLE 10 SECTION 4 WHICH BASICALLY SAYS THAT SINCE THE STATE HAS AN OWNERSHIP OF TIDELANDS UNDER THAT CONSTITUTIONAL SECTION THAT HAND-IN-HAND WITH THAT GOES A RIGHT OF ACCESS BOTH FROM THE LANDWARD SIDE AND THE OCEAN SIDE BY VIRTUE OF THE ROAD GOING IN AND BY VIRTUE ON WHAT YOU ALLEGE AND REFER TO IN

YOUR MOTION PAPERS AS, YOU KNOW, THE INLAND BEACH AREA THAT IS FRONTING ON THE OCEAN AND THAT THERE IS THEREFORE ACCESS FROM THE OCEAN FROM THE TIDELANDS, THAT IS WHAT THOSE ALLEGATIONS BOIL DOWN TO AND IT'S WHY THEY'RE STATED IN TWO SEPARATE CAUSES OF ACTION I BELIEVE UNLESS I MISREAD YOUR PLEADINGS.

SO THE CONSTITUTION OF THE STATE IN THAT REGARD IS REALLY ONLY A RESTATEMENT, A CODIFICATION IF YOU WILL A CONSTITUTIONAL RATHER THAN STATUTORY CODIFICATION - OF THE PREEXISTING PUBLIC TRUST DOCTRINE AS IT RELATES TO THE TIDELANDS AND WHAT RIGHTS FLOW FROM THE TIDELANDS. AND THEREFORE, BECAUSE OF THE ALVISO CASE AND THE BEARD CASE AND WHAT THEY SAY, THE RESULT IS THAT AS A MATTER OF FEDERAL LAW THE PUBLIC TRUST DOCTRINE AS RESTATED IN THE CONSTITUTION AS IT OPERATES OFF OF THE TIDELANDS CANNOT CARRY THE DAY HERE AND THAT WAS WHAT WAS EXPRESSLY HELD IN SUMMA CORPORATION. NOW, I RECOGNIZE THAT IN SUMMA CORPORATION AT 104 -- I AM SORRY AT 467 U.S. 1231 THIS IS A 1984 CASE I RECOGNIZE THAT JUSTICE REHNQUIST TALKS ABOUT THE ISSUE THERE AS AN ISSUE OF THE PUBLIC TRUST DOCTRINE BUT IT'S PRETTY CLEAR FROM READING THE FACTS THAT ARE RECITED IN THE DECISION THAT THE -- THAT THE PUBLIC ENTITIES' POSITION WAS GROUNDED IN THE IDEA THAT THERE WERE RIGHTS THAT -- THAT CREATED AN EASEMENT OR ACCESS IN THE BALLONA LAGOON NEAR VENICE, CALIFORNIA THAT WERE ROOTED IN THE STATE CONSTITUTION ARTICLE 10 SECTION 4 AND SO WHILE ON

ITS FACE THE CASE READS IN TERMS OF PUBLIC TRUST DOCTRINE I AM RELYING ON IT ALSO, SINCE I BELIEVE THAT THE STATE CONSTITUTION SECTIONS ARE SIMPLY A RESTATEMENT OF THE PUBLIC TRUST DOCTRINE AS IT PREEXISTED SPECIFICALLY WITH RESPECT TO TIDELAND ACCESS RIGHTS. I AM RELYING ON IT PRIMARILY FOR THE PROPOSITION THAT SUMMA CORPORATION HOLDS, THE UNITED STATES SUPREME COURT HOLDS IN THAT CASE THAT AGAIN THE LAND PATENT HERE PREVAILS AS A MATTER OF FEDERAL LAW AND THAT WAS THE RESULT. YOU KNOW, THERE IS SOME BACK AND FORTH ABOUT WHETHER THE LAGOON REALLY WAS A TIDELAND AND -- AND SO FORTH BUT -- BUT THE CASE ACTUALLY GETS DECIDED ON THE ISSUE THAT THE COURT STATED AS FOLLOWS: THIS IS WHAT JUSTICE REHNQUIST WROTE IN THE DECISION AT PAGE 205 "THE QUESTION WE FACE IS WHETHER A PROPERTY INTEREST SO SUBSTANTIALLY IN DEROGATION OF THE FEE INTEREST PATENTED TO THE PETITIONERS PREDECESSORS CAN SURVIVE THE PATENT PROCEEDINGS CONDUCTED PURSUANT TO THE STATUTE IMPLEMENTING THE TREATY OF GUADALUPE HIDALGO. WE THINK IT CANNOT. THE FEDERAL GOVERNMENT OF COURSE CANNOT DISPOSE OF A RIGHT POSSESSED BY THE STATE UNDER THE EQUAL FOOTING DOCTRINE OF THE UNITED STATES CONSTITUTION THUS AN ORDINARY FEDERAL PATENT PURPORTING TO CONVEY TIDELANDS LOCATED WITHIN A STATE TO A PRIVATE INDIVIDUAL IS INVALID SINCE THE UNITED STATES HOLDS SUCH TIDELANDS ONLY IN TRUST FOR THE STATE BUT THE COURT IN BORAX, THAT IS A PRIOR SUPREME COURT DECISION IN 1935, THAT THE COURT REFERS TO BUT THE COURT IN

