UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

EDWARD GOODWIN and DELANIE GOODWIN, Plaintiffs, v. WALTON COUNTY, FLORIDA, Defendant.	No. 3:16-cv-00364-MCR-CJK **PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION ON TAKINGS CLAIM** Hon. M. Casey Rodgers

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, TAKE NOTICE: Plaintiffs Edward and DeLanie Goodwin ("Goodwins" or "Plaintiffs") hereby move this Court to issue a preliminary injunction enjoining Defendant Walton County, Florida (County) and its agents, employees, officers, and representatives from enforcing its Customary Use Ordinance,[1] pending resolution of the merits of the claim raised in this action.

This motion is brought pursuant to Federal Rule of Civil Procedure 65, as well as upon the accompanying Memorandum of Points and Authorities, Declaration of Plaintiff Edward Goodwin, and all other papers and briefs previously filed in this action.

This motion seeks a preliminary injunction under the Goodwins' facial takings claim (Count Two) in their First Amended Complaint. This claim challenges a recently enacted County ordinance which legislatively grants Walton County residents and visitors a "customary" right to enter, occupy, and use the Goodwins' and others' private dry sand areas. The County passed this Customary Use Ordinance even as the parties and this Court prepare for trial on the issue of whether public customary rights

[1] Plaintiffs believe the Ordinance is formally designated as Ordinance No. 16-1536.

exist on the Goodwins' land under common law. The County has now bypassed the judicial process, choosing to take by legislation what it has not yet established by evidence in this Court; namely, a customary right of public access on the Goodwins' land.

The County's Customary Use Ordinance includes no provision for compensation to the Goodwins or other affected property owners, and is therefore constitutionally invalid on its face. This is not a difficult call. It is well established that the government unconstitutionally takes property when it redefines common law property rights or legislatively imposes public access on private land without just compensation. The Goodwins accordingly move for a preliminary injunction against the Customary Use Ordinance. Since their claim has merit, the Court should expeditiously grant the motion.

The grounds for the motion are that:

1. Plaintiffs are beachfront property owners who challenge the constitutionality of the County's recently enacted Customary Use Ordinance.

2. The Goodwins own a beachfront home in the Dune Allen area of Walton County. Their property includes an area of dry beach that runs from their home down to the mean high water line.

3. The Goodwins own this dry sand area under a fee simple title. There is no recorded public or government customary or common law access easement on their dry sand area and no such easement has been established and adjudged in a court of law.

4. On October 25, 2016, the County enacted a Customary Use Ordinance that permits members of the public, both residents of the County and visitors, to access and recreate on private dry sand areas like that owned by the Goodwins. The Ordinance goes into effect on April 1, 2017, but becomes ripe for judicial review upon enactment.

5. The Customary Use Ordinance imposes penalties on property owners who attempt to stop the public or County officials from using privately owned dry sand areas for beach access and recreation.

6. The Ordinance creates a fifteen foot public "no-go" buffer zone around private beachfront structures, but many County government agencies are not subject to this restriction. The ordinance allows officials with such agencies to enter the Goodwins' and others' private dry sand property at their discretion, including areas immediately adjacent to private homes.

8. The Ordinance does not include any guarantee of just compensation to affected property owners.

9. The Goodwins have always exercised and retained their fee simple right to exclude the public and government from their dry sand property and to control the use of that land. But, under the challenged Customary Use Ordinance, the Goodwins and all other private dry beach owners must now forfeit these property rights by allowing the general public, including non-residents and government officials, to enter, use, and occupy their private property.

10. The Ordinance authorizes a physical invasion and occupation of their private land by the public and government on its face. It appropriates the Goodwins' and others' constitutionally protected right to exclude the trespassers and government agents from private beach property, and destroys important privacy and property interests.

11. If the County is not enjoined from enforcing the Ordinance, there is a significant threat that the Goodwins will lose their fee speech signs rights, which hinge, under this Court's order of August 19, 2016, on whether the public has customary rights on their land. There is also a real danger the Goodwins will lose the control of their private land. These are significant injuries, and the Goodwins have no adequate alternative recourse at law.

12. There is a substantial likelihood the Goodwins will succeed on the merits of their takings claim, because the Ordinance facially violates settled Takings Clause precedent barring the government from legislating public access on private land without compensation.

13. Granting the requested preliminary injunction is in the public interest, as it would vindicate a critical constitutional property right, and maintain the status quo, while the parties litigate the issue of whether common law customary rights exist on the Goodwins' land. Given the nature of the rights involved, and the context of this dispute, the equities favor the requested relief.

CONCLUSION

The Court should grant the motion.

DATED: November 14, 2016.

Respectfully submitted,

s/ J. David Breemer

CHRISTINA M. MARTIN
Trial Counsel
Fla. Bar. No. 100760
Pacific Legal Foundation
8645 North Military Trail, Suite 511
Palm Beach Gardens, Florida 33410
Telephone: (561) 691-5000
Facsimile: (561) 691-5006
Email: cmm@pacificlegal.org

J. DAVID BREEMER
Cal. Bar No. 215039 (*Pro Hac Vice*)
Pacific Legal Foundation
930 G Street
Sacramento, California 95814
Telephone: (916) 419-7111
Facsimile: (916) 419-7747
E-mail: jdb@pacificlegal.org

WILLIAM J. DUNAWAY
Clark Partington
125 West Romona Street, Suite 800
Pensacola, Florida 32502
Telephone: (850) 434-9200
Email: wdunaway@clarkpartington.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I, J. David Breemer, do hereby CERTIFY that a true and correct copy of the foregoing has been furnished by the Court's CM/ECF system on this 14th day of November, 2016:

Timothy M. Warner
William G. Warner
Warner Law Firm, P. A.
P.O. Box 1820
Panama City, FL 32402
pleadings@warnerlaw.us

David A. Theriaque
S. Brent Spain
Theriaque & Spain
433 North Magnolia Drive
Tallahassee, FL 32308
dat@theriaquelaw.com
sbs@theriaquelaw.com

Mark D. Davis
Sidney N. Noyes
Office of the County Attorney
161 East Sloss Avenue
DeFuniak Springs, FL 32433
noysidney@co.walton.fl.us
sincrissie@co.walton.fl.us

s/ J. David Breemer
J. DAVID BREEMER

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

EDWARD GOODWIN and DELANIE GOODWIN, Plaintiffs, v. WALTON COUNTY, FLORIDA, Defendant.	No. 3:16-cv-00364-MCR-CJK **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION ON TAKINGS CLAIM** Hon. M. Casey Rodgers

INTRODUCTION

Plaintiffs Edward and DeLanie Goodwin (Goodwins) file this memorandum of law in support of their motion for a preliminary injunction on Count Two of their First Amended Complaint, a facial claim for an unconstitutional taking of their property. The motion asks this Court to immediately enjoin a new Walton County Ordinance (Customary Use Ordinance or Ordinance), *see* Exhibit A, that authorizes the public and government to use the Goodwins' and others' private land without permission or a mechanism for just compensation, in violation of the Takings Clause and 42 U.S.C. § 1983.

As the Court knows, the Goodwins own private beachfront land in the Dune Allen area of the County. DE 17, at 4. Their lot extends seaward to the mean high water line (MHWL), and includes a sandy beach area lying between the MHWL and their single family beach front home. *Id.* Since the mid-1990s, the Goodwins have carefully controlled the use of that dry beach property, posting "private property" signs on its boundaries and excluding strangers from using and damaging the area. *See* Second Declaration of Edward Goodwin (Second Goodwin Dec.), at 3-5, attached as Exhibit B.

When the County enacted an ordinance earlier this year banning signs on their dry beach area, the Goodwins sued in this Court, alleging the law violated their First Amendment free speech rights. The County defended the sign ban by claiming that the public had a right to use the Goodwins' land under the common law doctrine of custom and that the sign ban was needed to keep the area open and safe for the public. *See* Defendant's Answer [DE 13] at 8 ¶ 5.

This Court subsequently concluded that a trial was necessary to determine whether the County could prove the facts necessary to establish a customary public easement on the Goodwins' land. DE 17 at 5-6. The parties began research and discovery relevant to the elements of custom, particularly on whether a custom of public dry beach use (1) exists in Dune Allen (2) since time immemorial, (3) without interruption, (4) without dispute, and (5) is reasonable. The Goodwins soon became confident that the County could never satisfy its trial burden of proof because of significant and copious evidence showing that public use of private dry beaches in the Goodwins' (Dune Allen) area and elsewhere has been disputed and interrupted for some time.

However, the County has now moved to short-circuit the trial and this Court's power to adjudicate customary rights by passing an ordinance that legislatively imposes what it has not proven in court: public dry beach access rights. On October 25, 2016, it enacted a Customary Use Ordinance that declares the existence of customary public access rights on all private dry beach areas, including the Goodwins'. The new law authorizes the public and government officials to use such areas for beach recreation and bars owners from stopping such use. It provides no provision guaranteeing compensation to property owners who are now required to dedicate their land to the County for a public beach park, free of charge, and upon pain of civil penalties. The Customary Use Ordinance thus amounts to a taking of private property on its face.

The Ordinance's invocation of custom does not convert the law into a harmless codification of pre-existing public rights. Only courts can declare binding common law customary rights. *See* Fla. Atty. Gen. Op. 2002-38, at 5 ("[U]ntil a *court* establishes a 'customary right of use' by the public in such real [dry beach] property, the fee owners thereof may make complaints of trespass to local law enforcement officers as they occur.") (emphasis added). None has done so in Walton County, so the Ordinance is simply a legislative grant of public access rights. The County can go this route only if the Ordinance includes a provision for compensation. Since it does not do so, it is invalid.

The new Ordinance is already harming the Goodwins, as strangers have recently trespassed on their land under purported authority of the law, damaging their land and their right to control it. It is highly likely to harm them further if not enjoined.

STATEMENT OF FACTS

A. The Goodwins and Their Dry Beach Property

Edward Goodwin is a 75 year-old retired phone company manager. *See* Declaration of Edward Goodwin (First Goodwin Dec.) at 1 ¶ 3; attached as Exhibit C. He is married to Plaintiff DeLanie Goodwin, a retired banker. *Id.* at 1 ¶ 4. In 1971, the Goodwins purchased Gulf front, residential property in the Dune Allen area of Walton County. *Id.* at 1 ¶ 5; *see also* Exhibit D (deed). The property has an address of 113 Fort Panic Drive, Santa Rosa Beach, Florida. *See id.* In 1978, the Goodwins built a 2,296 square-foot home on their land. Since then, they have occupied it as their primary residence. *Id.* at 1 ¶ 6.

In Florida, the State owns the ribbon of shoreline that extends from the Gulf waters to the MHWL. Fla. Const. art. X, § 11 ("The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state . . . ."). However, the dry

beach area lying inland of the MHWL, and between the MHWL and the first line of vegetation, is generally private property. *See* Fla. Atty. Gen. Op. 2002-38, at 5 (dry sand property is "subject to private ownership"). This holds true with respect to the Goodwins' beach property. According to the Goodwins' deed, the plat which created their lot, a recent land survey, and the laws of Florida, a dry beach area lying within their lot lines and between the line of vegetation and MHWL is their private property, held in fee simple. First Goodwin Dec. at 1-2 ¶¶ 7-9; *see also* Exhibit E (survey). As such, they hold all normal incidents of title, including the right to exclude trespassers. *See* Fla. Atty. Gen. Op. 2002-38, at 5 ("[U]ntil a court establishes a 'customary right of use' by the public in such real [dry beach] property, the fee owners thereof may make complaints of trespass to local law enforcement officers as they occur.").

The Goodwins have long used their dry beach area for personal recreation and family gatherings. First Goodwin Dec. at 2 ¶¶ 10-11. The Goodwins often use their dry beach for sunset viewing, photography, and meeting people along the shore. *Id.* They also nurture fragile beach vegetation on parts of the dry beach to protect and stabilize upland dunes. *Id.*

No court has ever declared a public easement on their dry beach property and there is no recorded public or government access easement on their title. Exhibit B (Second Goodwin Dec.) at 2 ¶ 9. The Goodwins have always exercised exclusive control of their dry beach land. They have maintained "private property" signs on that land since the mid-1990s, and required trespassers to leave their dry beach area since they have owned the property. *Id.* at 3-5.

B. The Sign Ban and Subsequent Court Procedure

In June, 2016, the County enacted a beach obstruction ordinance (the Sign Ordinance) that banned beachfront owners from putting any signs on private dry beach parcels. The Goodwins sued the County, claiming the ordinance violated their free speech rights on its face in totally prohibiting signs on their dry beach property.

Their suit alleged, in part, that the Sign Ordinance left the Goodwins with no adequate alternatives for communicating their views and property rights to the public along the shore. *See* DE 17 at 1-3.

As an affirmative defense, the County asserted that the public had a right to use the Goodwins' dry beach property under the doctrine of custom. Defendant's Answer at 8 ¶ 5. Based on this, the County claimed the sign ban furthered legitimized public beach interests, and the Goodwins could adequately communicate with the people on the beach by putting signs on their home, rather than on the dry sand. After considering these issues, this Court issued an order concluding that it was necessary to determine whether customary public rights actually existed on the Goodwins' land in order to resolve their First Amendment claim. DE 17. The Court indicated that the Goodwins have an adequate means to communicate with the beach-going public by placing signs on their home, if the public has a customary right to be on the Goodwins' dry sand area near the home. But, the Court suggested, if there was no customary public use on the Goodwins' dry sand, the dry sand sign ban would leave the Goodwins with no reasonable means to communicate messages about their property and rights to beachgoers.

The Court thus ordered a joint trial on customary rights and the merits of the Goodwins' First Amendment claim. DE 17 at 6; *see also* DE 30. The Court later extended the trial to four days, at the County's request. The discovery deadline is January 13, 2017. DE 32. Since then, the parties have engaged in discovery and trial preparation. On September 22, 2016, the County voluntarily accepted a preliminary injunction on its sign ban and, as a result, on September 30, 2016, this Court continued the trial to an undetermined date, while allowing discovery to proceed. DE 38.

C. The New Customary Use Ordinance

After this Court extended the customary use trial to four days, and while the parties developed facts on customary rights, the County proposed a new ordinance (with no notice to the Court) declaring the existence of the same public dry sand rights it is under order to prove here. The County's new, Customary Use Ordinance defines the "dry sand area of the beach" as the area of land between the mean high water line and first line of vegetation. Ordinance, at 2 § 2.2.[1] The Ordinance then declares: "[t]he public's long-standing customary use of the dry sand areas of all of the beaches in the County for recreational purposes is hereby protected." *Id.* § 2.1. The ordinance prohibits any "individual, group, or entity [from] impe[ding] or interfer[ing] with the right of the public at large, including the residents and visitors of the County, to utilize the dry sand areas of the beach that are *owned by private entities* for recreational purposes." *Id.* Doing so "shall constitute a civil infraction punishable by a fine not to exceed $500.00." *Id.* § 3.

> The Customary Use Ordinance specifies that the public may engage in the following recreational activities . . . on the dry sand areas of the beach that are *owned by private entities*: walking; jogging; sitting on the sand, in a beach chair, or on a beach towel or blanket; using a beach umbrella that is ten (10) feet or less in diameter; sunbathing; picnicking; fishing; playing beach games; building sand castles; and similar traditional recreational activities.

Ordinance § 2.4 (emphasis added). The Ordinance identifies one activity the public is not allowed to engage in on private dry beaches: "the erection of tents." *Id.*

The Ordinance gives property owners "a fifteen (15) foot buffer zone located seaward from the toe of the dune or from any permanent habitable structure owned by a private entity," in which public recreation is not allowed. *Id.* § 2.3. However, this 15-foot private property buffer zone does "not apply to the Walton County Sheriff's

[1] Again, the Ordinance is attached as Exhibit A to this Memorandum.

Office, the Walton County Tourist Development Council, the South Walton Fire District, and other emergency service providers." *Id.*

The Customary Use Ordinance was introduced on October 6, 2016, and had an initial hearing on October 19, 2016.

D. People Are Already Invoking the Ordinance To Trespass on the Goodwins' Land

On October 23, 2016, after the Ordinance had received a favorable initial hearing before the County, Edward Goodwin observed a woman approach the "No Trespassing" sign posted on the southwest side of the Goodwins' dry sand area. Third Declaration of Edward Goodwin (Third Goodwin Dec.) at 1, attached as Exhibit F. The woman stopped, read the sign, then proceeded to trespass upon the Goodwins' dry beach area. *Id.* ¶ 5.

