

1 additional item that we will need to request judicial
2 notice of, and that's a section of the County zoning
3 regulations. We don't have a copy here today with us, but
4 we will have one tomorrow.

5 THE COURT: Well, okay. I'm not sure I have to
6 take judicial notice of that, but okay. Alright.

7 MR. BUESCHER: That, I have no thoughts on at
8 this point.

9 THE COURT: Okay. Well, you both are being more
10 generous than I would be, so there you are. That's nice.

11 So are you ready to call your next witness?

12 MR. COTCHETT: To move this case along, plaintiff
13 rests.

14 THE COURT: Okay. Thank you. So plaintiff
15 rests.

16 Is the defense ready to proceed?

17 MR. ESSNER: Yes, Your Honor. We are call
18 Rich Deeney.

19 THE CLERK: Please raise your right hand.

20 Testimony of,

21 RICHARD DEENEY,

22 called as a witness on behalf of the Defendants, and

23 having been first duly sworn, testified as follows:

24 THE CLERK: Thank you. Please be seated.

25 Can you please state and spell your first and
26 last name for the record.

1 THE WITNESS: First name is Richard,
2 R-i-c-h-a-r-d. Last name is Deeney, D-e-e-n-e-y.

3 THE COURT: If you could move the microphone up
4 underneath your mouth. Thank you very much.

5 THE WITNESS: I may not hear very well. One of
6 my hearing aids quit, so if I don't come through right,
7 holler at me.

8 MR. COTCHETT: You're not alone, sir.

9 THE COURT: It seems to be a prevailing problem.

10 DIRECT EXAMINATION BY MR. ESSNER

11 BY MR. ESSNER:

12 Q. I'll speak into the microphone. Can you hear me?

13 A. I can.

14 Q. Great. If you can't, just let me know, and I'll
15 repeat the question.

16 A. Okay.

17 Q. Thank you. Good morning, Mr. Deeney.

18 A. Good morning.

19 Q. My name is Jeff Essner, and I represent
20 Martins Beach 1 and 2.

21 A. Uh-huh.

22 Q. Thank you for coming today.

23 Now, you are under a subpoena to appear and
24 testify; is that correct?

25 A. That's right.

26 Q. Now, you were the seller of what we've been

1 calling here in this courtroom Martins Beach 2 -- my
2 client, Martins Beach 1 and 2; is that right?

3 A. That's correct.

4 Q. And do you recall approximately when that sale
5 occurred, just approximately?

6 A. It seems to me like September, '08.

7 Q. Okay. And do you recall the sale's price for the
8 property?

9 A. Not exactly, but I know it was 32 maybe million.

10 Q. Approximately, 32 million?

11 A. Yeah.

12 Q. And how long has the property been in your
13 family?

14 A. We owned that north parcel. I don't know which
15 one is Martins Beach 1 or Martins Beach 2, but the north
16 one, close to the beach access. That one we have owned
17 since 1902. And the south parcel, I believe, was in the
18 family since 1865.

19 Q. Okay. So the parcel that Martins Beach Road runs
20 on, is that the north or the south parcel?

21 A. The north.

22 Q. And that parcel you've owned since the early
23 1900s?

24 A. Yeah, 1902.

25 Q. The south parcel you've owned since, I'm sorry,
26 when?

1 A. 1865.

2 Q. Okay. Thank you. So I'm sorry to ask you this
3 question: When were you born?

4 A. 12/20/48, 1948.

5 Q. And have you grown up living on the property that
6 we've called Martins Beach?

7 A. I did, yes.

8 Q. Okay. And you were born and raised on that
9 property?

10 A. Correct.

11 Q. Okay. And where do you live now?

12 A. Straight east, we own property across the
13 highway, and we bought a parcel that adjoined our
14 preexisting parcels, a little further east. We're on the
15 Lobitos Creek cutoff back there. Probably, about a mile
16 away as the crow flies from the beach.

17 Q. Okay. When you were alive, because I only want
18 to know about when you were alive, was the property used
19 for agricultural purposes?

20 A. Yeah. It's always been -- always been
21 agricultural.

22 Q. Could you describe for the Court the first
23 agricultural purposes used for the property?

24 A. Most everything I remember, we, years ago, raised
25 dairy cows, and we raised young heifers there. And then
26 when they got big enough to, you know, breed and stuff, we

1 moved them back to the ranches further inland and bred them
2 and sold them for replacement heifers.

3 Q. Let me just interrupt you.

4 About when was that?

5 A. Ever since I was just a little -- probably -- I
6 mean, I know early in the '50s we were doing it. For as
7 long as I remember when I was a kid, that's what we did.
8 And we kept a couple of milk cows that we milked for our
9 own use and used the milk to raise those drop cows.