BORAX CHIEF JUSTICE REHNQUIST SAYS, "RECOGNIZED THAT A DIFFERENT RESULT WOULD FOLLOW IF THE PRIVATE LANDS HAD BEEN PATENTED UNDER THE 1851 ACT. PATENTS CONFIRMED UNDER THE AUTHORITY OF 1851 ACT WERE ISSUED PURSUANT TO THE AUTHORITY RESERVED TO THE UNITED STATES TO ENABLE IT TO DISCHARGE ITS INTERNATIONAL DUTY WITH RESPECT TO THE LAND WHICH ALTHOUGH TIDELAND HAD NOT PASSED TO THE STATE. THIS FUNDAMENTAL DISTINCTION REFLECTS AN IMPORTANT ASPECT OF THE 1851 ACT ENACTED BY CONGRESS. WHILE THE 1851 ACT WAS INTENDED TO IMPLEMENT THIS COUNTRY'S OBLIGATIONS UNDER THE TREATY OF GUADALUPE HIDALGO THE 1851 ACT ALSO SERVED AN OVERRIDING PURPOSE OF PROVIDING REPOSE TO LAND TITLES THAT ORIGINATED WITH THE MEXICAN GRANTS." THEN THE COURT GOES ON INTO SOME OTHER THINGS ABOUT SUTTER'S MILL AND THE GOLD RUSH AND EXPLOITATION AND THEN IT SAYS THIS, JUSTICE REHNQUIST SAYS THIS "THE 1851 ACT" -- THIS IS ON PAGE 206 -- "WAS INTENDED TO PLACE THE TITLES TO LAND IN CALIFORNIA ON A STABLE FOUNDATION AND TO GIVE THE PARTIES WHO POSSESSED THEM AN OPPORTUNITY OF PLACING THEM ON THE RECORDS OF THIS COUNTRY IN A MANNER AND FORM THAT WOULD PREVENT FUTURE CONTROVERSY. CALIFORNIA ARGUES THAT SINCE ITS PUBLIC TRUST SERVITUDE IS A SOVEREIGN RIGHT THAT INTEREST DID NOT HAVE TO BE RESERVED EXPRESSLY ON THE FEDERAL PATENT TO SURVIVE THE CONFIRMATION PROCEEDINGS." THEN THE COURT GOES ONTO REJECT CALIFORNIA'S POSITION IN THAT REGARD AND REMAND THIS CASE TO THE STATE COURTS AND IN DOING SO TOWARD THE END OF THE DECISION

JUSTICE REHNQUIST SAYS, "WE HOLD THAT CALIFORNIA CANNOT AT THIS LATE DATE ASSERT ITS PUBLIC TRUST EASEMENT OVER PETITIONER'S PROPERTY WHEN PETITIONER'S PREDECESSORS IN INTEREST HAD THEIR INTEREST CONFIRMED WITHOUT ANY MENTION OF SUCH AN EASEMENT IN THE PROCEEDINGS TAKEN PURSUANT TO THE ACT OF 1851. THE INTEREST CLAIMED BY CALIFORNIA IS ONE OF SUCH SUBSTANTIAL MAGNITUDE THAT REGARDLESS OF THE FACT THAT THE CLAIM IS ASSERTED BY THE STATE IN A SOVEREIGN CAPACITY THIS INTEREST LIKE THE INDIAN CLAIMS MADE IN BARKER AND UNITED STATES VERSUS TITLE INSURANCE AND TRUST COMPANY MUST HAVE BEEN PRESENTED IN THE PATENT PROCEEDING OR BE BARRED. ACCORDINGLY, THE JUDGMENT OF THE SUPREME COURT OF CALIFORNIA IS REVERSED AND THE CASE IS REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION."

NOW, ON REMAND AND IT'S KIND OF A COMPLICATED HISTORY. THE SUMMA CASE ON REMAND IS TURNED OVER BY THE CALIFORNIA SUPREME COURT TO THE SECOND DISTRICT IN LOS ANGELES WHICH WRITES CITY OF LOS ANGELES VERSUS VENICE PENINSULA PROPERTIES A 1988 CASE AT 205 CAL. APP. 3RD 1522 AND I AM NOT GOING TO BELABOR A DISCUSSION OF CITY OF LOS ANGELES VERSUS VENICE HERE. I RECOGNIZE THAT YOU EACH HAVE DIFFERENT THINGS THAT YOU SEE IN THIS DECISION, THAT EACH SIDE BELIEVES HELP ITS CASE. I THINK A FAIR READING OF THE DECISION IS THAT THE COURT, THE SECOND STRICT COURT OF APPEAL, IN CITY OF VENICE ADHERED TO THE SUMMA DECISION

BECAUSE ON PAGE 1532 THE COURT SAYS THIS, "THE ABOVE CITED CASES" -- REFER TO SOME OTHER CASES ABOVE COURT SAYS -- "THE ABOVE CITED CASES ARE A COMPLETE ANSWER TO THE STATE'S ARGUMENT HERE THAT ONLY FEE TITLE WAS SETTLED BY THE PATENT PROCESS AND THAT THE PUBLIC TRUST EASEMENT EXISTS INDEPENDENT OF THAT PATENT PROCESS. IT IS DIFFICULT FOR US TO SEE HOW THE PATENT CAN BE DESCRIBED AS SETTLING IN THE GUARANTEE A FULL AND COMPLETE TITLE WHILE AT THE SAME TIME HOLDING THAT IT WAS BURDENED BY A SERVITUDE OF THE MAGNITUDE OF THAT ASSERTED BY THE STATE IN THIS CASE. IT IS MUCH AS CALIFORNIA NEVER ACQUIRED SOVEREIGN TITLE TO LAND WHICH WAS THE SUBJECT OF A PRIOR GRANT BY THE MEXICAN GOVERNMENT THE PUBLIC TRUST EASEMENT WHICH IS AN ADJUNCT OF SOVEREIGNTY AND A CREATURE OF THE UNITED STATES AND CALIFORNIA LAW NEVER AROSE."