Edward Goodwin approached the woman and asked if she realized she was trespassing. *Id.* ¶ 6. The woman responded that the Walton County Board of County Commissioners had given her the right to use the dry sand area by establishing, through ordinance, that the public had a "Customary Use" right to that area. *Id.* Mr. Goodwin informed her that customary use rights had not been legally established on his property, and that she might be charged with a trespass violation, should she return. *Id.* ¶ 7. At that point, the woman turned and deliberately walked approximately 30 feet upland, further into the Goodwins' property and to within fifteen (15) feet of their home. *Id.* ¶ 8. She then walked east 130 feet, and South to the wet sand, effectively traversing all the dry sand on the Goodwins' parcel declared to be a public beach by the new Customary Use Ordinance. *Id.* ¶ 9. Mr. Goodwin subsequently filed a trespass report based on this event (Incident # 2016-00101594). *Id.* ¶ 10.

The Goodwins now seek to preliminarily enjoin the Customary Use Ordinance because it takes private property for public use without any guarantee of compensation and causes immediate harm to their land and to their property and free speech rights.

SUMMARY OF ARGUMENT

It is unclear why the County would rush to legislatively decree the existence of public beach access rights on the Goodwins' and others' private dry sandy land while it is under order to prove the existence of such rights in this Court under common law. Whatever its thinking, the County's ordinance goes too far. A law that explicitly imposes public or government access on private land, without a provision for just compensation, causes an unconstitutional physical taking. *Gulf Power Co. v. United States*, 187 F.3d 1324, 1328-29 (11th Cir. 1999), *Hendler v. United States*, 952 F.2d 1364, 1365 (Fed. Cir. 1991). Here, the County's new law authorizes the public and government officials to occupy private dry sandy areas for recreational uses, and governmental purposes, converting private land into a government-maintained public beach park, without any mechanism for compensation. The law destroys affected property owners' constitutional right to exclude non-owners from their land in every situation it has effect. *See, e.g.*, *Purdie v. Attorney General*, 732 A.2d 442 (N.H. 1999) (a law authorizing public recreation on private dry sand beaches without compensation held to be a taking). For this reason, it is constitutionally invalid and subject to injunction. *Eide v. Sarasota County*, 908 F.2d 716, 722 (11th Cir. 1990) ("For a facial [takings] challenge, the remedy is the striking down of the regulation.").

Pasting the "custom" moniker on the County's legislative invasion of private dry sandy property changes nothing. The County has no power to factually adjudicate customary rights, and it did not do so in enacting the ordinance. Only a court can decide and declare (on a local basis) that private parcels are impressed with a common law easement, such as one arising from custom. Fla. Atty. Gen. Op. 2002-38, at 5 ("until a court establishes a 'customary right of use' by the public" owners may exclude the public).

No court has found public or government customary rights on the Goodwins' dry sandy parcel or any Walton County dry beach. Exhibit G (Defendant's Response

to Plaintiff's First Request for Admissions) at 2-3 ¶ 5. As a result, the County's new ordinance does not protect lawfully existing customary rights; it *creates* such rights, and that is a taking of private property. It is not enough that the County sincerely *believes* customary rights exist. The only way it can constitutionally legislate public and/or governmental access rights on private land is by including a provision for compensation. *Opinion of the Justices*, 649 A.2d 604, 610 (N.H. 1994) (the government "has the power to permit a comprehensive beach access and use program by . . . compensating private property owners, [but] it may not take property rights without compensation through legislative decree").

Nothing that happens in the pending customary rights trial in this case can save the Ordinance from unconstitutionality. This is because the new law imposes greater access burdens on private land than the County could allege or prove in a common law customary rights trial. The Ordinance imposes public access on every private dry sand parcel in the County, not "merely" those in Dune Allen. It also imposes a government services easement, which it could never prove as an "immemorial" common law right. These impositions ensure the Ordinance remains an unconstitutional taking.

In light of the foregoing, the Goodwins are likely to prevail on their takings claim against the Ordinance. Without an injunction, the Goodwins will suffer irreparable injury to their property rights and their property. Moreover, they will also likely lose their First Amendment rights without an injunction, since this Court has said the County can forbid them from speaking through dry beach signs if the public can enter and use such property. As a result, the Ordinance should be enjoined.

PRELIMINARY INJUNCTION STANDARDS

A district court may grant injunctive relief if the moving party shows that: (1) it has a substantial likelihood of success on the merits; (2) it is likely to suffer irreparable harm without relief; (3) the balance of equities favors the movant; and (4) the injunction is in the public interest. *Winter v. Natural Res. Defense Council,*

Inc., 555 U.S. 7, 20 (2008); *see also KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1268 (11th Cir. 2006). When a lawsuit is filed against a governmental entity, the third and fourth considerations are combined. *Scott v. Roberts*, 612 F.3d 1279, 1290 (11th Cir. 2010).

ARGUMENT

I

THE GOODWINS ARE LIKELY TO SUCCEED ON THEIR CLAIM THAT THE CUSTOMARY USE ORDINANCE CAUSES A TAKING OF PRIVATE PROPERTY ON ITS FACE

A. The Law of Takings

1. General Standards

The Fifth Amendment prohibits the taking of private property for public use without just compensation. It applies to the states through the Fourteenth Amendment. *See Palazzolo v. Rhode Island*, 533 U.S. 606, 617 (2001). Takings standards vary depending on whether the challenged imposition causes a physical invasion of property or a regulatory restriction on private uses. *Lingle v. Chevron, USA, Inc.*, 544 U.S. 528, 538-40 (2005).

Land use restrictions are often subject to a balancing test that weighs the degree to which the restriction damages the private use and value of private property. *See id.* at 538. But laws that cause a physical occupation of land are subject to a strict, *per se* takings test. *Id.*; *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 434-35 (1982). Regulations resulting in a physical invasion of land are unconstitutional "'without regard to whether the action achieves an important public benefit or has only a minimal economic impact on the owner.'" *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825, 831-32 (1987) (quoting *Loretto*, 458 U.S. at 434-35). Put another way, no public health, safety, or welfare interest justifies an uncompensated physical taking. Nichols on Eminent Domain § 1.42(1) ("'when land . . . is actually

taken from the owner and put to use by the public authorities, the constitutional obligation to make just compensation arises, however much the use to which the property is put may enhance the public health, morals or safety'") (citation omitted).

Physical occupations of land are judged so strictly (at least in part) because they eviscerate the owner's fundamental right to exclude non-owners from the land, and other rights. The right to exclude is "'one of the most essential sticks in the bundle of rights that are commonly characterized as property.'" *Dolan v. City of Tigard*, 512 U.S. 374, 393 (1994) (quoting *Kaiser Aetna v. United States*, 444 U.S. 164, 176 (1979)).

2. Facial Takings Claims

Takings claims arising under the foregoing framework can be classified as facial or as-applied claims. Facial takings claims assert that enactment of a law, rather than its enforcement in particular circumstances, unconstitutionally takes private property. *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 494 (1987); *Hillcrest Property, LLP v. Pasco County*, 731 F. Supp. 2d 1288, 1294-95 (M.D. Fla. 2010) ("[I]f the 'claim arises in . . . a facial challenge rather than in . . . a concrete controversy concerning the effect of a regulation on a specific parcel of land, the only issue is whether the mere enactment of the regulation constitutes a taking.'") (citing *Glisson v. Alachua County*, 558 So. 2d 1030, 1035-36 (Fla. Dist. Ct. App. 1990) (citing *Keystone*, 480 U.S. 470)). The remedy for a law that facially takes property without a provision for just compensation is invalidation. *San Remo Hotel, L.P. v. City and County of San Francisco*, 545 U.S. 323, 345 (2005) ("facial takings challenges . . . by their nature request[] relief distinct from the provision of 'just compensation'"); *Eide*, 908 F.2d at 722 (The remedy for a facial taking is "the striking down of the regulation.").

The facial category of takings claims is important for procedural reasons. While as-applied takings claims must sometimes be ripened through exhaustion of state court

compensation procedures, the same is not true of facial claims. Instead, facial challenges "are generally ripe the moment the challenged regulation or ordinance is passed." *Suitum v. Tahoe Regional Planning Agency*, 520 U.S. 725, 736 n.10 (1997); *Temple B'Nai Zion, Inc. v. City of Sunny Isles Beach*, 727 F.3d 1349, 1359 n.6 (11th Cir. 2013) ("*Williamson County*'s finality principles do not apply to facial claims that a given regulation is constitutionally infirm.").[2]

The Customary Use Ordinance was enacted on October 25, 2016, and became subject to challenge at that time, even though it becomes effective in April, 2017. This is because, unlike with an as-applied takings claim, "[a] facial challenge . . . becomes ripe upon the ordinance's enactment." *Hillcrest*, 731 F. Supp. 2d at 1295. As a general matter, the Goodwins need not "await the consummation of threatened injury to obtain preventative relief," *Blum v. Yaretsky*, 457 U.S. 991, 1000 (1982), and (in any event) they are already experiencing injury from the Ordinance, *see* Exhibit F (Third Goodwin Dec.). Thus , there is no doubt they may seek to enjoin it now a violation of physical takings law. *Id*.

C. Courts Have Repeatedly Held that Laws Extending Public Beach Access to Private Land Are a Taking

Obviously, unconstitutional physical takings can occur when the government occupies private land for its own purposes. *Hendler*, 952 F.2d at 1374; *Otay Mesa Property, L.P. v. United States*, 670 F.3d 1358, 1363 (Fed. Cir. 2012). But they also arise when the government gives *third parties* the right to use private property. *Nollan*, 483 U.S. at 832 (a physical taking occurs "where individuals are given a permanent and continuous right to pass to and fro, so that the property may continuously be traversed"). It makes no difference if such a right is exercised only intermittently; it is the government's grant of a *right* of access that causes the physical

[2] *See also Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 287 (5th Cir. 2012) ("The Supreme Court has held *Williamson County* to be inapplicable to facial challenges.").

taking. *Id.*; *Hendler*, 952 F.2d at 1378. Thus, the uncompensated imposition of an easement on private land for periodic public or governmental use is the same as outright confiscation. *Kaiser Aetna*, 444 U.S. at 180 ("[I]f the Government physically invades only an easement in property, it must nonetheless pay just compensation."); *Preseault v. I.C.C.*, 494 U.S. 1, 24 (1990) (same).

Under this standard, courts have repeatedly held that statutes and ordinances authorizing public access and recreation on private beachfront land without any provision for compensation amount to an unconstitutional taking. *Boone v. United States*, 944 F.2d 1489 (9th Cir. 1991) (federal regulation); *Weems v. County Comm'rs of Calvert County*, 919 A.2d 77 (Md. 2007) (ordinance); *Purdie,* 732 A.2d 442 (statute); *Opinion of the Justices*, 649 A.2d 604 (statute); *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989) (statute); *see also*, *Severance v. Patterson*, 370 S.W.3d 705, 731 (Tex. 2012) (imposition of customary public access easement on private dry beaches, without judicial proof, would "dispossess many beachfront property owners along the Texas coast of the land they purchased, raise constitutional questions and bring into consideration, potentially, tremendous liability of the State for just compensation").

D. The Text of the Customary Use Ordinance Authorizes the Occupation of Private Land by the Public and the Government, Without any Guarantee of Compensation, Thus Causing a Facial Taking

In light of the foregoing, to prevail on their facial takings claim, the Goodwins must simply show that, on its own terms, the Ordinance causes a physical taking in every situation in which it authorizes conduct (*i.e.*, public or governmental access) or prohibits it (*i.e.*, barring exercise of the right to exclude), without any accompanying provision for adequate compensation. *City of Los Angeles v. Patel*, 135 S. Ct. 2443, 2451 (2015). If they make this showing, the law is invalid. *Gulf Power*, 187 F.3d at 1327, 1331; *Eide*, 908 F.2d at 722. The Goodwins are likely to prevail on this test.

The plain text of the Customary Use Ordinance grants members of the public the right to use private dry sand property for beach access and recreation, and bars property owners from stopping such use. Ordinance §§ 1, 3. The Ordinance states that Walton County residents and visitors may access and engage in numerous recreational activities "on the dry sand areas of the beach that are *owned by private entities*. *Id.* § 4 (emphasis added). The ordinance states that "no individual, group, or entity shall impede or interfere with the right of the public at large, including the residents and visitors of the County, *to utilize the dry sand areas of the beach that are owned by private entities* for recreational purposes." *Id.* § 1 (emphasis added). The Ordinance imposes a small, fifteen-foot buffer zone around private structures, *id.* § 3, but the public is allowed on all other private dry sand areas.

The Ordinance also authorizes County officials with the police, fire department, and the Tourist Development Council to enter and occupy private dry sand areas, such as the Goodwins' property. *Id.* Indeed, the law exempts these agencies from the fifteen-foot private structure buffer zone applicable to the public. The Ordinance therefore authorizes officials with such agencies to use all private dry sandy lands, including land immediately adjacent to the Goodwins' and others' private homes. *Id.* No permission is required. On the face of the Ordinance, there are no limits to what the authorized agencies may do on private dry sand areas.[3]

[3] The Ordinance makes clear that all providers of "emergency services" may enter private dry beaches, but it does not require that they be acting in an emergency service capacity when they actually enter private land. The Walton County Tourist Development Council, which has access, is primarily concerned with beach tourism and promotion. The County's website states: "The mission of the South Walton TDC is to direct and manage activities that will strengthen the position of the South Walton brand in the tourism marketplace, in order to increase the tourism economy of Walton County. The TDC will manage and maintain our beaches as a primary attraction and serve as a responsible industry organization to take a leadership role in addressing issues that affect tourism and the quality of life in Walton County." http://www.co.walton.fl.us/index.aspx?NID=162.

Because the Ordinance effects a "wholesale denial" of the effected property owners' right to exclude the public and government from private dry beach land, *Bell*, 557 A.2d at 178; *Hendler*, 952 F.2d at 1374, while failing to include a provision for compensation, it causes an unconstitutional physical taking. *Nollan*, 483 U.S. at 831-32; *Gulf Power Co.*, 187 F.3d at 1328-29; *Purdie*, 732 A.2d at 667 ("Because [the statute] unilaterally authorizes the taking of private shoreland for public use and provides no compensation for landowners whose property has been appropriated, it violates . . . the Fifth Amendment of the Federal Constitution.").

E. The Ordinance Cannot Be Saved by Its Reference to Custom or by Anything That Might Occur in a Common Law Trial in This Case

1. The Ordinance Is a Legislative Act, Not an Adjudication of Customary Rights

The County will almost surely argue that its new Ordinance does not legislate and create beach access rights on private dry beaches, but simply recognizes existing common law customary rights. The problem is that the Board of County Commissioners does not have the power to "recognize" the existence of common law customary rights in the first instance, at least not in any mandatory sense.[4] Common law customary rights must be determined through a fact-based judicial proceeding. *Trepanier v. County of Volusia*, 965 So. 2d 276, 290 (Fla. Dist. Ct. App. 2007) (custom requires "the courts to 'ascertain in each case the degree of customary and ancient use the beach has been subjected to'"). Consequently, only courts can declare binding customary rights. *Id.*; Fla. Atty. Gen. Op. 2002-38, at 5 ("until *a court* establishes a 'customary right of use' by the public" owners may exclude the public)

[4] The only way legislation could properly recognize customary rights without triggering constitutional concerns is if it simply recognized and promised to protect such rights *once a court finds them under common law*. Obviously, the County's Ordinance goes beyond that. It unilaterally and affirmatively authorizes dry sand public access and prohibits property owners from excluding the public from such lands, and imposes fines for doing so.

(emphasis added); *Purdie*, 732 A.2d at 664 ("The determination of common law questions is a judicial, not a legislative, function"); *Opinion of Justices*, 649 A.2d at 92 ("determination [of a prescriptive easement] is . . . a judicial one").

This means that when the County declared, without a court order, and through an Ordinance, that the public may recreate on private beach lands (and the owners cannot bar such use), it was necessarily *legislating* rights. The custom "findings" accompanying the Ordinance are legislative, not judicial, findings, and no different in effect than any other findings that underlie legislative action. They may reveal the County's goals and perhaps provide a rational basis for the legislation, but they cannot justify a physical occupation of private property, like that here. *See, e.g.*, *Loretto*, 458 U.S. at 444 n.3 (Blackmun, J., dissenting) (futilely objecting to the majority's ruling that a statute caused a taking in part because "the state legislature had enacted [the challenged statute] to 'prohibit gouging and arbitrary action' by 'landlords [who] in many instances have imposed extremely onerous fees and conditions on cable access to their buildings'") (citation omitted). The only thing that can constitutionalize an act causing a physical taking is a compensation provision, *id.* at 434, and that is absent here.