ALSO AS THE DEFENSE ARGUED THE OTHER DAY MR. REDENBACHER YOUR THEORY THAT MEXICAN LAW AND THE CIVIL NAPOLEONIC CODE MAKES A DIFFERENCE WAS COMPLETELY REJECTED BY THE SECOND DISTRICT IN THIS CASE WHICH SAID THAT THAT ARGUMENT THAT CONTENTION WHICH WAS MADE IN CITY OF LOS ANGELES VERSUS VENICE PENINSULA HAS BEEN LAID TO REST BY DECISIONS OF THE UNITED STATES AND CALIFORNIA APPEAL COURTS. SO THAT'S AN ISSUE THAT I DON'T NEED TO REACH AS TO WHAT THE CIVIL CODE PROVIDED FOR IN THE NAPOLEONIC CODE ADOPTED BY MEXICO.

SO THAT BRINGS ME TO MY THIRD MAIN CONCLUSION OF

LAW HERE AND THAT IS THAT IF I WERE TO RULE OTHERWISE AND AS I SAID I AM GRANTING THE SUMMARY ADJUDICATION MOTIONS ON THESE FIRST THREE MOTIONS THAT I HAVE ISOLATED ON THE FOURTH, SECOND AND SEVENTH CAUSE OF ACTION. IT WOULD BE COMPLETELY CONTRARY TO THE WHOLE STRUCTURE OF EMINENT DOMAIN. AND THERE IS AN EXTREMELY SIGNIFICANT ASPECT TO THIS THAT NEITHER OF YOU MENTION IN YOUR PAPERS AND THAT IS THE SUPREME COURT'S RECENT DECISION IN A CASE -- THAT I AM BLANK ON THE NAME OF RIGHT NOW BUT IT WAS VERY, VERY FAMOUS AND YOU WILL KNOW THE NAME OF IT -- THAT SAYS UNDER CERTAIN CIRCUMSTANCES A PRIVATE PARTY MAY BE AUTHORIZED TO EXERCISE THAT EMINENT DOMAIN POWER. FOR EXAMPLE, IF YOU HAVE A PRIVATE DEVELOPER WHO'S WORKING WITH THE CITY TO CREATE LOW COST HOUSING THAT PRIVATE DEVELOPER CAN ACTUALLY BRING THE EMINENT DOMAIN CASE UNDER THE CASE THAT WAS RECENTLY DECIDED IN THE UNITED STATES SUPREME COURT. I DON'T KNOW IF ANY OF YOU REMEMBER THE --

MS. YOB: THE KOONTZ DECISION. K-O-O-N-T-Z.

THE COURT: ALL RIGHT. AT ANY RATE THAT WILL HAVE TO BE FILLED-IN SIN THE FORM OF ORDER. NOW, WHY I MENTION THAT IS THAT, YOU KNOW, IT RECOGNIZES EVEN THOUGH THERE WAS A LOT OF FUROR ABOUT HANDING THAT AUTHORITY OVER TO PRIVATE PEOPLE TO BRING EMINENT DOMAIN ACTIONS, IT RECOGNIZES, THE SIGNIFICANCE AND IMPORTANCE OF THE REQUIREMENT OF EMINENT DOMAIN AND THAT THERE BE JUST COMPENSATION FOR THE TAKING OF PRIVATE PROPERTY. HOW SIGNIFICANT IT IS TO HAVE -- FOR

THE SUPREME COURT TO HAVE HELD THAT EVEN A PRIVATE PARTY CAN BE HELD TO THE OBLIGATION OF BRINGING SUCH AN ACTION TO ASSURE THAT THERE IS JUST COMPENSATION AND I THINK THAT THIS POINT, IF I DECIDED OTHERWISE IT WOULD REALLY HARM AND BE CONTRARY TO EMINENT DOMAIN LAW, IS EXTREMELY WELL STATED IN THE REPLY FILED BY THE DEFENDANTS ON SEPTEMBER 20TH OF THIS YEAR WHERE ON PAGE 2 IN YOUR LEGAL ARGUMENT YOU TALK ABOUT THIS AND THERE IS JUST A COUPLE PAGES THERE ON PAGES 2 AND 3 WHERE YOU STATE VERY SUCCINCTLY WHY THE COURT CANNOT IN THIS CASE RECOGNIZE A RIGHT OF PUBLIC ACCESS ABSENT JUST COMPENSATION OF PROPERTY HERE. AND YOU CITE STATE CASES INCLUDING THE MOST FAMOUS ONE THAT I AM FAMILIAR WITH IS APTOS VERSUS SEA SCAPE CORPORATION AND THE COUNTY OF SANTA CRUZ WHICH IS A 1982 CASE AT 138 CAL. APP. 3D 484 AT 505 TO 506. BUT I BELIEVE THAT YOUR STATEMENT OF THIS ISSUE IS SO GOOD THAT I AM GOING TO ADOPT WHAT YOU SAY THERE AND RATHER THAN MY READING IT AND REPEATING IT HERE VERBATIM JUST INDICATE THAT THOSE TWO PAGES, THEY MIGHT HAVE TO BE ADJUSTED A LITTLE BIT, ARE GOING TO FORM PART OF MY CONCLUSIONS OF LAW HERE. SO THOSE ARE THE REASONS THAT I THINK AND AM GOING TO RULE THAT THE SUMMARY ADJUDICATION MOTION ON THOSE THREE CAUSES OF ACTION THE SECOND, THE FOURTH AND THE SEVENTH THOSE ARE GRANTED IN FAVOR OF THE PLAINTIFF ON YOUR MOTIONS AND ON THE -- I AM SORRY IN FAVOR OF THE DEFENDANTS, ON THE DEFENDANTS, ON YOUR MOTIONS AND AS TO THE PLAINTIFF'S CROSS MOTION ON THE SECOND CAUSE OF

ACTION THAT IS DENIED AND THOSE WILL BE MY RULINGS ON THOSE.