It is true that the County may generally have power to legislatively redefine property rights. But when it uses that power to destroy constitutionally protected rights, it must include a provision for just compensation to sustain its action. *Stop the Beach Renourishment, Inc. v. Florida Dep't of Envtl. Prot.*, 560 U.S. 702, 713 (2010) ("States effect a taking if they recharacterize as public property what was previously private property."); *Purdie*, 732 A.2d at 667 ("Although the legislature has the power to change or redefine the common law to conform to current standards and public needs . . . property rights created by the common law may not be taken away legislatively without due process of law."); *Webb's Fabulous Pharmacies, Inc. v.*

Beckwith, 449 U.S. 155, 164 (1980) (The government "by ipse dixit, may not transform private property into public property without compensation.").[5]

The Ordinance fails this constitutional standard. No court has adjudicated and declared customary rights of *any scope* on *any* private dry sand property in Walton County, much less declared the broad public and government access rights the Ordinance authorizes on *all* private dry beaches. Yet, the County Ordinance newly decrees such rights, effectively expanding the public beach existing seaward of the mean high water line inland to private parcels, without any provision for compensation to the owners. This is a quintessential taking. *Id.*; *Stop the Beach Renourishment*, 560 U.S. at 710 & n.2 (State of Florida concedes that, if the government moves the boundary between public and private beach areas inland onto private parcels, it is a taking.).

2. The Trial in This Case Cannot Constitutionalize the Ordinance

The County may argue that the Ordinance will be constitutional if it proves common law customary rights in this case and, therefore, that the Court should stay its hand. This is wrong. Nothing that occurs in the proceedings in this case can save the Customary Use Ordinance from invalidity under the Takings Clause. This is because the Ordinance goes further in imposing public and governmental access on the private land in general, and the Goodwins' property specifically, than the County could accomplish at trial.

First, as this Court knows, common law customary rights adjudication is "intensely local." *Trepanier*, 65 So. 2d at 289. The most the County could accomplish in this case is to prove certain public rights on the particular Dune Allen "area of the beach where [the Goodwins'] property is located." *Id.* at 290; *see* Defendant's

[5] *See also, Purdie*, 732 A.2d at 667 ("Although it may be desirable for the State to expand public beaches to cope with increasing crowds, the State may not do so without compensating the affected landowners.").

Response in Opposition to Motion for Preliminary Injunction [DE 15] at 6-7 (disputing that the Goodwins can exclude the public from the beach to which "they hold legal title"). Yet, the Ordinance imposes public customary rights on the *entire Walton County coastline*. Ordinance § 2.1. It devotes private dry sand parcels in Miramar Beach, the Sandestin resort area, Seaside, and Rosemary Beach—as well as in Dune Allen—to public (and governmental) access without a provision for compensation. Regardless of the outcome of this case, the Ordinance takes private dry beach parcels.[6]

Second, even if one only considers the Goodwins' land, the Ordinance imposes greater access burdens on that land than the County could prove in this case under the common law of custom. Most importantly, the Ordinance authorizes *County government agencies*, as well as the public, to occupy the Goodwins' dry sand parcel for public services and other undefined purposes.[7] The County has never asserted, and it cannot prove, that modern government service agencies have a customary right from time immemorial to provide various services on private land.[8] Defendant's Answer [DE 13] at 8 ¶ 5 ("The *public* has the right of use of the subject beach . . . .") (emphasis added); Defendant's Supplemental Memorandum of Law on Customary Use [DE 27] at 2 ¶ 2 ("In its Answer . . . the County asserts, in part, that the *general public* has a right, pursuant to the customary use doctrine, to utilize the subject beach

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[6] As property owners within the effected area, the Goodwins have standing to contest the Ordinance in its widest sweep through a facial claim.

[7] In granting access to certain government agencies, the Ordinance notes it affords access to any County agency that provides "emergency services." Ordinance § 2.3. But importantly, on its face, the Ordinance does not limit such agencies' access to *performance* of emergency services. As long as an agency's functions include emergency services, the Ordinance appears to give the agency as a whole a right to enter private dry beach parcels. *Id.*

[8] Joseph J. Kalo & Lisa Schiavinato, *Customary Right of Use: Potential Impacts of Current Litigation to Public Use of North Carolina's Beaches*, 6 Sea Grant L. & Pol'y J. 26, 38 (2014) (proving a customary right "involve[s] proving that customary use of the dry sand beaches has existed since colonial times").

. . . .") (emphasis added). The Ordinance gives the Tourist Development Council, whose mission includes beach tourism, beach safety, and environmental action, a right to enter private dry sand areas, but the County has not asserted, and it cannot prove, any common law custom encompassing such a mission.

It bears repeating that private property owners have a constitutionally protected right to exclude the government, as well as members of the public, from private land. *Hendler*, 952 F.2d at 1374.[9] The Ordinance's imposition of undefined government access on private dry sandy land, in derogation of the owners' right to exclude, is enough to cause a facial physical taking, regardless of how a trial on *public* rights turns out. *Id*. at 1377 (Finding a physical taking where "[g]overnment vehicles and equipment entered upon plaintiffs' land from time to time, without permission, for purposes of installing and servicing [devices]. They remained on the land for whatever duration was necessary to conduct their activities, and then left, only to return again when the Government desired.").

The bottom line is that the Ordinance unconstitutionally takes property rights from every private parcel on which it authorizes public and governmental access because (1) no court has declared the existence of public customary access rights and (2) in any event, the Ordinance goes beyond the law of custom in authorizing modern government agencies to access dry sand parcels for modern governmental purposes. The Goodwins are highly likely to prevail on their takings claim.

[9] "In the bundle of rights we call property, one of the most valued is the right to sole and exclusive possession—the right to exclude strangers, or for that matter friends, but especially the Government." *Hendler*, 952 F.2d at 1374.

II

THE GOODWINS AND MANY OTHER PROPERTY OWNERS WILL LIKELY SUFFER IRREPARABLE INJURY UNLESS THIS COURT ISSUES AN INJUNCTION

If the Court agrees the Ordinance is likely to be found facially unconstitutional, it is important that it enjoin the Ordinance now to avoid constitutional and other harms to the Goodwins and other property owners. The Ordinance specifically threatens (1) the Goodwins' First Amendment free speech rights, (2) their right to control their private property, and (3) the right of the Goodwins to a day in court to contest allegations of customary public rights on their private land.

First, the Goodwins' free speech rights are likely dependent on the validity of the Customary Use Ordinance. This is a consequence of the County's claim that its sign ban on dry beaches is justified as a means to protect alleged public customary access rights on the Goodwins' dry sandy land, and this Court's prior order stating that the Goodwin's free speech rights are indeed likely contingent on customary rights. DE 17. If the Customary Use Ordinance is not enjoined, its imposition of public access on the Goodwins' land may provide an independent and sufficient basis for the County to argue its sign ban is lawful under this Court's prior reasoning.[10] Thus, the Ordinance threatens to strip the Goodwins of their First Amendment rights in the context of this case. That is an irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.").

Second, regardless of its delayed effective date, the Ordinance encourages members of the public to trespass and recreate on the Goodwins' property. Indeed, it

[10] It does not matter that the County voluntarily enjoined the Sign Ordinance in this case. DE 33. Without a binding injunction from this Court (which the Court has said it cannot issue until a trial occurs), the County can reverse its unilateral stay of enforcement against the Goodwins at any time, and then employ the new Ordinance as constitutional justification for the sign ban.

declares to the general public that it has, and has always had, a right to access and recreate on the Goodwins' land. As Edward Goodwin's Third Declaration shows, people are already invoking the Ordinance as authority to enter and use the Goodwins' land against their will. *See* Exhibit F. The Goodwins have carefully guarded and used their dry sandy parcel for decades, but now the Ordinance poses an immediate risk that they will be "deprived of control of [their] real property," an irreparable harm. *RoDa Drilling Co. v. Siegal*, 552 F.3d 1203, 1210 (10th Cir. 2009). The law encourages a public invasion that will harm the Goodwins' enjoyment of their property and damage the land itself, including the native vegetation they are trying to restore. Third Goodwin Dec. at 2 ¶ 8. Thus it is irreparable harm both in a practical and legal sense. *Id.*; *Southland Corp. v. Froelich*, 41 F. Supp. 2d 227, 242 (E.D.N.Y. 1999); *Florida Retail Federation, Inc. v. Attorney General of Florida*, 576 F. Supp. 2d 128, 1299 (N.D. Fla. 2008) ("Denial of a constitutional right is often irreparable harm without more.").

Finally, the Ordinance purports to decree customary rights on the Goodwins' land that are normally adjudicated in a fact-based court proceeding. *Trepanier*, 965 So. 2d at 289. Such a proceeding ensures that property owners receive an opportunity to produce and rebut easement evidence before their property is encumbered by a common law easement. The Ordinance circumvents this system by legislatively declaring customary access rights without any prior, adequate court hearing on the issue for affected property owners. If not enjoined, the Customary Use Ordinance will likely deprive the Goodwins and other property owners of their day in court on the issue of whether customary rights exist on their land. This too is an irreparable injury.

For all the foregoing reasons, there is a substantial threat the Goodwins will suffer irreparable injury if the Customary Use Ordinance is not preliminarily enjoined.

III

THE NEED TO ENJOIN THE CUSTOMARY USE ORDINANCE OUTWEIGHS ANY HARM TO THE COUNTY, AND AN INJUNCTION WOULD SERVE THE PUBLIC INTEREST

The public is not harmed by an injunction preventing the government from enforcing an unconstitutional restriction, such as the Customary Use Ordinance. *KH Outdoor, LLC*, 458 F.3d at 1272. Indeed, "[t]he public interest does not support the . . . expenditure of time, money, and effort in attempting to enforce an ordinance that may well be held unconstitutional." *Florida Businessmen for Free Enter. v. City of Hollywood*, 648 F.2d 956, 959 (5th Cir. 1981).

Enjoining the Customary Use Ordinance will not upset any legitimate public beach access rights in Walton County because the County retains the ability to secure and protect such rights by proving common law customary rights in court. An injunction will simply maintain the status quo of existing property boundaries and rights while these common law customary rights disputes are sorted out. If the County truly cannot wait to impose public access on private parcels, it may purchase access easements, or whole plots of beach land. It can also seek access permission from property owners.

Enjoining the Ordinance protects the public interest in constitutional government, maintains the status quo while common law litigation on the doctrine of custom occurs here and in similar cases, and does no lasting harm to the government's ability to advance beach access. The balance of equities favors an injunction.

CONCLUSION

This Court should protect constitutional property rights from irreparable injury and grant a preliminary injunction enjoining enforcement of the County's Customary

Use Ordinance.[11] The County can lift the injunction by including a provision for compensation in the Ordinance. Alternatively, it can live with the injunction and move ahead to secure judicial declarations that customary rights exist on the desired land. Either way, the current Ordinance cannot stand.

DATED: November 14, 2016.

Respectfully submitted,

s/ J. David Breemer

CHRISTINA M. MARTIN
Trial Counsel
Fla. Bar. No. 100760
Pacific Legal Foundation
8645 North Military Trail, Suite 511
Palm Beach Gardens, Florida 33410
Telephone: (561) 691-5000
Facsimile: (561) 691-5006
Email: cmm@pacificlegal.org

J. DAVID BREEMER
Cal. Bar No. 215039 (*Pro Hac Vice*)
Pacific Legal Foundation
930 G Street
Sacramento, California 95814
Telephone: (916) 419-7111
Facsimile: (916) 419-7747
E-mail: jdb@pacificlegal.org

WILLIAM J. DUNAWAY
Clark Partington
125 West Romona Street, Suite 800
Pensacola, Florida 32502
Telephone: (850) 434-9200
Email: wdunaway@clarkpartington.com

Counsel for Plaintiffs

[11] Rule 65(c) provides that the Court should consider the necessity of a bond when issuing a preliminary injunction. The County will not face any serious harm, particularly financial harm, from an injunction that simply allows property owners to keep signs on their land—many of which already exist. Under these circumstances, the Court can and should waive the security requirement. *Id.* (a "nominal bond" fixed in the amount of zero suffices where risk of harm is remote); *Urbain v. Knapp Bros. Mfg. Co.*, 217 F.2d 810, 815-16 (6th Cir. 1954) (bond requirement is discretionary and not necessary where "no material damage will ensue").

CERTIFICATE OF SERVICE

I, J. David Breemer, do hereby CERTIFY that a true and correct copy of the foregoing has been furnished by the Court's CM/ECF system on this 14th day of November, 2016:

Timothy M. Warner
William G. Warner
Warner Law Firm, P.A.
P.O. Box 1820
Panama City, FL 32402
pleadings@warnerlaw.us

David A. Theriaque
S. Brent Spain
Theriaque & Spain
433 North Magnolia Drive
Tallahassee, FL 32308
dat@theriaquelaw.com
sbs@theriaquelaw.com

Mark D. Davis
Sidney N. Noyes
Office of the County Attorney
161 East Sloss Avenue
DeFuniak Springs, FL 32433
noysidney@co.walton.fl.us
sincrissie@co.walton.fl.us

s/ J. David Breemer
J. DAVID BREEMER

EXHIBIT A

DRAFT DATED 10-20-16

ORDINANCE NO:

AN ORDINANCE OF WALTON COUNTY, FLORIDA, PROTECTING THE PUBLIC'S LONG-STANDING CUSTOMARY USE OF THE DRY SAND AREAS OF THE BEACHES; PROVIDING FOR A BUFFER AREA AROUND PRIVATE PERMANENT STRUCTURES; PROVIDING FOR PENALTIES FOR VIOLATION OF THIS ORDINANCE; PROVIDING AUTHORITY, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the recreational use of the dry sand areas of all of the beaches in the County is a treasured asset of the County which is utilized by the public at large, including residents and visitors to the County; and

WHEREAS, the dry sand areas of all of the beaches in the County are a vital economic asset to the County and the State of Florida; and

WHEREAS, the public at large, including residents and visitors to the County, have utilized the dry sand areas of all of the beaches in the County for recreational purposes since time immemorial; and

WHEREAS, the Florida Supreme Court in *City of Daytona Beach v. Tona-Rama, Inc.*, 294 So. 2d 73, 75 (Fla. 1974), expressly recognized the doctrine of customary use in the state of Florida; and

WHEREAS, the research and analysis of Dr. James Miller, as well as the testimony of citizens of the County, confirm that the doctrine of customary use has applied to all of the beaches in Walton County since before 1970; and

WHEREAS, the County desires to ensure that the public's long-standing customary use of the dry sand areas of all of the beaches in Walton County for recreational purposes is protected; and

WHEREAS, the County recognizes and acknowledges the rights of private property owners to enjoy and utilize their property; and

WHEREAS, the County desires to establish a fifteen (15) foot buffer zone located seaward from the toe of the dune or from any permanent habitable structure owned by a private entity that is located on, or adjacent to, the dry sand areas of the beach, whichever is more seaward; and

WHEREAS, the public at large, including the residents and visitors to the County, shall not utilize such fifteen (15) foot buffer zone, except to utilize an existing or future beach access point for ingress and egress to the beach; and

WHEREAS, such fifteen (15) foot buffer zone is not intended to constitute an abandonment of the public's right, based upon its long-standing customary use, to utilize the dry sand areas for recreational purposes in such buffer zone, but rather is provided voluntarily and solely as an accommodation to the private property rights of those individuals who own property on which a portion of the dry sand areas of the beach is located; and

WHEREAS, no individual, group, or entity shall interfere with the public's ability to continue its long-standing customary use of the dry sand areas located outside of the fifteen (15) foot buffer zone; and

WHEREAS, the owners of property that contains a portion of the dry sand areas of the beach may make any use of their property which is consistent with such public use and not calculated to interfere with the exercise of the right of the public to enjoy the dry sand area as a recreational adjunct of the wet sand or foreshore area.

NOW, THEREFORE, BE IT ORDAINED BY THE WALTON COUNTY BOARD OF COUNTY COMMISSIONERS THAT CHAPTER 23 OF THE WALTON COUNTY CODE OF ORDINANCES IS HEREBY CREATED TO READ AS FOLLOWS:

SECTION 1: AUTHORITY.

The authority for the enactment of this Ordinance is Chapter 125, *Florida Statutes*.

SECTION 2: REGULATION OF DRY SAND AREAS.

1. The public's long-standing customary use of the dry sand areas of all of the beaches in the County for recreational purposes is hereby protected. Except as stated in Paragraph 3, no individual, group, or entity shall impede or interfere with the right of the public at large, including the residents and visitors of the County, to utilize the dry sand areas of the beach that are owned by private entities for recreational purposes.

2. The dry sand area of the beach is defined as the zone of unconsolidated material that extends landward from the mean high water line to the place where there is marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves, whichever is more seaward.

3. The public at large, including the residents and visitors of the County, shall not utilize a fifteen (15) foot buffer zone located seaward from the toe of the dune or from any permanent habitable structure owned by a private entity that is located on, or adjacent to, the dry sand areas of the beach, whichever is more seaward, except as is necessary to utilize an existing or future beach access point for ingress and egress to the beach. The foregoing buffer zone

requirement shall not apply to the Walton County Sheriff's Office, the Walton County Tourist Development Council, the South Walton Fire District, and other emergency service providers.