I DON'T HAVE THAT MUCH MORE TO SAY. I AM ALMOST DONE HERE. NOW, ONE THING THAT FOLLOWS FROM THOSE RULINGS -- ONE THING THAT FOLLOWS FROM THOSE RULINGS IS THAT ON THE MOTIONS THAT THE DEFENSE HAS MADE FOR SUMMARY ADJUDICATION AS TO THE FIRST CAUSE OF ACTION FOR AN INJUNCTION, THE FIFTH CAUSE OF ACTION AS TO PREEXISTING USE AND THE SIXTH CAUSE OF ACTION FOR DECLARATORY RELIEF, BY VIRTUE OF WHAT I HAVE RULED AS TO THE IMPACT OF THE FEDERAL LAW ON THIS THE MOTION FOR SUMMARY ADJUDICATION ON THOSE CAUSES OF ACTION IS GRANTED IN FAVOR OF THE DEFENDANTS.

AND THAT DISPOSSESS OF THE ENTIRE CASE EXCEPT FOR THE THIRD CAUSE OF ACTION FOR A DECLARATION OF PUBLIC ACCESS RIGHTS ON A THEORY OF EXPRESS DEDICATION. AND THIS IS BASICALLY ROOTED IN THE UNDISPUTED FACTS OF WHAT THE DEENEYS DID WITH THE PROPERTY WHEN THEY HAD A SIGN OUT THERE. I AGREE WITH THE PLAINTIFF'S POSITION THAT THAT SIGN CAN REASONABLY BE TAKEN AS A WRITING AND IT'S CLEAR THAT THE DEENEYS CONSENTED TO HAVING THE PUBLIC COME IN. THEY BUILT THE FACILITIES THAT ARE THERE SO THE PUBLIC COULD DO THAT. IT'S CLEAR THAT ALL OF THAT WAS PRIMARILY FOR A RECREATIONAL USE AND THAT APPEARS TO ME TO BE UNDISPUTED. BUT THAT DOES NOT IN MY OPINION CONSTITUTE AN EXPRESS DEDICATION WHICH NORMALLY TAKES A DEED AND NORMALLY OPERATES OFF OF A HISTORY OF USE AND ACCESS THAT IS

SOMETHING OTHER THAN ON A PERMISSIVE BASIS WITH A CHARGE FOR THAT AND WHAT I AM GOING TO FIND IS THAT UNDER THE APPLICABLE CASE LAW, WITHOUT BELABORING THE POINT HERE, THE CASES YOU HAVE ALL CITED THEM AND ARGUED THEM IN YOUR PAPERS, THAT THE CASES ON THIS I THINK CALL FOR THIS CONCLUSION: AND THAT IS THAT THE DEENEYS BASED ON THE FACTS TAKEN AS THE PLAINTIFF HAS SET THEM OUT AS TO WHAT THEY DID AND HAVING THE BILLBOARD THERE, BUILDING THE FACILITIES AND SO FORTH, ALL THAT WAS GOING ON THERE WAS COMMERCIAL ADVERTISING THAT WAS BEING USED IN FURTHERANCE OF AND IN THE EXERCISE OF THE PRIVATE OWNERSHIP RIGHTS THAT GO BACK TO THE FEDERAL LAND PATENT. AND THAT COMMERCIAL ADVERTISING DID NOT CONSTITUTE ANY KIND OF AN EXPRESS DEDICATION OF EITHER THE ROAD OR ACCESS FROM THE OCEAN IN FAVOR OF A PUBLIC ACCESS OF THE PUBLIC AND SO I AM GOING TO GRANT THE MOTION FOR SUMMARY ADJUDICATION IN FAVOR OF THE DEFENDANTS ON THAT. AND I HAVE ONE OTHER AUTHORITY I AM GOING TO RELY ON AND THERE IS TWO AUTHORITIES IN THIS CASE. ONE IS THE ORANGE COUNTY DECISION WHICH IS UNPUBLISHED AND THE OTHER IS THE CITY OF WATSONVILLE CASE THAT I MENTIONED FROM TIME TO TIME WHICH IS ALSO UNPUBLISHED. BUT I NOW HAVE THE SLIP OPINION FROM JULY 23RD, 1971 OF THE FIRST APPELLATE DISTRICT, DIVISION 3, IN CITY OF WATSONVILLE VERSUS ANTHONY RESETAR WHICH IS 1 CIVIL 26538. THE STATE SUPREME COURT NUMBER ON THE PETITION FOR HEARING THAT WAS LATER DENIED IS SUPREME COURT NUMBER 37612.

IN THE INTERVENING TIME WHILE A MEMORANDUM DECISION AND ORDER IS BEING PREPARED IN THIS I AM GOING TO BE WRITING THE FIRST DISTRICT AND THE DISTRICT THAT DECIDED THE ORANGE COUNTY CASE AND ASK THE PRESIDING JUSTICES TO ORDER PUBLICATION OF THESE ON THE BASIS THAT THEY ARE VERY HELPFUL IN DECIDING THIS KIND OF ISSUE AND I WANT THEM PUBLISHED SO THAT I CAN RELY ON THEM IN THIS DECISION AND WE WILL SEE WHAT HAPPENS. BUT WHAT I INTEND TO DO IS ATTACH A COPY OF THIS SLIP OPINION AS AN EXHIBIT TO THE MEMORANDUM DECISION AND ORDER THAT COMES OUT OF MY STATEMENT OF THE RULING TODAY.