4. The following recreational activities are permitted for members of the public on the dry sand areas of the beach that are owned by private entities: walking; jogging; sitting on the sand, in a beach chair, or on a beach towel or blanket; using a beach umbrella that is ten (10) feet or less in diameter; sunbathing; picnicking; fishing; playing beach games; building sand castles; and similar traditional recreational activities.

5. The following recreational activities are prohibited for members of the public on the dry sand areas of the beach that are owned by private entities: erection of tents as defined in the Beach Activities Ordinance.

SECTION 3: PENALTY PROVISION.

A violation of this Chapter shall constitute a civil infraction punishable by a fine not to exceed $500.00. Each occurrence of a violation, or, in the case of continuing violations, each day a violation occurs or continues, constitutes a separate offense. In addition to issuance of fines, the County shall have the power to sue for relief in civil court to enforce the provisions of this Ordinance.

SECTION 4: SEVERABILITY.

If any portion of this Ordinance is determined by any Court to be invalid, the invalid portion shall be stricken, and such striking shall not affect the validity of the remainder of this Ordinance. If any Court determines that this Ordinance, or any portion hereof, cannot be legally applied to any individual(s), group(s), entity(ies), property(ies), or circumstance(s), such determination shall not affect the applicability hereof to any other individual, group, entity, property, or circumstance.

SECTION 5: EFFECTIVE DATE.

This Ordinance shall become effective immediately upon adoption by the Walton County Board of County Commissioners, as provided by law.

PASSED AND DULY ADOPTED in regular session, by the Board of County Commissioners of Walton County, Florida, this _____ day of _____ 2016.

BOARD OF COUNTY COMMISSIONERS OF WALTON COUNTY, FLORIDA

Attest:

_____
Alex Alford, Clerk of Circuit Court
and County Comptroller

_____
Sara Comander, Chair

EXHIBIT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

EDWARD GOODWIN and DELANIE GOODWIN, Plaintiffs, v. WALTON COUNTY, FLORIDA, Defendant.	No. 3:16-cv-00364-MCR-CJK **SECOND DECLARATION OF EDWARD GOODWIN** Hon. M. Casey Rodgers

I, Edward Goodwin, do hereby declare:

1. I have personal knowledge of the following facts and, if called upon to do so, could competently testify to the facts contained herein.

2. I am a United States citizen, a resident of Walton County, Florida, and a plaintiff in this case.

3. I am 75 years old and a retired phone company manager.

4. I am married to DeLanie Goodwin, a retired banker.

5. In 1971, my wife and I purchased vacant, Gulf front, residential property in the Dune Allen area of Walton County in 1971 (Property). The Property was part of a Government Land Patent (Lot 38) and was later platted as part of the "Santa Rosa Dunes" subdivision. The Property has an address of 113 Fort Panic Road, Santa Rosa Beach, Florida.

6. Both the surveyed Government Lot 38 and the Santa Rosa Dunes plat extend the east and west boundary lines of the Property to the waterline. Exhibit A. Under Florida law, the seaward Property boundary is the Mean High Water Mark, and I have accordingly continuously exercised dominion and control of our Property to the mean high water mark.

7. An area of dry beach landward of the waterline is within our Property boundaries. At times, this dry beach area has extended landward to the edge of our house on its southern, seaward side.

8. The plat originally included a 33-foot street and utility easement in favor of the County running along the Northern boundary of the Property. This easement was vacated by the County in 1977 by Walton County Board of County Commissioners Resolution 77-30.

9. The subdivision plat which includes our Property does not dedicate any part of the beach to the public for beach recreation or access. There is no recorded public beach access or recreation easement on our title.

10. I have used the entire beach area within our Property boundaries to the mean high water mark for my own purposes and granted or denied permission for its use by others as I wished.

11. My family and I have exclusively used, possessed and controlled the dry beach within the Property.

12. At the time of purchase of the Property in 1971, I saw no evidence of use of the dry beach within, or immediately adjacent to, the Property by pedestrians or vehicles.

13. A photograph taken by a family member soon after purchase of the Property shows what I observed: an empty beach. *See* Exhibit B.

14. Between June, 1978, and March, 1979, my wife and I built a 2,296 square-foot home on the Property.

15. My wife and I have, at times, allowed the public to walk laterally along the shore on the wet beach near the waterline.

16. However, my wife and I have never permitted members of the public to walk on, use, or set up beach equipment on the dry beach within my Property.

17. My wife and I have not permitted members of the public to access the wet beach area or Gulf by walking across the dry beach within the Property.

18. I carefully observe activities on the beach near our Property and the Santa Rosa Dunes/Fort Panic subdivision of which are Property is a part.

19. I have taken numerous photographs of the beach near our Property since the home was constructed in 1979.

20. I took photos of the home in 1979 and 1980. Exhibit C. The photos show what I observed at the time: a dry beach lacking any public presence or any pedestrian or vehicle tracks that would indicate any recent public presence.

21. I saw no evidence of general public beach use on dry beaches in the Santa Rosa Dunes subdivision or Fort Panic Road area at the time I purchased the Property.

22. In 1981, the County passed Emergency Ordinance 1981-03, which restricted public beach driving to certain areas. The permitted areas did not include beaches in the Santa Rosa Dunes subdivision or Fort Panic Rd. area that includes our Property.

23. I took a photo of the Property in 1990. Exhibit D. The photo shows what I observed: a dry beach without any public presence or any pedestrian footprints or vehicle tracks that would indicate any recent public use.

24. In the mid 1990's, I began to post "private property" signs and fencing along and within the dry beach portion of our Property to deter trespassing on the dry beach, to mark out our Property boundaries, and to protect fragile vegetation.

25. In 1995, I took a photo of the parcel just to the east of my Property. Exhibit E. The photo shows what I observed: a "private property" sign on part of the dry beach next to the eastern neighbor's house.

26. In 1996, I took a photo from the beach looking toward our house. Exhibit F. The photo shows what I observed: a post and "private property" sign that I had erected on the eastern boundary of the dry beach within our Property.

27. In 1997, a family member took a photo of my wife and I standing on part of our dry beach area. Exhibit G. The photo shows what I observed: fencing and a "private property" sign I erected on the dry beach area within our Property.

28. In 1999, I encountered a man on our Property. The man asked if I objected to his presence on the dry beach within our Property. I told the man he could be on the dry beach within my Property lines if he obtained my permission, and if he agreed to leave when I requested his departure.

29. On June 6, 2002, I took photos of the beach from my house. Exhibit H. The photos show what I observed: white PVC posts which I had erected on the dry sand along the boundaries of our Property, plastic chain rope linking the posts, and a "private property" sign hanging from the plastic chain above a portion of the dry beach within our Property.

30. On May, 1, 2008, I took a photo of the beach and Gulf from my house. Exhibit I. The photo shows what I observed: wood "sand" fencing, white PVC posts, and white plastic chain link rope which I had erected on the dry beach on a portion of our Property.

31. On November 30, 2008, I took photos of the Property and my home from the beach. Exhibit J. The photos show what I observed: numerous PVC posts and plastic chain that I had erected along the western, eastern, and north-eastern boundaries of the dry beach within our Property.

32. In 2008, ropes and "no trespassing" signs were placed on the dry sand adjacent to a house located three houses to the east of our own home and along Fort Panic road.

33. On November 6, 2009, I took photos of the beach adjacent to my house. Exhibit K. The photos show what I observed: a "private property" sign, posts, and white plastic chain which I had placed on the boundaries of the dry beach within our Property.

34. In February of 2011, I observed an All Terrain Vehicle (ATV) traveling across the dry sand area within our Property from east to west. I called the Sheriff's Office and reported the event and told them I wished to file a trespass complaint. I later withdrew the complaint when I learned the ATV was associated with a "Wounded Warriors" beach run.

35. Also in February, 2011, a group of tourists entered the dry sand area within our posted Property and began to set up beach equipment. I told them they had to leave. They left without incident.

36. On October 9, 2011, I took photos of the beach looking east from my home. Exhibit L. The photos show what I observed: PVC posts and plastic chain which I had placed on the dry beach along the eastern and western boundaries of our Property and, beyond our boundaries, people near the water line.

37. In June of 2012, I observed a pickup truck crossing the dry beach within our Property. I went out of my house and down to my beachfront. After the driver of the pickup set up some equipment on beaches to the west of our Property, it turned around and returned toward the western boundary of our Property. I stood along my Property boundary and in the apparent path of the truck. The driver demanded to drive on the dry sand within our Property, but I told him he could only use the wet sand area near the water. After a few moments of a stand-off, the pickup left and drove on the wet beach.

38. In November, 2012, I took a photo of a sign I had placed along the western boundary of the dry beach within our Property. Exhibit M. The sign states the dry sand is "for exclusive use of property owners and invited guests."

39. In 2013, "no trespassing" signs were erected on the dry beach adjacent to a house located nine houses to the east of our house and within the "Santa Rosa Dunes" subdivision.

40. On May, 26, 2014, I took photos of the beach adjacent to my home, Exhibit N. The photos show what I observed: PVC posts and white plastic chain which I had erected along the boundaries of the dry sand within our Property along with empty beach chairs my neighbor and I had placed on the beach and, in the distance, people and umbrellas near the water line.

41. In 2014, a "no trespassing" sign was erected on the dry beach adjacent to a house located 4-5 houses to the east of our house and within the "Santa Rosa Dunes" subdivision.

42. Prior to the June 2016 amendment to the beach activities ordinance at issue in this case, "private property" signs existed on the dry beach adjacent to the homes located both to the east and to the west of our Property.

43. As long as I can remember, and particularly since the mid-1990's, there has been controversy about public use of dry beaches in Walton County.

44. On many occasions, I observed our former neighbors to the east (the Peppers) verbally deny access to the dry sand portion of their property to members of the public.

45. In January, 2014, I and the owner of the beach property located two houses to our east (the Staulb family) encountered four surfers on Fort Panic Road who appeared ready to cross the dry sand to reach the Gulf water. The members of the Staulb family and myself informed the surfers that they could not walk across our private dry beach areas. These young men ignored us, and trespassed across my Property. As they returned, they wrote "FU" in large letters on my property and threatened me with bodily harm. I filed a report of the incident with the Sheriff's Office and documented the incident with photos.

46. In December, 2014, I observed three people walking on or near our Property close to the waterline. One of them, an elderly man, began cursing towards

our house and proceeded to tear down and throw one of our posted signs. I went out and confronted him and demanded that he leave our Property.

47. In June of 2015, I observed a large group of people (12-13) setting up beach equipment on the dry sand area within my Property. I showed them our posted signs and boundary markers and told them they needed to leave. They complied.

48. In August, 2015, I observed a man approach our property along the shore from the east. As he got near our southeast and southwest boundary posts and chains, he stopped and deliberately broke the chains. The man continued down the beach and then turned around. As he re-approached our Property, I confronted the man and told him he was trespassing and that I had seen him damage our boundary markers. I later filed a complaint. I was subsequently informed by the Sheriff's Office that the man had been apprehended. He was suspected of damaging boundary markers on other properties. The person was charged with trespassing on our Property. (Circuit Court Case No. 15-4532.).

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge, and that this declaration was executed this ____ day of Sept 21, 2016, at Walton County, Florida.

EDWARD GOODWIN

EXHIBIT A

Book 2
Page 79

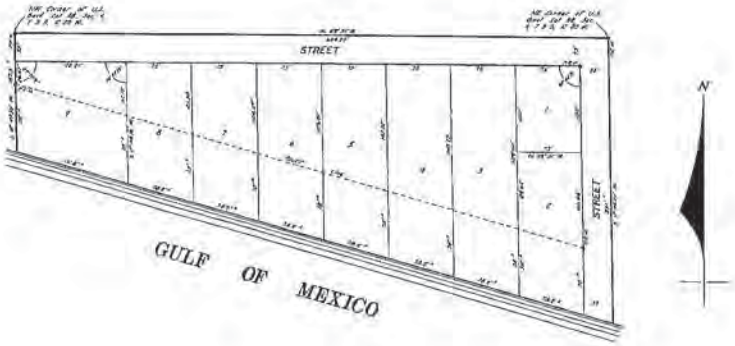
SANTA ROSA DUNES

A SUBDIVISION OF A PORTION OF
SECTION 4, T 3 S, R 20 W
WALTON COUNTY, FLA.

AUGUST 1967

SCALE 1" = 50'

BUELL H. HARPER, JR.
FLORIDA LAND SURVEYOR NO. 1718
PANAMA CITY, FLORIDA



DESCRIPTION

U.S. Government Lot 38, Section 4, Township 3 South, Range 20 West, Walton County, Florida.

DEDICATION

Know all men by these presents that Santa Rosa Dunes, Inc., a Florida corporation, owners of the land herein subdivided, hereby dedicate to the public the streets and roads as designated on this plat. In witness whereof said Santa Rosa Dunes, Inc. has caused these presents to be signed by its President and Secretary, or and with the authority of its Board of Directors this 26th day of September, 1967.

Signed, sealed and delivered
in the presence of:

Estelle Sanders
Mary B. Lisk

Santa Rosa Dunes, Inc.
Owner
Helen A. Johnson
President
Norma S. Zipp
Secretary

STATE OF FLORIDA, COUNTY OF WALTON

Before the undersigned personally appeared Helen A. Johnson and Norma S. Zipp, President and Secretary respectively of Santa Rosa Dunes, Inc., known to me to be the individuals described in and who executed the foregoing instrument, and acknowledged that they executed the same for the uses and purposes therein set forth. Given under my hand and official seal this 26th day of Sept., 1967.

Estelle Sanders
Notary Public, State of Florida
My Commission expires 6-27-71

SURVEYOR'S CERTIFICATE

The undersigned hereby certifies that the plat is a correct representation of the land surveyed hereon, that said land has been subdivided and platted as shown, and that Permanent Reference Monuments (Concrete P.R.M.) have been placed as required by the laws of the (Chapter 177.091 (9) of the Florida Statutes) State of Florida.

Buell H. Harper Jr.
Buell H. Harper Jr.
Florida Land Surveyor No. 1718

COUNTY COMMISSIONERS' APPROVAL

We hereby certify that this plat has been examined and was approved by the Board of County Commissioners of Walton County, Florida this 12th day of December, 1967.

County Commissioners
Walton County, Florida.

Cecil Burgess
Ralph Williams
Sylvan Lisk
Jack K. Robin
Marvin Ridley

COUNTY CLERK'S CERTIFICATE

I, the undersigned Clerk of the Circuit Court of Walton County, Florida, hereby certify that this plat complies with all the requirements of the Florida Statutes Chapter 177.091 (9) of the laws of the legislature of Florida and that said plat is hereby filed for record on this 12th day of December, 1967, in the public records of said county in Plat Book 2, at Page 79.

Clerk of the Circuit Court
Walton County, Florida.

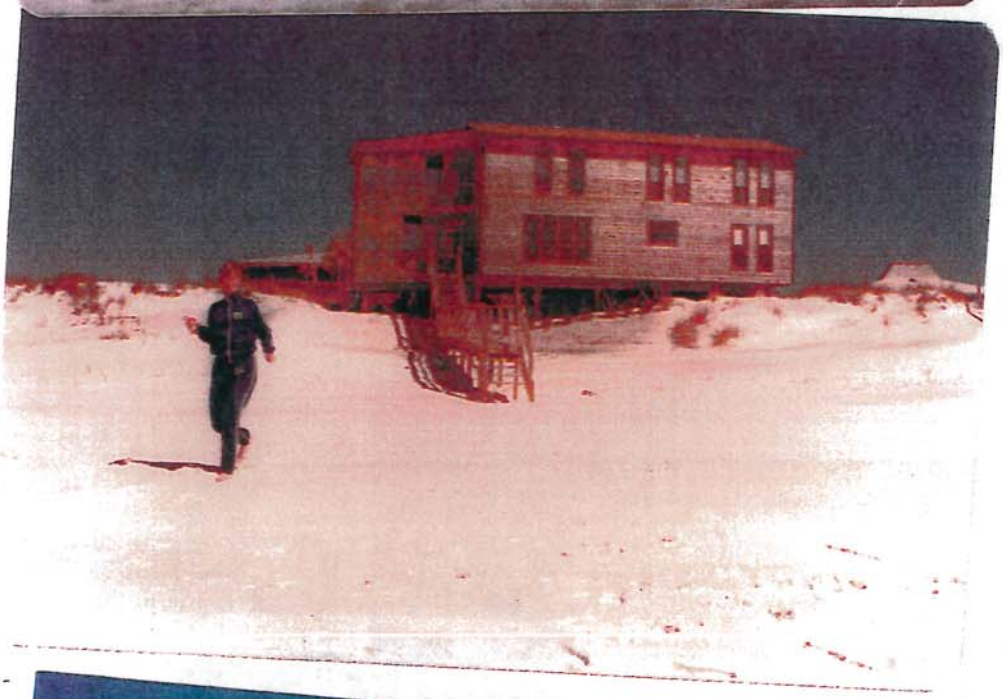
CERTIFIED A TRUE COPY
5-25 2016
ALEX ALFORD
CLERK OF COURTS &
COUNTY COMPTROLLER
WALTON COUNTY, FLORIDA
BY: DEPUTY CLERK