WHY THIS CASE SUPPORTS THE IDEA THAT THE ADVERTISING AND THE PUBLIC USING THE ROAD DURING THE DEENEYS OWNERSHIP DOES NOT CONSTITUTE A DEDICATION IS THIS. THIS CASE IS THE OBVERSE OF YOUR CASE. THE CITY OF WATSONVILLE CASE IS ONE WHERE THE SPANISH LAND GRANT RIGHTS WENT TO A PREDECESSOR IN INTEREST OF THE CITY OF WATSONVILLE FOR THE RANCHO CORRALITOS IN SANTA CRUZ COUNTY. THERE CAME A TIME LATER ON WHERE THE CITY BOUGHT THE PINTO LAKE FROM THE WATSONVILLE WATER AND LIGHT COMPANY AND THAT PREDECESSOR'S TITLE WENT BACK TO THE SPANISH LAND GRANT OF THE RANCHO CORRALITOS. IN THE INTERVENING YEARS PRIOR TO THE FILING OF THIS QUIET TITLE ACTION OF CITY OF WATSONVILLE VERSUS ANTHONY RESETAR THE POWER LIGHT COMPANY HAD SOLD WATER TO THE FARMERS IN THE AREA. THERE WAS THIS SUPPLY OF WATER GOING ON AND THAT WAS AT FIRST ON A

SPORADIC BASIS BUT IT BECAME SOMETHING DONE MUCH MORE FREQUENTLY AND SO THE ISSUE IN THE CASE WAS WHETHER OR NOT BY VIRTUE OF DOING THAT THERE HAD BEEN AN ABANDONMENT OF THE SPANISH LAND GRANT RIGHTS THAT THE CITY OF WATSONVILLE NOW HELD BECAUSE THAT SALE OF WATER WAS AN EXPRESS DEDICATION OF THAT LAKE TO PRIVATE USES. THAT WAS THE ISSUE THAT JUDGE FRANICH, THE TRIAL JUDGE, DECIDED.

JUDGE FRANICH DECIDED THAT THERE WAS NO SUCH EXPRESS DEDICATION AND THE FIRST DISTRICT COURT OF APPEAL AFFIRMED THAT AND THERE WAS A PETITION TO THE STATE SUPREME COURT. I WORKED ON THE RESPONSE AS A LAW CLERK IN THE SUMMER OF 1971 AND IN OCTOBER OF 1971 THAT PETITION WAS DENIED AND JUDGE FRANICH'S DECISION BECAME FINAL AND THE LAKE WAS QUIETED TITLE FOR PUBLIC USE.

I MENTION THAT ON THE ISSUE OF EXPRESS DEDICATION BECAUSE WHAT IS SAUCE FOR THE GOOSE IS SAUCE FOR THE GANDER HERE. IF THAT IS THE RESULT FOR A PUBLIC ENTITY HOLDING TITLE UNDER A SPANISH LAND GRANT AND PATENT PROCESS IT HAS TO BE THE SAME FOR PRIVATE OWNERS WHO HAVE THE SAME KIND OF OWNERSHIP HERE AND THAT CASE I BELIEVE ALSO SUPPORTS MY CONCLUSION. THAT THE COMMERCIAL ADVERTISING HERE, JUST AS THE COMMERCIAL SALE OF WATER IN THE WATSONVILLE VERSUS RESETAR CASE DOES NOT ESTABLISH AN EXPRESS DEDICATION BY ANY STRETCH OF THE IMAGINATION.

NOW, THERE ARE SOME THINGS THAT I CANNOT FULLY STATE TODAY THAT I NEED TO DO BUT AT ANY RATE SO THE THIRD

CAUSE OF ACTION THE DEFENSE MOTION FOR SUMMARY ADJUDICATION IS GRANTED BY VIRTUE OF THAT THE DEFENSE HAS IN EFFECT A SUMMARY JUDGMENT IN THE CASE GRANTED IN YOUR FAVOR.

THE REQUEST FOR JUDICIAL NOTICE THAT HAVE BEEN MADE THOSE ARE GRANTED. THE OBJECTIONS TO THOSE ARE OVERRULED.

AS TO THE EVIDENCE THERE'S BEEN OBJECTIONS BY EACH PARTY TO THE FACTS AND EVIDENCE OFFERED BY THE OTHER PARTY. FOR THE MOST PART THOSE ARE OVERRULED WITH SOME EXCEPTIONS TO THAT BUT THEY ARE MOSTLY OVERRULED WITH SOME GRANTED. AND I AM GOING TO STATE SPECIFIC RULINGS IN A SEPARATE WRITTEN ORDER WHILE A MORE FORMAL MEMORANDUM DECISION AND ORDER THAT GRANTS JUDGMENT IN THE DEFENDANTS' FAVOR IS BEING PREPARED.

THE TRIAL DATE HERE WILL STAND VACATED AND IS ORDERED OFF CALENDAR AND I AM GOING TO TALK TO YOU IN A MINUTE ABOUT WHETHER YOU WANT THE MANDATORY SETTLEMENT CONFERENCE TO REMAIN ON CALENDAR OR NOT. WE WILL TALK ABOUT THAT BUT BEFORE I COME TO THAT THE LAST THING I THINK I NEED TO DO IS ASK DEFENSE COUNSEL IF YOU WOULD PREPARE A WRITTEN MEMORANDUM DECISION AND ORDER STATING THE RULING THAT I HAVE MADE.

I WOULD LIKE YOU TO INCLUDE IN THAT EARLY ON A SENTENCE THAT SAYS THAT THE COURT HAS REVIEWED -- LET ME START OVER AGAIN. A SENTENCE THAT SAYS, "IN ARRIVING AT ITS RULINGS ON THESE MOTIONS THAT THE COURT HAS REVIEWED AND CONSIDERED THE MOTION PAPERS THAT ARE LISTED ON THE

ATTACHED EXHIBIT NO. 1 AND I WILL DRAW UP A LIST THAT CAPTURES EVERYTHING THAT I HAVE REVIEWED AND SO THERE WILL BE A CLEAR RECORD OF THE FACT THAT I HAVE REVIEWED ALL THE MOTION PAPERS, ALL THIS SEPARATE STATEMENTS, THE DECLARATIONS, THE EXHIBITS, AND SO FORTH. AND THEN I HAVEN'T BEEN ABLE BECAUSE TIME DID NOT REALLY PERMIT ME TO DO IT TO MAKE REFERENCES TO SPECIFIC STATEMENTS OF FACT THAT ARE UNDISPUTED IN THE STATEMENTS OR EXHIBITS OTHER THAN WHAT I SAID ABOUT THE TITLE SEARCHES IN REFERENCE TO THE FINDINGS THAT I MADE ABOUT WHAT THE UNDISPUTED FACTS ARE AND I BELIEVE THAT THOSE NEED TO BE TIED TO THE EVIDENCE AND THAT SHOULD BE PART OF THE PROPOSED -- JUST, YOU KNOW, PARENTHETIC REFERENCE -- THAT SHOULD BE PART OF THE PROPOSED MEMORANDUM DECISION AND ORDER THAT I AM ASKING YOU TO PREPARE AND I THINK THAT'S ALL THAT I NEED TO DO.

THE OTHER THING IS THAT HAVING GRANTED A SUMMARY JUDGMENT I AM ALSO GOING TO ORDER THAT A JUDGMENT OF DISMISSAL, A SUMMARY JUDGMENT OF DISMISSAL IN FAVOR OF THE DEFENDANTS WILL BE ENTERED UPON THE FILING OF THE MEMORANDUM DECISION AND ORDER THAT'S GOING TO BE PREPARED AND FINALIZED AND SO I WOULD LIKE DEFENSE COUNSEL TO ALSO PREPARE A FORM OF SUMMARY JUDGMENT WITH PREJUDICE. THE DISMISSAL WILL BE WITH PREJUDICE DEFENDANTS TO HAVE THEIR COSTS OF SUIT IN THIS CASE SUBJECT TO THE FILING OF AN APPROPRIATE MEMORANDUM OF COSTS.

AND I THINK THAT WHAT WE SHOULD DO BECAUSE I

RECOGNIZE THAT THE CASE IS VERY IMPORTANT TO BOTH PARTIES HERE, I RECOGNIZE THAT THE LIKELIHOOD OF APPELLATE REVIEW BEING SOUGHT IS EXTREMELY HIGH HERE. AND I AM GOING TO DO SOMETHING THAT'S A LITTLE UNUSUAL FOR THE LAW AND MOTION CALENDAR. BUT ONCE A PROPOSED MEMORANDUM OF DECISION AND ORDER HAS BEEN PREPARED AND A COPY FURNISHED TO PLAINTIFF'S COUNSEL, I AM GOING TO HANDLE IT LIKE WE WOULD AFTER A BENCH TRIAL AND GIVE YOU AN OPPORTUNITY, MR. REDENBACHER, TO MAKE ANY OBJECTIONS TO THAT MEMORANDUM DECISION AND FORM OF ORDER THAT IS PROPOSED.

THE ONLY ISSUE WILL BE WHETHER IT IS A FAITHFUL REDUCTION TO WRITING OF THE ORAL DECISION THAT I HAVE ANNOUNCED OR NOT INCLUDING ANY SPECIFIC REFERENCES TO UNDISPUTED FACTS, SO THAT YOU HAVE AN OPPORTUNITY MORE THAN THE USUAL OBJECTION TO THE FORM OF ORDER I THINK THE CASE IS SIGNIFICANT ENOUGH THAT WE SHOULD GIVE THE PLAINTIFF AN OPPORTUNITY TO DO THAT AND IF EITHER ONE OF YOU WANT A HEARING ON THOSE OBJECTIONS I WILL GIVE YOU ONE IF ANY OBJECTIONS ARE RAISED. AND I WON'T SET A DATE FOR THAT BUT IF THE OBJECTIONS ARE MADE AND THERE IS A REQUEST FOR A HEARING THEN I WANT YOU TO JOINTLY CALL THE CLERK AND JUST TELL US THAT YOU NEED TO COME IN AND I WILL ACCORD YOU A HEARING AND I WILL FINALIZE THE MEMORANDUM DECISION AND ORDER AND THE FORM OF JUDGMENT UNLESS THERE IS A STRONG OBJECTION TO MY HANDLING IT THAT WAY.

I BELIEVE THAT IT'S IN ALL YOUR INTERESTS FOR ME TO

DO THAT AND THAT WAY AT LEAST THERE WILL BE A SITUATION WHERE, YOU KNOW, THERE'S BEEN A REAL FULL LOOK AT THE ISSUES HERE IN CASE THERE IS REVIEW SOUGHT AND I THINK THAT AN APPELLATE COURT WILL PROBABLY APPRECIATE THAT OF HAVING THAT EXTRA STEP HERE AS UNUSUAL AS IT IS, BUT I BELIEVE I HAVE THE AUTHORITY AND DISCRETION TO DO THAT. THIS CASE IS SUCH THAT, YOU KNOW, IT COULD HAVE BEEN A SPECIALLY ASSIGNED CASE IT'S CERTAINLY COMPLICATED ENOUGH, BUT WE DIDN'T HAVE THE RESOURCES FOR THAT IN THE CURRENT BUDGET CRISIS.