Clerk of Courts & County Comptroller
1824
Walton County Florida

EXHIBIT B

EXHIBIT C

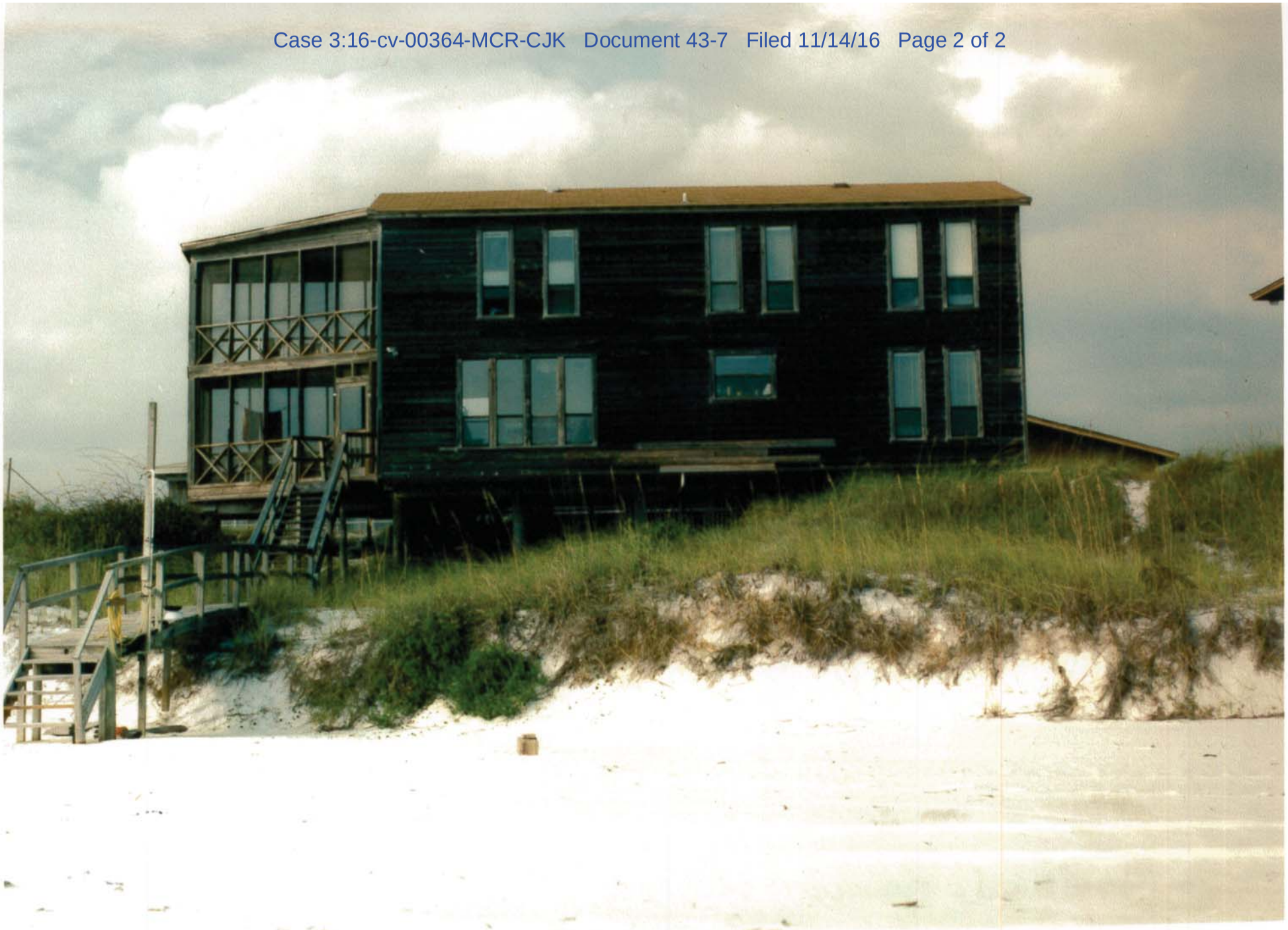
1979



1980+

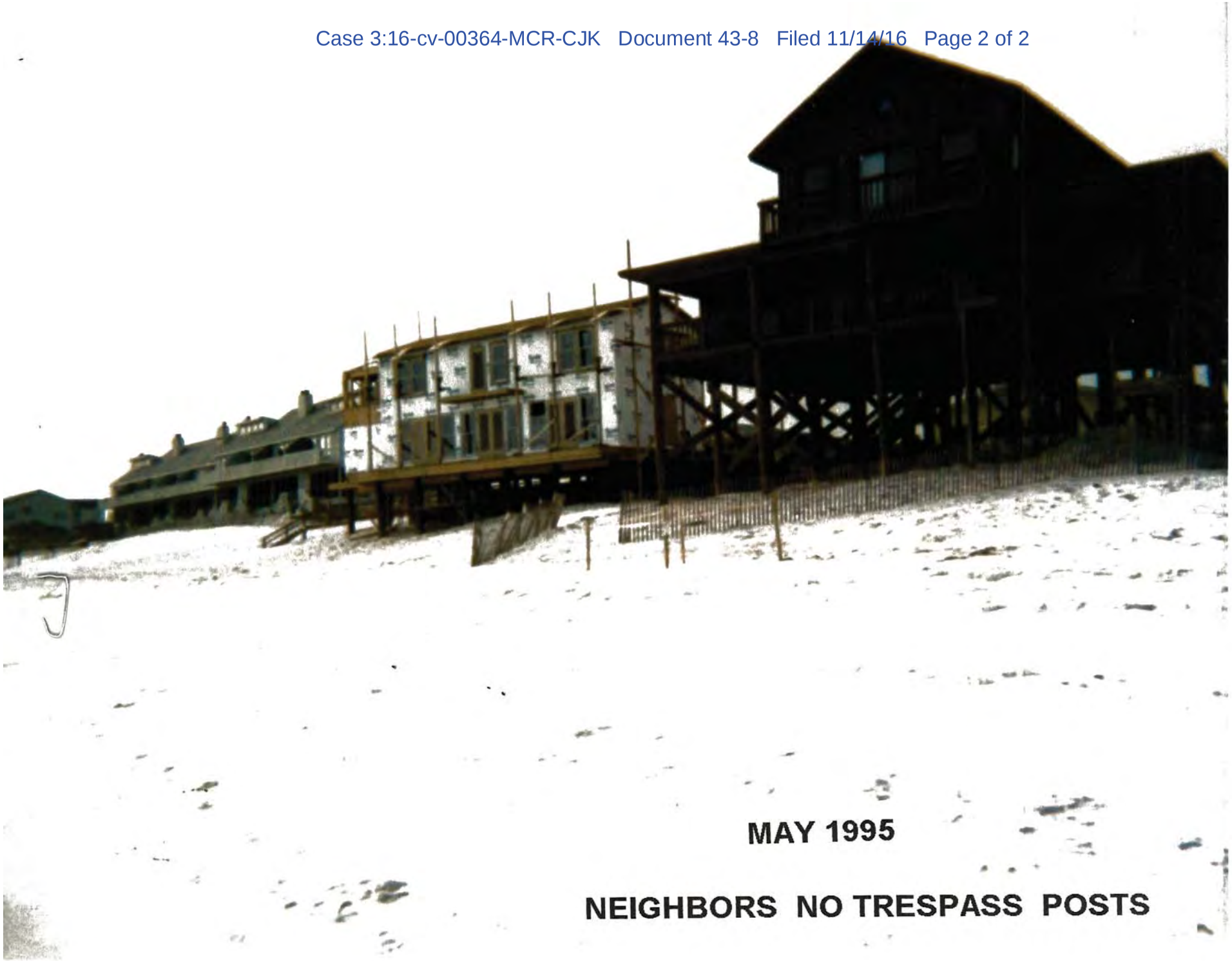

ENROACHMENT
BOARDWALKS REMOVED BY COURT ORDER
OCTOBER 1979

EXHIBIT D



MARCH 1990

EXHIBIT E



MAY 1995

NEIGHBORS NO TRESPASS POSTS

EXHIBIT F

1996

EXHIBIT G

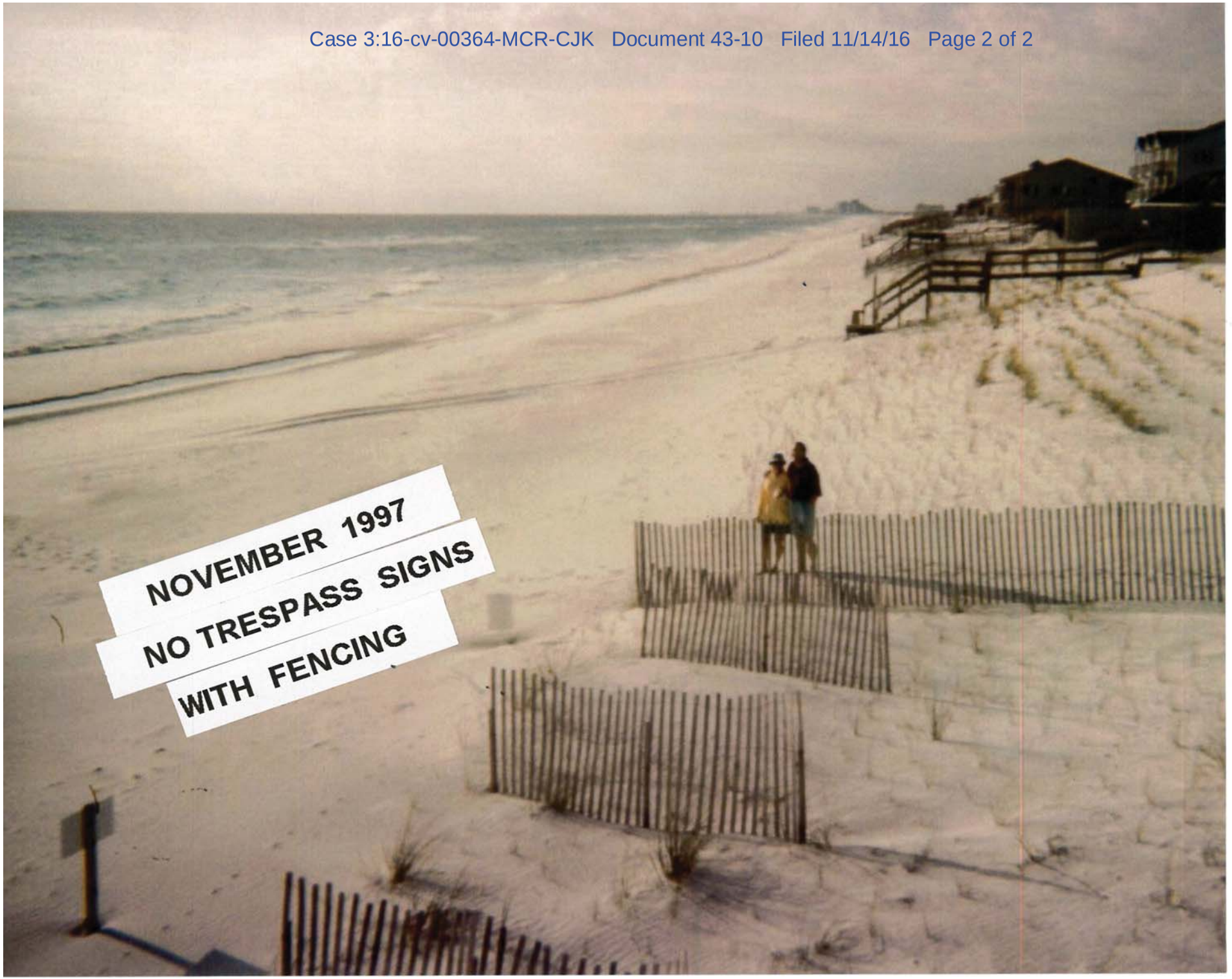

NOVEMBER 1997
NO TRESPASS SIGNS
WITH FENCING

EXHIBIT H


06.12.2002 00:53


06.12.2002 00:53


06.12.2002 01:06

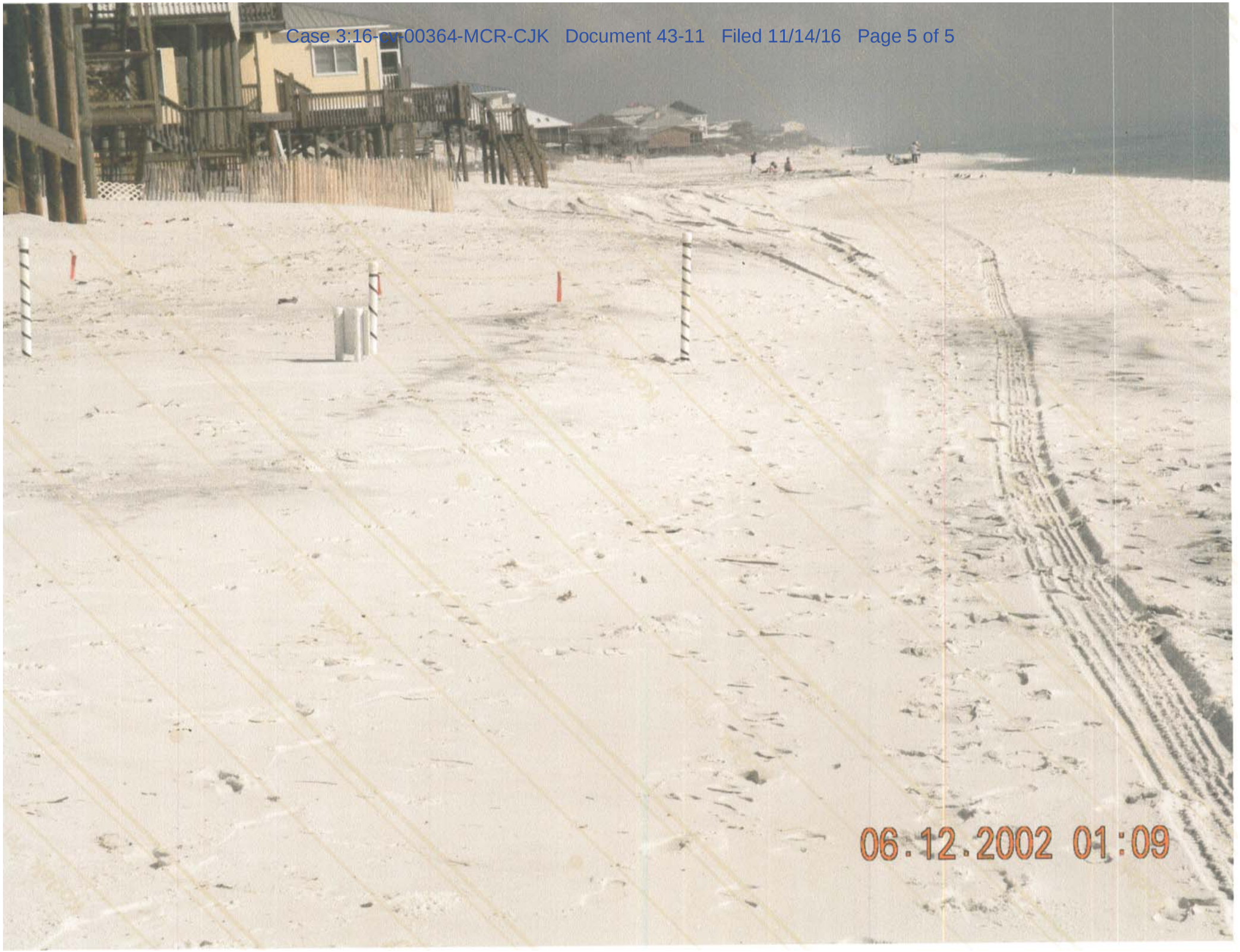

06.12.2002 01:09

EXHIBIT I

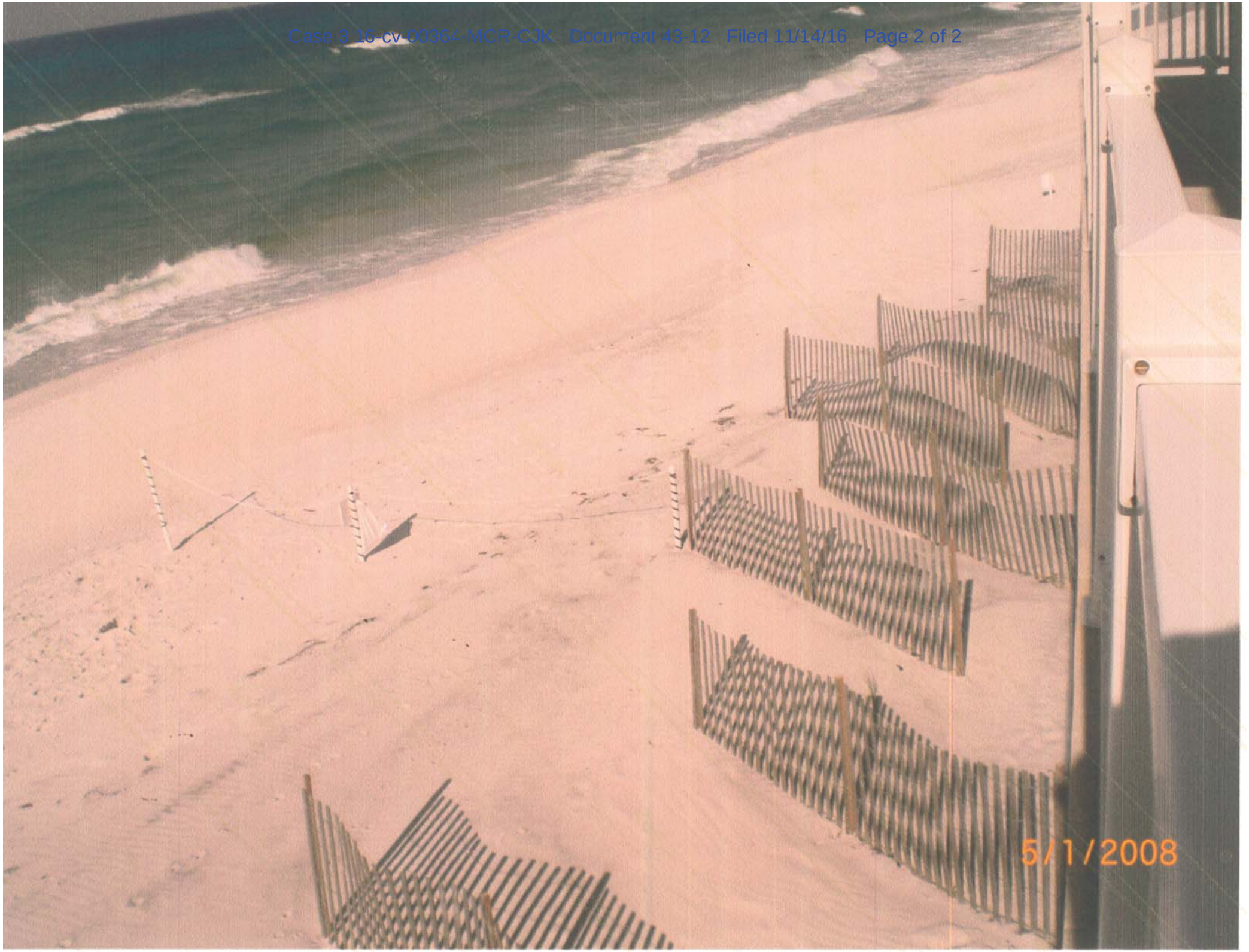

5/1/2008

EXHIBIT J


PRIVATE PROPERTY
11.30.2008


11.30.2008

EXHIBIT K


2009.11.06


PRIVATE
PROPERTY
NO TRESPASSING
HY-KO PRODUCTS CO., NORTHFIELD, OHIO 44067-1415 Made in the U.S.A.
848
W.O.# 12183
2009.11.06

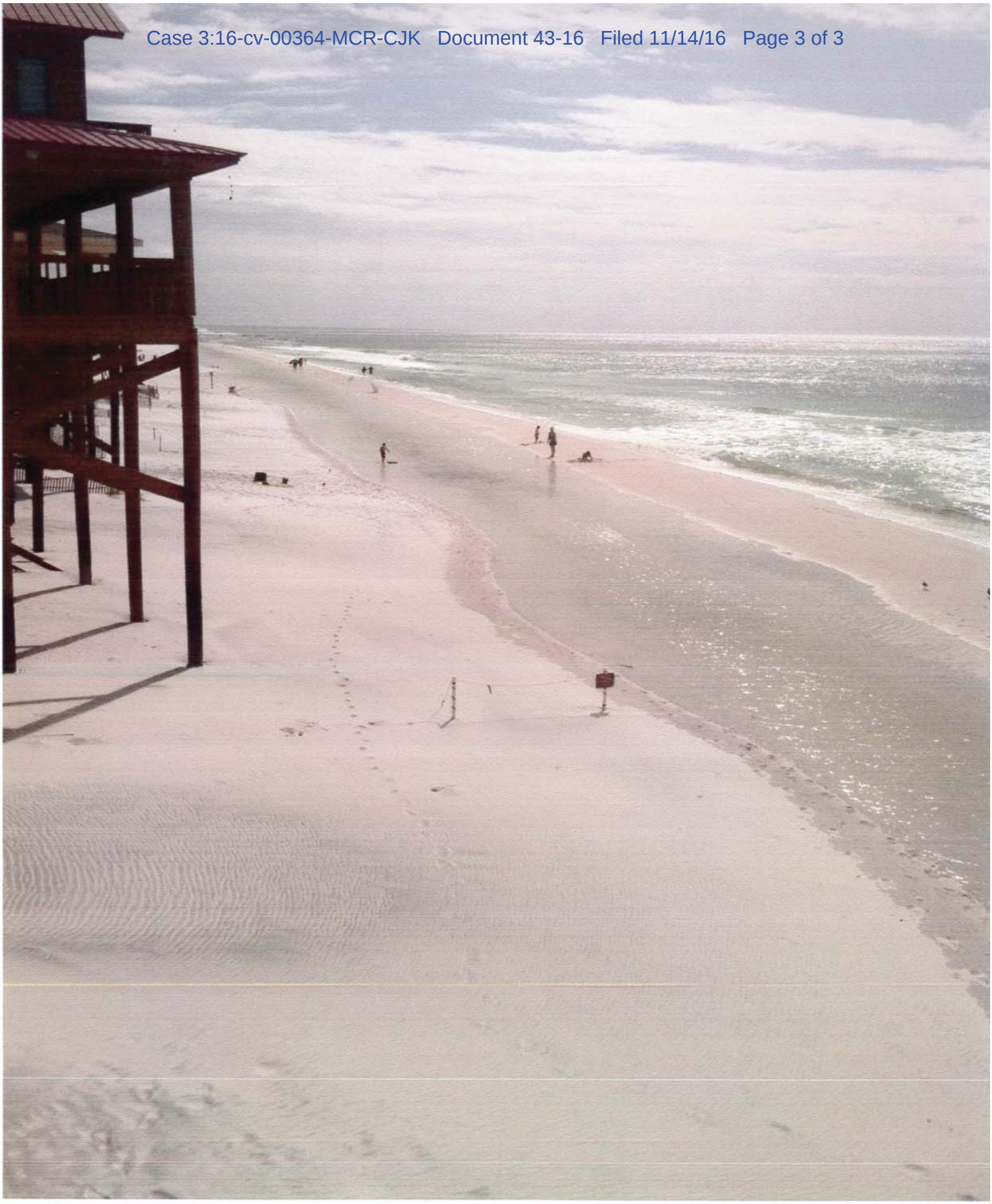
EXHIBIT L


PRIVATE PROPERTY
PLEASE WALK ALONG
WATERS EDGE. BEACH
RESTORATION IN PROGRESS.
FL STATUTE 810.09
NOV 6 2009

NOV 6 2009

EXHIBIT M

OCT 9 2011



OCT 9 2011

EXHIBIT N


26.05.2014


POSTED
26.05.2014


odwin West Boundry
26.05.2014

EXHIBIT C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

EDWARD GOODWIN and DELANIE GOODWIN, Plaintiffs, v. WALTON COUNTY, FLORIDA, Defendant.	No. 3:16-cv-00364-MCR-CJK **DECLARATION OF EDWARD GOODWIN IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

I, Edward Goodwin, do hereby declare:

1. I have personal knowledge of the following facts and, if called upon to do so, could competently testify to the facts contained herein.

2. I am a United States citizen, a resident of Walton County, Florida, and a plaintiff in this case.

3. I am 75 years old and a retired phone company manager.

4. I am married to DeLanie Goodwin, a retired banker.

5. My wife and I purchased Gulf front, residential property in the Santa Rosa Beach area of Walton County in 1971 (Property). The Property is part of the "Santa Rosa Dunes" subdivision and has an address of 113 Fort Panic Road, Santa Rosa Beach, Florida.

6. In 1978, we built a 2,296 square-foot home on the Property. That home remains there today, and we live in it as our primary residence.

7. According to the deed to our Property, the plat which created our lot, and the laws of Florida, the Mean High Water Line (MHWL) is our property boundary on the seaward, Gulf side.

8. Tide lands lying seaward of our MHWL boundary, and adjacent to the Property, are state-owned public beaches.

9. A dry sand area exists within our Property boundaries, between the MHWL and line of natural vegetation and/or dunes.

10. We regularly use this dry beach area as our backyard. My wife and I use this area for sunset viewing, photography, and meeting people along the shore. We also nurture fragile beach vegetation along the edge of our dry beach to protect and stabilize upland dunes.

11. When members of our extended family (including a daughter, grandchildren, nephews) visit us, they also use our dry beach (along with us) area for playing and relaxation.

12. During certain times of the year, Gulf coast beaches in and around Santa Rosa Beach are heavily occupied by the public. Sometimes, members of the public engage in loud parties, excessive drinking, and littering on beach areas in Walton County.

13. County vehicles and officials also regularly travel along the shoreline in Walton County.

14. Individuals have occasionally used our dry beach without permission. Some have set up beach tents on the Property, allowed pets to defecate on it, and refused to pick up their trash. On occasion, strangers have crossed our dry beach without permission and entered our home.

15. In 2015, I was threatened by an apparent surfer when I took photos of that person trespassing on our dry beach.

16. The County sometimes drives its vehicles, including trash trucks and other vehicles, on our private dry sand area without permission.

17. I do not object to, and will permit, pedestrians to occasionally cross our sand to get to the water or adjacent public beach areas, provided I retain the right to stop any objectionable activities on our land and to use signs to make clear that I retain ownership and control over the Property.

18. In 2014, I posted several small "Private Property" signs along the borders of our dry beach property. I did so to protect the land and vegetation from damage, to clarify our ownership, and to inhibit mistaken claims by the public or government that our dry sandy land is public property.

19. I erected the signs by sticking thin white PVC posts directly in the sand, and then attaching the small "Private Property" signs to the posts. I linked the posts with a lightweight, white plastic chain, thus marking out our lot lines. I then put black tape around the white posts to ensure that people about to trespass into our land would see them against the white sand.

20. The "Private Property" signs I installed are 12" x18" in size. The signs warn that entry onto our private land behind the signs is unlawful under various Florida laws. The signs identify me by name as the owner of the Property, and provide my post office box mailing address for contact and inquiries about the Property or our ownership.

21. In May, 2014, a County Code Enforcement Officer cited me for violating County code provisions that, at the time, barred the placement of "obstructions" on the beach without a permit. The citation identified the placement of "PVC post and Chain from toe of dune south toward the waters edge" as the offending unpermitted "obstruction." The Citation levied a civil penalty of $100.00 against me.

22. I moved to dismiss the citation in state court, contending that state law allowed me to mark my private property lines in the manner for which I was cited. The state court subsequently dismissed the citation.

23. I therefore kept the "Private Property" signs and posts on my private dry beach area as I had erected them.

24. In May, 2015, the Walton County Sheriffs' Office issued Standard Operating Procedure #15-004 (SOP) to address enforcement of trespassing laws on private dry sand beaches like mine. The SOP explained that enforcement would not occur unless beachfront property owners first mark "on the ground" their boundaries, including the mean high water line that forms the boundary between private and public beach property.

25. Around the same time, a controversy grew in the County over the status of private dry beaches. Some suggested in the press and to County officials that dry beaches in the county, although privately owned, should be subject to public use and access due to alleged public "customary" use.

26. It is my belief that following the issuance of the SOP and discussions of public customary use, more beach front owners in Walton County marked out or put small signs on their dry sand property.

27. It is my understanding that, sometime in the spring of 2016, or thereabouts, the County hired private attorneys to research the feasibility of bringing quiet title actions to establish public access to private dry sand areas under "customary" law or other common law easement doctrines. It is my understanding that proving a customary or prescriptive public right on private land potentially involves showing in court that the public has actually used the land for a certain period.

28. On June 14, 2016, or thereabouts, the County amended its existing Beach Activities Ordinance. In so doing, it added a new Ordinance that bans the placement of signs on the beach. Codified as Section 22-55 of the Walton County Code of Ordinances, the Ordinance specifically states:

> It shall be unlawful for any person to place, construct or maintain an obstruction on the beach. Obstructions include, but are not limited to ropes, chains, signs, or fences.

Id. (emphasis added).

29. Under the County Code, "the soft sandy portion of land lying seaward of the seawall or the line of permanent dune vegetation" is subject to the new sign ban. This area includes my private sand beach lying seaward of the vegetation on my land and between that vegetation and the MHWL.

30. The Ordinance bans all signs on my privately owned dry sandy beach.

31. The Ordinance thus prevents me from using signs to identify my dry beach property as "Private Property" and/or for advising people and vehicles on the adjacent public beach that it is illegal to use my dry beach land without my permission.

32. The Ordinance prevents me from using signs on my dry sand property to convey political or personal messages, including those about County beach policies or the ownership of my Property, to individuals on the public beach or along the shore.

33. I believe the sign ban makes it easier for the public and government to mistakenly or purposefully physically enter and use our dry beach land without my permission. I also believe that such use would make it easier for the public or government to later claim that my dry beach is a public area.

34. On or about June 29, 2016, the County issued a letter informing me of pending enforcement of the new Ordinance and sign ban. The letter reiterates that the "beach" subject to the law includes all areas seaward of the vegetation line—an area that includes my Property. It then states:

> If as the date of this letter you have an obstruction on the beach, including but not limited to ropes, chains, signs, or fences, you are in violation of Section 22-55 of the Beach Activities Ordinance. . . .

> If you are in violation of . . . 22-55 of the Beach Activities Ordinance, you have until July 15, 2016 to correct the violation by removing any obstruction that you have placed, constructed or maintained on the beach, including but not limited to ropes, chains, signs, or fences. If you do not correct this violation on or before July 15, 2016, a citation will be issued to you requiring that you pay a civil penalty of up to $500.00 per violation.

35. Prior to the July 15, 2016 enforcement date, I had someone remove the plastic chainlink fencing that had previously connected the PVC posts marking out my dry sand boundary lines. I also took down several of the white PVC posts. I took down this part of the boundary markers as a good faith effort to accommodate the Ordinance as much as I could.

36. However, I kept in place two of the white posts, each with an attached "Private Property" sign. These signs remain on both the eastern and western boundary of our dry sand beach.

37. I also recently installed a new, small (6" x 6") sign to each of the two retained sign posts mentioned above. These little signs have an American flag background and say: "If the County Wants My Private Beach for Public Use, It Must Pay Me For It—U.S. Constitution."

38. The signs on my dry beach property are designed to convey messages to people and government officials on the public beach seaward of, and around, my dry sand beach boundary. The messages they convey are important to me. I wish to keep the signs in place.

39. I also would like the option to put up different signs on my dry beach property in the future, if necessary.

40. I have no reasonable alternative means to convey messages, including advisories about my dry beach property, to people on the public beach area other than posting signs on my adjacent dry beach. My home is located approximately 120 feet or more from the public beach area frequented by the audience with which I want to communicate and the property boundary I want to protect. To effectively

convey messages to those who might cross into the dry beach portion of my Property, I need to be able to post signs on or near my dry sand area boundary.

41. To effectively convey messages to County vehicles and officials who travel along the shore near my Property, and who may cross into my dry beach area, I need to be able to post small signs on my dry beach property.

42. Presumably to communicate with the beach-going public, the County itself has posted numerous advisory signs on publicly-owned dry beach access points that connect upland public roads areas to public beaches.

43. To my knowledge, the County has not taken down its beach signs since enactment of the Ordinance.

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge, and that this declaration was executed this 25th day of July, 2016, at Harsens Island, ~~Florida~~ Michigan.

EDWARD GOODWIN

EXHIBIT D

This Instrument Prepared By
ROBERT PENTEL, Realtor
Star Rt. Box 628, Destin, Fla. 32541

18

RECORDER NO. 20-8417 C.T. 23.6
WALTON COUNTY, FLA.

WARRANTY DEED

This Warranty Deed Made the 1st day of November A. D. 1971 by

W. E. Prestwood, Jr. and Madge H. Prestwood, husband and wife

hereinafter called the grantor, to

Edward C. Goodwin and DeLanie C. Goodwin, husband and wife

whose postoffice address is 23129 Whitley Dr., Mt. Clemens, Mich. 48043
hereinafter called the grantee:

(Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

Witnesseth: That the grantor, for and in consideration of the sum of $10.00 and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the grantee, all that certain land situate in Walton County, Florida, viz:

Lot 9, Santa Rosa Dunes, according to plat thereof on file in the Office of the Clerk of the Circuit Court, Walton County, Florida.

Subject to restrictions and reservations of record.

* * * *

DOCUMENTARY STAMP TAX
DEPT. OF REVENUE
NOV 23 '71
$4.50

STATE OF FLORIDA DOCUMENTARY SUR TAX $.55
NOV 23 1971
STATE OF FLORIDA DOCUMENTARY SUR TAX $5.50
STATE OF FLORIDA DOCUMENTARY SUR TAX $1.10
NOV 23 1971
STATE OF FLORIDA DOCUMENTARY SUR TAX $5.50

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same in fee simple forever.

And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 1970.

FILED FOR RECORD THIS 23 DAY OF November A.D. 1971
AT 9:32 O'CLOCK A. M. AND RECORDED IN VOL 9
OF O.R. RECORDS AND VERIFIED
PHILIP A. ANDERSON, CLERK CIRCUIT COURT
BY: DEPUTY CLERK
WALTON COUNTY, FLORIDA

In Witness Whereof, the said grantor has signed and sealed these presents the day and year first above written.

Signed sealed and delivered in our presence:

Pamela L Dobson
Pamela C Dobson

W. E. Prestwood, Jr. (L.S.)
Madge H. Prestwood (L.S.)

SPACE BELOW FOR RECORDERS USE

STATE OF Alabama
COUNTY OF DeKalb

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared

W. E. Prestwood, Jr. and Madge H. Prestwood his wife

to me known to be the persons described in and who executed the foregoing instrument and they acknowledged before me that they executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this 1st day of November A.D. 1971.

Pamela C Dobson

My commission expires 4/25/75

18

CERTIFIED A TRUE COPY
11/25 2016
ALEX ALFORD
CLERK OF COURTS &
COUNTY COMPTROLLER
WALTON COUNTY FLORIDA
BY: Cathy Kon
DEPUTY CLERK

Clerk of Courts & County Comptroller 1824

This Instrument Prepared By 19
ROBERT PENTEL, Realtor
Star Rt. Box 620, Destin, Fla. 32541 REGISTERED NUMBER 22,248 1900

STATE OF FLORIDA,
COUNTY OF WALTON SS.

KNOW ALL MEN BY THESE PRESENTS, THAT Edward C. Goodwin and DeLanie C. Goodwin, husband and wife, for and in consideration of the sum of Twelve Thousand and No/00 DOLLARS ($12,000.00 to us in hand paid by W. E. Prestwood, Jr. and Madge H. Prestwood, husband & wife the receipt whereof is hereby acknowledged, have granted, bargained, and sold and by these presents do grant, bargain, sell and convey unto the said W. E. Prestwood, Jr. and Madge H. Prestwood their heirs, executors, administrators, and assigns, forever, the following described real estate, situate, lying and being in County of Walton, State of Florida, to-wit:

Lot 9, Santa Rosa Dunes, according to plat thereof on file in the Office of the Clerk of the Circuit Court, Walton County, Florida.

* * * *

$ 24.00 INTANGIBLE PERSONAL PROPERTY TAX PAID PURSUANT TO CHAPTER 20724, ACTS OF 1941.

Jack Tuttle
Tax Collector, Walton County

DOCUMENTARY STAMP TAX
DEPT. OF REVENUE
NOV 1971
$18.00

Together with the improvements thereon and hereditaments and appurtenances thereunto belonging or in any wise appertaining.

TO HAVE AND TO HOLD the said above described premises unto the said W. E. Prestwood, Jr. and Madge H. Prestwood their heirs, executors, administrators, and assigns, forever, free from all exemption or homestead right or claim of we, the said mortgagors, if any such right or claim we possess; but upon conditions as follows:

If we, the said mortgagors, shall well and truly pay, or cause to be paid, unto the said mortgagees or order, the sum of $12,000.00 according to the tenor and effect of one certain promissory note, of even date herewith in monthly payments of at least $240.46 each, including interest at the rate of 7 1/2% per annum on the balance remaining due from time to time, with the first said payment becoming due and payable on or before the tenth day of December 1971, and one payment becoming due and payable on or before the tenth day of each succeeding month until the whole of said indebtedness has been paid, with interest from 10 November 1971, with privilege of prepayment on the whole or part of principal sum remaining due, at any time, without penalty,

and well and truly perform all the stipulations, conditions, and agreements in these presents contained, then these presents to be of no further effect, otherwise to continue of full force and virtue.

It is Hereby Further Stipulated, Agreed and Covenanted: That we the said mortgagors will at our own proper costs and charges, do all things necessary to keep perfect and unimpaired the security hereby intended, and specially to pay or cause to be paid all taxes or assessments and penalties which may be levied or assessed against the above-described property, and to keep the improvements, thereon insured in a first-class insurance company, to be approved by the mortgagees, in the sum of not less than $xxxxxx loss, if any, payable to said mortgagees, as their interest may appear; and we, said mortgagors, have also agreed and hereby covenant that upon failure to do and perform any of the agreements and convenants herein agreed to be done or performed, or upon failure to pay the principal of said note at maturity, or either of them, or any installment of the principal and/or interest thereon, when due, the whole amount covered by this mortgage shall become immediately due and payable, and this mortgage may be foreclosed at the option of the mortgagees, and all costs and expenses, including attorneys fees and commissions incurred in collecting this mortgage debt or the foreclosure of this mortgage by reason of the failure of or non-performance of any of the agreements or convenants herein, shall be a part of the mortgage debt, and a lien upon the mortgaged property.

IN TESTIMONY WHEREOF we have hereunto set our hand and seals, this 12th day of November, 19 71.

Signed, Sealed and Delivered in the Presence of

Edward C. Goodwin (SEAL)
DeLanie C. Goodwin (SEAL)
(SEAL)
(SEAL)

Recorded in Book 154 Page 174

STATE OF ~~FLORIDA~~ MICHIGAN
~~SANTA ROSA~~ WAYNE COUNTY.

This day before the undersigned personally appeared Edward C. Goodwin and Dolanie C. Goodwin, his wife,

to me well known to be the individual s described in and who executed the foregoing Deed of Mortgage, and acknowledged that they executed the same for the uses and purposes therein expressed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, this 12th day of November, A. D. 1971.

My commission expires ....., 19.....

DONALD R. ST. JOHN
Notary Public, Wayne County, Mich.
Acting in Macomb County, Mich.
My Commission Expires May 22, 1973

NOTARY PUBLIC WAYNE COUNTY, MICH.

REGISTERED NUMBER 2A-2478

MORTGAGE DEED

TO

WALTON COUNTY, FLORIDA

Filed for record this 23 day of November, A. D. 19 71 at 9:32 o'clock A. M. and recorded in Vol. 9 O. R. at page 19 of Mortgage Record, and verified.

ANNIE LEE HOWELL, Clerk Circuit Court

Deputy Clerk

CLERK CIRCUIT COURT
WALTON COUNTY
DeFUNIAK SPRINGS, FLORIDA

QUIT-CLAIM DEED

RAMSEY FORM 8

OFFICIAL RECORDS

This Quit-Claim Deed, Executed this 29th day of September, A. D. 1981, by FRANK T. HOLT and WINNETT T. HOLT, his wife,

first party, to EDWARD C. GOODWIN and DELANIE C. GOODWIN

whose postoffice address is , 45

second party.

(Wherever used herein the terms "first party" and "second party" shall include singular and plural, heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires.)

Witnesseth, *That the said first party, for and in consideration of the sum of* $ 1.00---------- *in hand paid by the said second party, the receipt whereof is hereby acknowledged, does hereby remise, release and quit-claim unto the said second party forever, all the right, title, interest, claim and demand which the said first party has in and to the following described lot, piece or parcel of land, situate, lying and being in the County of* Walton *State of* Florida, *to-wit:*

Commence at the NW corner of U. S. Government Lot 38, Section 4, Township 3 South, Range 20 West, for a point of beginning; run thence S 0 degrees 49 minutes 30 seconds W 33 feet; thence run S 88 degrees 31 minutes E 126.21 feet; thence run N 0 degrees 49 minutes 30 second E 33 feet; thence N 88 degrees 31 minutes W 126.21 feet to the point of beginning. All according to the plat of Santa Rosa Dunes as recorded in Plat Book 3, Page 79, of the Public Records of Walton County, Florida.

This conveyance is made pursuant to an agreement dated September 1981, said agreement imposing certain restrictions on the use of the above property. A copy of this agreement is attached hereto.

Florida Documentary Stamp Tax Required by Florida Statutes Chapter 201 has been paid in Walton County in the amount of $ .45 Date 10-29-81
Certificate of Registration # 28-5159
Catherine Kipp, Clerk
By Colleen McDonald
Deputy Clerk

OCT 29 AM 10 50

2 0 5 1 5 9

To Have and to Hold *the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of the said first party, either in law or equity, to the only proper use, benefit and behoof of the said second party forever.*

In Witness Whereof, *The said first party has signed and sealed these presents the day and year first above written.*

Signed, sealed and delivered in presence of:

Laura L Ragan — Frank T. Holt — L.S.
Frank T. Holt

June Keadle — Winnett T. Holt — L.S.
Winnett T. Holt

STATE OF ~~KENTUCKY~~, GEORGIA
COUNTY OF THOMAS

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared Frank T. Holt and Winnett T. Holt to me known to be the person s described in and who executed the foregoing instrument and they acknowledged before me that they executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this 29th day of September A. D. 19 81.

June Keadle
Notary Public

JUNE KEADLE
NOTARY PUBLIC, THOMAS COUNTY, GEORGIA
MY COMMISSION EXPIRES JAN. 6, 1982

This Instrument prepared by: Frank T. Holt
Address P. O. Box 1053, Thomasville, Ga. 31792

CERTIFIED A TRUE COPY
5-23 2016
ALEX ALFORD
CLERK OF COURTS & COUNTY COMPTROLLER
WALTON COUNTY, FLORIDA
BY:

Clerk of Courts & County Comptroller 1824 Florida

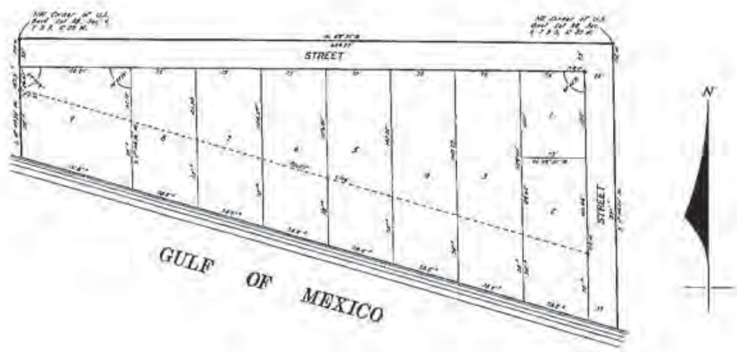
Book 3
Page 79

SANTA ROSA DUNES

A SUBDIVISION OF A PORTION OF
SECTION 4, T 3 S, R 20 W
WALTON COUNTY, FLA.
AUGUST 1967

SCALE 1" = 50'

BUELL H. HARPER, JR.
FLORIDA LAND SURVEYOR NO. 1719
PANAMA CITY, FLORIDA



DESCRIPTION

U. S. Government Lot 38, Section 4, Township 3 South, Range 20 West, Walton County, Florida.

DEDICATION

Signed, sealed and delivered in the presence of:

STATE OF FLORIDA, COUNTY OF WALTON

Notary Public, State of Florida
My Commission expires: 6-17-71

SURVEYOR'S CERTIFICATE

Buell H. Harper Jr.
Florida Land Surveyor No. 1719

COUNTY COMMISSIONERS' APPROVAL

County Commissioners
Walton County, Florida.

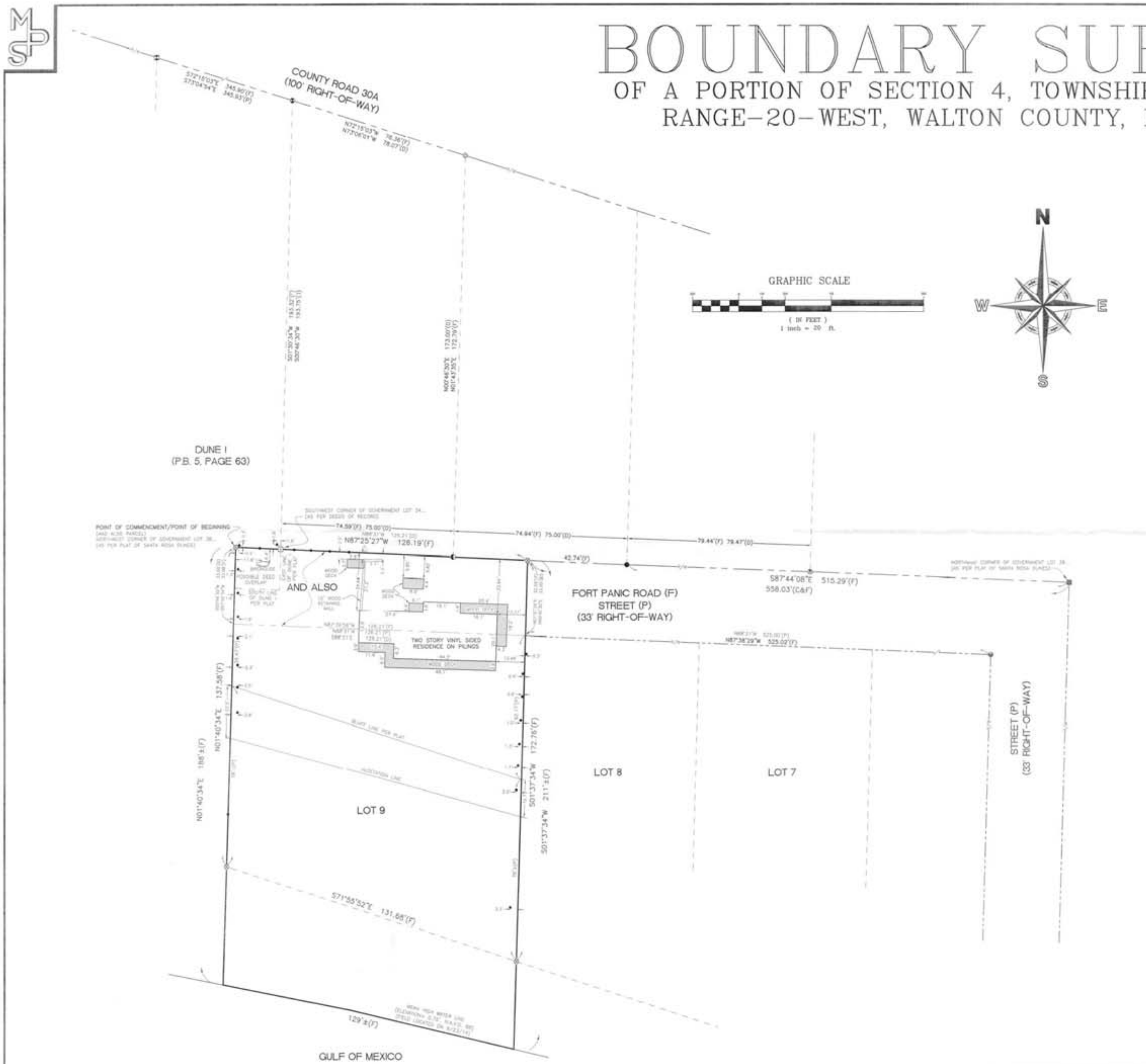
COUNTY CLERK'S CERTIFICATE

Clerk of the Circuit Court
Walton County, Florida.

EXHIBIT E

BOUNDARY SURVEY

OF A PORTION OF SECTION 4, TOWNSHIP-3-SOUTH, RANGE-20-WEST, WALTON COUNTY, FLORIDA.



LEGAL DESCRIPTION: (AS FURNISHED)

Lot 9, Santa Rosa Dunes, according to plat thereof on file in the Office of the Clerk of the Circuit Court, Walton County, Florida.