SO THAT'S ALL I CAN SAY FOR TODAY AND I WANT TO THANK YOU FOR YOUR -- YOU KNOW, THE BRIEFING ON THIS, THE ARGUMENTS ON THIS, YOU KNOW, IT'S -- I KNOW JUDGES OFTEN SAY THIS BUT IT'S HARD TO CONVEY THE REAL DEPTH OF APPRECIATION ON THIS. I PRACTICED LAW FOR A LONG TIME BEFORE I CAME HERE. I HAVE CASES WHERE THE LAWYERING IS NOT GOOD AND SOMETIMES I FEEL LIKE CRAWLING OVER THE BENCH AND TAKING OVER. IT IS SUCH A PLEASURE, YOU KNOW, TO HAVE REALLY GOOD COUNSEL LIKE IN THIS CASE AND I REALLY, REALLY HAVE APPRECIATED, YOU KNOW, ALL OF THE WORK YOU DID ON THIS, THE WAY THE BRIEFING WAS DONE, THE ARGUMENTS ON BOTH SIDES OF THIS CASE WERE VERY PERSUASIVELY DONE AND I WANT TO THANK YOU FOR ALL OF THAT FINE SUBMISSION TO THE COURT AND THAT IS ALL WE CAN DO FOR TODAY. SO I MIGHT SEE YOU AGAIN IN DUE COURSE.

MS. YOB: YOUR HONOR.

THE COURT: WHAT YOU DON'T WANT TO QUIT WHILE YOU ARE AHEAD HERE.

MS. YOB: WE JUST HAVE TWO QUESTIONS. ONE OF POINT OF LEGAL CLARIFICATION AND THE SECOND IS PROCEDURAL QUESTION. ON THE FIRST POINT WE HAVE OUR CROSS COMPLAINT AND I JUST WANT TO CONFIRM THAT THE COURT SUMMARY JUDGMENT APPLIES TO OUR FIRST AND SECOND CAUSE OF ACTION OUR CROSS COMPLAINT FOR QUIET TITLE AND DECLARATORY RELIEF?

THE COURT: OH, ALL RIGHT. WELL, I DON'T KNOW. DO YOU REALLY NEED THAT IN THE FACE OF WHAT I HAVE DECIDED OR DOES THAT BECOME --

MR. YOB: YES.

THE COURT: -- SUPERFLUOUS?

MS. YOB: I THINK WE NEED IT AMONG OTHER REASONS BECAUSE WE SERVED THAT ON THE PUBLIC TO SEEK THE QUIET TITLE AS OUR RIGHTS TO EVERYBODY NOT JUST SPECIFICALLY THE PLAINTIFFS IN THIS CASE.

THE COURT: OH, I SEE WHAT YOU ARE SAYING. WELL, THAT WOULD BE CONSISTENT WITH THE FINDINGS THAT I HAVE MADE AND THE CONCLUSIONS OF LAW THAT I HAVE REACHED. AND SO YOUR CLIENT SHOULD HAVE JUDGMENT ON THE CROSS ACTION ON THOSE CAUSES OF ACTION.

MR. ESSNER: AND JUST FOR ONE OTHER POINT OF CLARIFICATION, WE DID NOT MOVE FOR SUMMARY JUDGEMENT ON THE THIRD CAUSE OF ACTION FOR INJUNCTIVE RELIEF. BASED ON THE COURT'S RULING TODAY WE WILL GO AHEAD AND DISMISS THAT

CAUSE OF ACTION WITHOUT PREJUDICE AND SO THERE WILL BE NO NEED -- WE WILL IN EFFECT BE GETTING SUMMARY JUDGEMENT ON OUR CROSS COMPLAINT AND THERE WILL BE NO NEED FOR TRIAL ON MONDAY FOR ANY CAUSE OF ACTION. THIS RESOLVES EVERYTHING.

THE COURT: I SEE. OKAY. YEAH, THAT IS FINE.

MR. ESSNER: THANK YOU.

THE COURT: ALL RIGHT.

MS. YOB: AND THEN JUST THE SECOND -- THE PROCEDURAL POINT, YOUR HONOR. WE APPRECIATE THE COURT'S ATTENTION TO THIS AND UNDERSTAND HOW BURDENED YOU ARE AND THAT APPLIES EQUALLY TO THE COURT REPORTER AND BECAUSE OF THE BURDEN ON THE COURT REPORTER THEY ARE NOT HONORING REQUESTS TO EXPEDITE TRANSCRIPTS SO WE CONTACTED THE SUPERVISOR PRIOR TO THIS HEARING AND SHE SAID IF THE COURT WERE TO ORDER A TRANSCRIPT PREPARED BY A DATE CERTAIN THEN THAT WOULD BE THE ONLY WAY THAT WE COULD GET A TRANSCRIPT PREPARED BY A CERTAIN TIME. SO SHE REQUESTED THAT I MAKE THAT REQUEST IN COURT TODAY OUT OF RESPECT FOR THE COURT REPORTER'S SCHEDULE.

THE COURT: WELL, WHAT MAKES HER THINK AND YOU THINK THAT I WOULDN'T HAVE TO NEGOTIATE THAT WITH THE REPORTER. WHO I AM SURE DOESN'T FEEL TOO GOOD ABOUT HAVING BEEN BYPASSSED HERE.

MR. ESSNER: SO WHEN WOULD THE COURT LIKE THE PROPOSED STATEMENT OF DECISION BECAUSE WE ARE GOING TO NEED THE TRANSCRIPT IN ORDER TO MAKE SURE WE ARE FAITHFULLY

ADHERING TO YOUR FINDINGS AND YOUR RULINGS AND, OF COURSE, WE ARE PREPARED TO INCUR THE FEES FOR AN EXPEDITIOUS CHARGE. I UNDERSTAND THERE'S GOING TO BE A PREMIUM FOR THAT.