AND ALSO

Commence at the NW corner of U. S. Government Lot 30, Section 4, Township 3 South, Range 20 West, for a point of beginning; run thence S 0 degrees 49 minutes 30 seconds W 33 feet; thence run S 88 degrees 31 minutes E 126.21 feet; thence run N 0 degrees 49 minutes 30 second E 33 feet; thence N 88 degrees 31 minutes W 126.21 feet to the point of beginning. All according to the plat of Santa Rosa Dunes as recorded in Plat Book 3, Page 79, of the Public Records of Walton County, Florida.

GENERAL NOTES:

1. THE BEARINGS AS SHOWN HEREON ARE REFERENCED TO STATE PLANE COORDINATE SYSTEM OF THE STATE OF FLORIDA, NAD-83.

2. THE SURVEY DATUM AS SHOWN HEREON IS REFERENCED TO THE RECORD PLAT OF SANTA ROSA DUNES AS RECORDED IN PLAT BOOK 3 AT PAGE 79 OF THE PUBLIC RECORDS OF WALTON COUNTY, FLORIDA, DESCRIPTION AS FURNISHED, DEEDS OF RECORD AND TO EXISTING FIELD MONUMENTATION.

3. NO TITLE SEARCH WAS PROVIDED TO NOR PERFORMED BY MERRILL PARKER SHAW, INC., FOR THE SUBJECT PROPERTY. THERE MAY BE DEEDS OF RECORD, UNRECORDED DEEDS, EASEMENTS, RIGHTS-OF-WAY, STATE AND/OR FEDERAL JURISDICTIONAL AREAS OR OTHER INSTRUMENTS WHICH COULD AFFECT THE SUBJECT PROPERTY.

4. THIS SURVEY DOES NOT DETERMINE OWNERSHIP.

5. THIS SURVEY MEETS MINIMUM TECHNICAL STANDARDS AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 5J-17.051 AND 5J-17.052 FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES, TO THE BEST OF MY KNOWLEDGE AND BELIEF.

6. THE MEASUREMENTS AS SHOWN HEREON WERE MADE TO UNITED STATES STANDARDS.

7. FEDERAL AND STATE COPYRIGHT ACTS PROTECT THIS MAP FROM UNAUTHORIZED USE. THIS MAP IS NOT TO BE COPIED OR REPRODUCED IN WHOLE OR PART AND IS NOT TO BE USED FOR ANY OTHER TRANSACTIONS. THIS DRAWING CANNOT BE USED FOR THE BENEFIT OF ANY OTHER PERSON, COMPANY OR FIRM WITHOUT PRIOR WRITTEN CONSENT OF THE COPYRIGHT OWNER AND IS TO BE RETURNED UPON REQUEST.

8. ONLY THE ABOVE GROUND VISIBLE ENCROACHMENTS AND IMPROVEMENTS WERE FIELD LOCATED AS SHOWN HEREON, UNLESS OTHERWISE NOTED. UNDER GROUND ENCROACHMENTS AND IMPROVEMENTS, IF ANY, WERE NOT FIELD LOCATED OR VERIFIED, UNLESS OTHERWISE NOTED.

9. THE DIMENSIONS OF THE BUILDINGS (IF ANY) AS SHOWN HEREON ARE ALONG THE OUTSIDE FACE OF THE BUILDINGS AND DO NOT INCLUDE THE EAVES OVERHANG OR THE FOOTINGS OF THE FOUNDATIONS.

10. THIS SURVEY IS FOR THE PURPOSE OF DETERMINING THE LOCATION OF THE DEEDED (PLATTED) UPLAND LINES AND THE LOCATION OF THEIR TERMINUS AT THE APPARENT SHORELINE OF THE WATERS OF SANTA ROSA SOUND. THE MEAN HIGH WATER LINE ALONG THE SHORES OF LAND IMMEDIATELY BORDERING NAVIGABLE WATERS IS RECOGNIZED AND DECLARED TO BE THE BOUNDARY LINE BETWEEN THE FORESHORE OWNED BY THE STATE IN ITS SOVEREIGN CAPACITY AND UPLAND SUBJECT TO PRIVATE OWNERSHIP. THE APPROVED METHOD FOR DETERMINING THE MEAN HIGH-WATER LINE IS OUTLINED IN CHAPTER 177, PART II, FLORIDA STATUTES. NO REQUEST WAS RECEIVED NOR WAS ANY ATTEMPT MADE BY THIS FIRM TO PERFORM A "MEAN HIGH-WATER LINE SURVEY" AS DEFINED IN PART II OF CHAPTER 177, FLORIDA STATUTES. THE APPARENT SHORELINE AS DEPICTED HEREON IS VISIBLE LOCATION ONLY AND IS NOT TO BE USED AS A TITLE BOUNDARY LINE.

DENOTES:

- ⊗ – 1/2" CAPPED IRON ROD, NUMBERED 7174 (PLACED)
- – 1/2" CAPPED IRON ROD, NUMBERED 6381 (FOUND)
- – 1/2" CAPPED IRON ROD, NUMBERED 3293 (FOUND)
- – 1/2" CAPPED IRON ROD, NUMBERED 3724 (FOUND)
- – 1/2" IRON PIPE, UNNUMBERED (FOUND)
- ● – 1/2" IRON ROD, UNNUMBERED (FOUND)
- – 5/8" IRON ROD, UNNUMBERED (FOUND)
- – 4"X4" WOOD POST WITH NAIL, UNNUMBERED (FOUND)
- – 4"X4" CONCRETE MONUMENT WITH PIPE, UNNUMBERED (FOUND)
- ■ – 6"X6" CONCRETE MONUMENT, UNNUMBERED (FOUND)
- – 2"X2" WOOD STAKE
- ● – 2" P.V.C. PIPE
- R/W – RIGHT-OF-WAY
- (D) – DEED INFORMATION
- (P) – PLAT INFORMATION
- (F) – FIELD INFORMATION
- (C) – CALCULATED INFORMATION
- P.B. – PLAT BOOK

THAT THE SURVEY SHOWN HEREON MEETS THE FLORIDA MINIMUM TECHNICAL STANDARDS SET FORTH BY THE BOARD OF PROFESSIONAL SURVEYORS & MAPPERS IN THE STATE OF FLORIDA, ACCORDING TO FLORIDA ADMINISTRATIVE CODE, CHAPTER 5J-17.051 AND 5J-17.052, PURSUANT TO CHAPTER 472.027, FLORIDA STATUES.

MERRILL PARKER SHAW, INC.
4928 N. DAVIS HIGHWAY, PENSACOLA, FL 32503

E. Wayne Parker 10/1/14

E. WAYNE PARKER, PROFESSIONAL LAND SURVEYOR
REGISTRATION NUMBER 3683 CORPORATE NUMBER 7174
STATE OF FLORIDA

NO.	DATE	APPR.	REVISIONS

MERRILL PARKER SHAW, INC.
PROFESSIONAL LAND SURVEYING SERVICES
4928 N DAVIS HWY
PENSACOLA, FL 32503
FLORIDA CORPORATION NUMBER 7174

SCALE: 1" = 20' | DRAWN: AES | CHECKED: EWP | DATE: 10/01/14
FIELD DATE: 9/23/14 | FIELD BOOK: 275, PAGE: 42

BOUNDARY SURVEY
OF A PORTION OF SECTION 4, TOWNSHIP-3-SOUTH, RANGE-20-WEST, WALTON COUNTY, FLORIDA
PREPARED FOR: EDWARD GOODWIN

JOB NO. 14-6824-S-1 | SHEET 1 OF 1

EXHIBIT F

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

EDWARD GOODWIN and DELANIE GOODWIN, Plaintiffs, v. WALTON COUNTY, FLORIDA, Defendant.	No. 3:16-cv-00364-MCR-CJK **THIRD DECLARATION OF EDWARD GOODWIN** Hon. M. Casey Rodgers

I, Edward Goodwin, do hereby declare:

1. I am a resident of Walton County Florida and a citizen of the United States.

2. I am competent to testify to the following facts, which are known to me by personal knowledge.

3. I own beachfront property at 113 Fort Panic Road, Walton County, Florida. The parcel includes a dry beach area adjacent to the Gulf of Mexico.

4. On the morning of October 23, 2016, I was on my dry sand property, watering and tending to some native sea oats trying to take root in the sand.

5. I observed a woman approach the "No Trespassing" sign posted on the southwest boundary of our private dry sand area. The woman stopped, read the sign, and then proceeded to enter the dry beach area within my property boundaries.

6. I approached her and asked if she realized she was trespassing on my private property. She responded that the Walton County Board of County Commissioners had established she had the right to be on the area through an ordinance recognizing that the public had a "Customary Use" right to the dry beach.

7. I informed her that customary use rights had not been legally established on my property, and that she might be charged with a trespass violation.

8. At that point, the woman turned and deliberately walked approximately thirty (30) feet upland, further into my private dry sand parcel. She came to within about fifteen (15) feet of our home, to the approximate boundary of the public "buffer zone" proposed in the customary use ordinance. In so doing, the woman trampled on some of the native beach oats my wife and I have been attempting to nurture on our land.

9 I watched as the woman then walked east across our dry beach for about 130 feet, and then south to the wet sand, effectively traversing my dry sand parcel.

10. I subsequently filed a trespass claim based on this event. Sgt. Paula Pendelton took the report and filed it as Incident # 2016-00101594.

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge, and that this declaration was executed this 11th day of November, 2016, at Santa Rosa Beach Florida.

EDWARD GOODWIN

EXHIBIT G

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

EDWARD GOODWIN and DELANIE GOODWIN,

Plaintiffs,

v. CASE NO.: 3:16-cv-00364-MCR-CJK

WALTON COUNTY, FLORIDA,

Defendant.

DEFENDANT'S RESPONSE TO PLAINTIFFS' REQUEST FOR ADMISSIONS TO DEFENDANT, SET ONE

Defendant, Walton County, Florida, pursuant to Rule 36, Federal Rules of Civil Procedure, hereby responds to Plaintiffs' Request for Admissions to Defendant, Set One, and states:

REQUEST FOR ADMISSION NO. 1:

Admit that Plaintiffs own beachfront property in Walton County located at 113 Fort Panic Road, Santa Rosa Beach, Florida.

RESPONSE: Admitted.[1]

REQUEST FOR ADMISSION NO. 2

Admit the Plaintiffs' property at 113 Fort Panic Road, santa Rosa Beach, Florida extends seaward toward the Gulf of Mexico to the Meah High Water Line (MHWL).

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 3:

Admit that, to date, Walton County has never proven that customary public rights exist on Plaintiffs' parcel at 113 Fort Panic Road, Santa Rosa Beach, Florida.

RESPONSE: Denied.

REQUEST FOR ADMISSION NO. 4:

Admit the County is aware of Florida Attorney General Opinion 2002-38.

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 5:

[1] Defendant notes that the Walton County Property Appraiser lists the name of the road as "Fort Panic Street."

Admit the County did not initiate any type of suit to establish customary rights on dry sand areas in Walton County between 2002-2016.

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 6:

Admit that, at the time of the filing of this suit, there was plastic chain, "private property" signs, and other items around the boundaries of the property at 113 Fort Panic Road, Santa Rosa Beach, Florida.

RESPONSE: The County has made reasonable inquiry and the information it knows or can readily obtain is insufficient to enable it to admit or deny.

REQUEST FOR ADMISSION NO. 7:

Admit that the County cited Edward Goodwin in 2014 for putting PVC sign posts and plastic chain around the boundaries of the property at 113 Fort Panic Road, Santa Rosa Beach, Florida.

RESPONSE: Admitted. However, such citation was pursuant to a prior version of the section of the Ordinance that is challenged in this action which contained different language than that at issue in this action,

and did not contain a specific prohibition concerning "obstructions."

REQUEST FOR ADMISSION NO. 8:

Admit that the County has received complaints from property owners about members of the public entering and/or using dry beach property in Walton County.

RESPONSE: Denied. However, it is admitted that some members of the public may have raised the issue at various public meetings.

REQUEST FOR ADMISSION NO. 9:

Admit that the County has received complaints from property owners about members of the public entering and/or using dry beach property in the Santa Rosa Beach area of Walton County.

RESPONSE: Denied. However, it is admitted that some members of the public may have raised the issue at various public meetings.

REQUEST FOR ADMISSION NO. 10:

Admit that members of the public have been arrested by the Walton County Sheriff's Office for trespassing on private dry sand areas in Walton County.

RESPONSE: Admitted that one person was arrested; however, he was not convicted.

REQUEST FOR ADMISSION NO. 11

Admit that members of the public have been arrested by the Walton County Sheriff's Office for trespassing on private dry sand areas in the Santa Rosa Beach area of Walton County.

RESPONSE: Admitted that one person was arrested; however, he was not convicted.

REQUEST FOR ADMISSION NO. 12:

Admit that property owners have sometimes told members of the public to leave dry beach areas in Walton County.

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 13:

Admit that there were ropes, "private property" and "no trespassing" signs, fences, and other items on dry sand beach parcels in the Santa Rosa Beach area of Walton County prior to the June, 2016, enactment of the beach "obstruction" ordinance giving rise to this suit.

RESPONSE: Admitted that prior to the enactment of Section 22-55 of the Walton County Waterways and Beach Activities Ordinance in June 2016, there were some "private property" and "no trespassing" signs, ropes, chains, fences and other items at some locations along the dry sand beach in the Santa Rosa Beach area.

REQUEST FOR ADMISSION NO. 14:

Admit that Walton County property owners have complained about County-authorized beach vendors setting up on, or using, dry beach areas in Walton County.

RESPONSE: Denied.

REQUEST FOR ADMISSION NO. 15:

Admit that property owners in the Santa Rosa Beach area of Walton County have complained about County-authorized beach vendors setting up on, or using, dry beach areas.

RESPONSE: Denied.

REQUEST FOR ADMISSION NO. 16:

Admit that County vehicles sometimes cannot freely traverse dry

beaches in the Santa Rosa Beach area of Walton County because of "private property" and "no trespassing" signs, ropes, and fences placed on dry beach areas.

RESPONSE: Denied.

REQUEST FOR ADMISSION NO. 17:

Admit that there has been controversy in Walton County about public use of dry beaches for at least 10 years.

RESPONSE: Denied.

REQUEST FOR ADMISSION NO. 18:

Admit that a person was arrested for trespassing on Plaintiffs' dry sand property at 113 Fort Panic Road, Santa Rosa Beach, Walton County, Florida in 2015.

RESPONSE: Denied.

REQUEST FOR ADMISSION NO. 19:

Admit the County has found no recorded public access easement on the title to 113 Fort Panic Road, Santa Rosa Beach, Walton County, Florida.

RESPONSE: Admitted.

Dated this 22nd day of September, 2016.

WARNER LAW FIRM, P. A.

s/William G. Warner
WILLIAM G. WARNER, ESQ.
Florida Bar No. 0346829
TIMOTHY M. WARNER, ESQ.
Florida Bar No. 0642363
pleadings@warnerlaw.us
Post Office Box 1820
Panama City, FL 32402
Phone No. (850) 784-7772
Telecopier No. (850) 784-7756
Counsel for Defendant, Walton County, Florida

THERIAQUE & SPAIN

s/David A. Theriaque
DAVID A. THERIAQUE, ESQ.
Florida Bar No. 832332
S. BRENT SPAIN, ESQ.
Florida Bar No. 320810
433 North Magnolia Drive
Tallahassee, FL 32308
Phone No. (850) 224-7332
Facsimile No. (850)224-7662
dat@theriaquelaw.com
sbs@theriaquelaw.com
Co-Counsel for Defendant, Walton County, Florida

OFFICE OF THE COUNTY ATTORNEY

s/Mark D. Davis
MARK D. DAVIS, ESQ.
Florida Bar No. 0764700
SIDNEY N. NOYES, ESQ.
Florida Bar No. 84923
161 E. Sloss Avenue
DeFuniak Springs, FL 32433
Phone No. (850) 892-8110
Facsimile No. (850) 892-8471
mdd@co.walton.fl.us
noysidney@co.walton.fl.us
sincrissie@co.walton.fl.us

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by electronic mail this 22nd day of September, 2016 to:

J. David Breemer, Esq.
Pacific Legal Foundation
930 G. Street
Sacramento, California 95814
jdb@pacificlegal.org

Christina M. Martin
Trial Counsel
Pacific Legal Foundation
8645 North Military Trail, Ste. 511
Palm Beach Gardens, FL 33410
cmm@pacificlegal.org

William J. Dunaway
Clark Partington Hart Larry Bond & Stackhouse
125 West Romana Street
Suite 800
Pensacola, Florida 32502
wdunaway@clarkpartington.com

Counsel for Plaintiffs

s/*William G. Warner*
William G. Warner
Florida Bar No. 0346829