THE COURT: OKAY. LET'S DO THIS. GIVE ME A MINUTE WHERE I CAN CONFER WITH THE REPORTER. MAYBE WE'LL JUST STEP BACK INTO THE BACK HALLWAY, ROSA, AND TALK ABOUT THIS.

THE COURT REPORTER: YOU CAN DECIDE, YOUR HONOR.

THE COURT: REALLY. ALL RIGHT. WELL, I MEAN, I THINK THE CASE IS PROBABLY IMPORTANT ENOUGH TO GIVE IT THAT PRIORITY THEN AND SO WHAT I WILL DO IS ORDER THAT YOU PREPARE A TRANSCRIPT OUT OF THE NORMAL SEQUENCE OF THINGS EXCEPT FOR IF YOU HAVE HAD ANY REQUESTS FOR TRANSCRIPTS OF PRELIMINARY HEARINGS AND FELONY CASES OR IN ANY OTHER CRIMINAL MATTER WHERE THERE IS CONSTITUTIONAL PRIORITY AND THEN I WILL LEAVE IT, YOU KNOW, TO THE REPORTER BEFORE YOU LEAVE HERE AND GIVE YOU SOME ESTIMATE OF WHEN SHE THINKS THAT CAN BE AVAILABLE. AND AS FAR AS PREPARATION OF THE MEMORANDUM AND DECISION -- MEMORANDUM DECISION AND ORDER SINCE I AM TREATING IT SOMEWHAT SIMILAR TO WHAT WE DO AT THE END OF A BENCH TRIAL THAT CAN BE WITHIN A REASONABLE TIME. AFTER A BENCH TRIAL THERE IS A DEADLINE BY RULE OF COURT BUT THE COURT HAS DISCRETION UNDER A SUBDIVISION M OF THAT RULE TO EXTEND THOSE DEADLINES FOR GOOD CAUSE AND I RECOGNIZE THAT, YOU KNOW, IT'S GOING TO TAKE AWHILE FOR YOU TO GET THE TRANSCRIPT. IT IS GOING TO TAKE AWHILE FOR YOU

TO PREPARE A WRITTEN MEMORANDUM DECISION AND ORDER AND THEN MR. REDENBACHER NEEDS TIME TO LOOK AT IT, DECIDE IF HE IS GOING TO MAKE OBJECTIONS AND IF WE GO THROUGH THAT PROCESS SO I AM JUST GOING TO SAY THAT IT NEEDS TO BE DONE, YOU KNOW, WITHIN A REASONABLE TIME MAYBE, WHAT, NOT EXCEEDING 90 DAYS OR SOMETHING LIKE THAT BECAUSE OTHERWISE I WILL -- YOU WANT ME TO LOOK AT IT WHILE THE MATTER IS FRESH IN MIND AND IF IT CAN BE DONE A LOT EARLIER THAN THAT IT SHOULD BE BUT FOR RIGHT NOW I WILL REQUIRE THAT BE DONE WITHIN 90 DAYS, THAT BE PREPARED, MR. REDENBACHER MAKE ANY OBJECTIONS HE HAS AND THEN AT LEAST WE WILL SEE WHERE WE ARE WITHIN 90 DAYS ON THAT AND IF YOU CAN DO IT EARLIER THAT'S FINE.

MS. YOB: THANK YOU, YOUR HONOR.

THE COURT: ALL RIGHT. SO MR. REDENBACHER YOU SHOULD NOT GO AWAY DISCOURAGED BECAUSE I THINK THAT I HAVE SEEN A LOT OF LAWYERS IN MY CAREER AND THIS WAS VERY, VERY WELL PRESENTED YOUR CASE ON THESE MOTIONS AND IT COULD BE THAT AN APPELLATE COURT WILL THINK I AM WRONG AND THAT THAT WILL CARRY THE DAY HERE EVENTUALLY. WE DON'T KNOW BUT WE WILL SEE. ALL RIGHT. HAVE A GOOD DAY.

MR. ESSNER: THANK YOU VERY MUCH FOR YOUR TIME. I KNOW IT WAS A LOT OF STRESS ON THE COURT AND THANK YOU TO YOUR LAW CLERK.

THE COURT: WHY DON'T WE TALK INFORMALLY FOR A MINUTE IN CHAMBERS. I WANT TO ASK YOU ABOUT THE SETTLEMENT CONFERENCE.

MR. ESSNER: OKAY.

THE COURT: IF YOU HAVE A MINUTE, OKAY. WHAT YOU WANT TO DO ON THAT.

(WHEREUPON PROCEEDINGS CONCLUDED).

REPORTER'S CERTIFICATE

COUNTY OF SAN MATEO)
) SS.
STATE OF CALIFORNIA)

I, ROSA M. DE NOLA, HEREBY CERTIFY:

THAT I AM AN OFFICIAL CERTIFIED SHORTHAND REPORTER OF THE SUPERIOR COURT OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA;

THAT IN PURSUANCE OF MY DUTIES AS SUCH, I ATTENDED THE PROCEEDINGS IN THE FOREGOING MATTER AND REPORTED ALL OF THE PROCEEDINGS AND TESTIMONY TAKEN THEREIN;

THAT THE FOREGOING IS A FULL, TRUE AND CORRECT TRANSCRIPT OF MY SHORTHAND NOTES SO TAKEN.

DATED: OCTOBER 29, 2013

REDWOOD CITY, CALIFORNIA

ROSA M. DE NOLA

C.S.R. NO. 8893