10 Q. And at the time that the cows were on the
11 property, was the entirety of the property fenced?

12 A. Oh, yes.

13 Q. Okay. And was there a gate at the front of
14 Martins Beach Road at that time?

15 A. When I was young, there was -- it seems -- this
16 is just a recollection. Maybe they put up a chain there.
17 Way back, I know my dad talked about they had a wire gap
18 that they always used to close on the road. And then I
19 think when they opened it for public -- you know, when
20 Mr. Watt, our previous tenant came in there, I believe he
21 put a chain across to close it on non-business hours.

22 Q. Okay. We'll get into that.

23 But was the property fenced?

24 A. Oh, yes, yes.

25 MR. BUESCHER: Objection. Asked and answered.

26 THE COURT: I'm sorry. What was the objection?

1 MR. BUESCHER: Asked and answered. It's fine.

2 Q. (By Mr. Essner) You also mentioned that --
3 I'm sorry.

4 Were there any other animals or other kind of
5 agricultural uses other than the heifers?

6 A. Well, yeah, heifers were in the earlier years.
7 And then we got out of the Holstein replacement heifer
8 business, and we had previously had sheep across the
9 highway. And we were having such a predator problem over
10 there, that we moved them to the west side of the highway.
11 And we kept sheep in there for -- I can't remember what
12 year we actually started them in there.

13 Well, when we got out of the Holstein thing,
14 which is probably in the late '60s, early '70s, then we
15 moved sheep over there and kept sheep for quite a few
16 years.

17 And then when we finally -- well, we just kept
18 them until they, you know, gradually died off. And then we
19 started farming. And we would farm it, and, you know,
20 sometimes give it a year or two off and then farm it again,
21 but it was always farmed. If we weren't farming it, we
22 would put some animals in there.

23 Q. And do you know if the property is currently used
24 for agricultural purposes?

25 A. Yes, it is.

26 Q. And do you know what those are?

1 A. What the uses are?

2 Q. Yes.

3 A. It's being used for raising hay, and we still use
4 the hay on our cattle ranch and raise, you know, to
5 supplement the cattle.

6 Q. So you had mentioned a little bit earlier in your
7 testimony that it was your belief that there was some type
8 of fence at Martins Beach Road that was a chain-link fence?

9 A. I believe so.

10 Q. Okay.

11 A. And then -- until they put in the steel swinging
12 gates, which --

13 Q. Well, we'll get to that in a second. I just want
14 to -- we'll start with the chain fence.

15 A. Sure.

16 Q. Do you recall when that was, roughly?

17 A. You know, I don't have much recollection of that.
18 I was pretty young. I just remember a chain there. You
19 know, and we had leased to another man, and I don't know
20 all the details of that, but I just remember a chain.

21 Q. Okay. And then you had mentioned at some point
22 the chain fence was replaced with a steel fence?

23 A. Right.

24 Q. Or a steel gate?

25 A. Right.

26 Q. Do you remember when the steel gate went in?

1 A. I would say somewhere between '58 and '60.

2 Q. 1958?

3 A. Yes.

4 Q. Okay. And can you describe for the Court what
5 the steel gate looked like?

6 A. On both sides, there was a steel pipe, probably
7 dug into the ground with concrete poured around the base.
8 Then, it had a bigger sleeve pipe over the top with a long
9 pipe that could be swung around to close the gap off. You
10 know, it swung like this (indicating) and hinged off of the
11 back, and it had braces that came up. And then on the
12 center of it, it had a bigger sleeve that slid across with
13 a couple of eyes and a long neck lock that would latch and
14 lock that.

15 Q. Let me make sure I understand.

16 There was a lock on the gate?

17 A. Oh, yes.

18 Q. Okay. Could you describe how the gate locked?

19 THE COURT: Well, before you do that, just for
20 the record, can you describe what he did with his arms in
21 terms of the swinging of the gate, just for the record?

22 MR. ESSNER: Oh, I'm sorry.

23 Q. (By Mr. Essner) Could you describe for the
24 record --

25 A. Sure.

26 Q. -- verbally what you were motioning with your

1 hands?

2 A. Yeah. It had, like I say, two pipes, a bigger
3 sleeve on it with a bracket welded on the bottom of the
4 gate, so this couldn't slide up and down, and then a pipe
5 that ran to the center of the road, and it did that on both
6 sides. And then off the bottom, it had another sleeve
7 there, kind of -- it was like a hinge-type setup, to where
8 it swiveled on the top of this pipe and braced from the
9 bottom. And then in the center, it had two -- the two
10 sides swung in together like this (indicating.)

11 THE COURT: When you say "Like this," we can't
12 tell. So you're putting your fingers together, so they're
13 coming together?

14 THE WITNESS: Real close.

15 THE COURT: Okay.

16 THE WITNESS: And then over the top of that, they
17 had a bigger perimeter pipe that could slide over the top
18 of these two pipes coming in sideways. And, on one side,
19 there was a stable eye welded. And this other side, it had
20 a -- it slid back, and I believe the lock was -- in fact, I
21 know it had a chain welded to the lock so that somebody
22 couldn't just take the lock off and throw it away. More
23 than once, we went over and welded it because it got broke.
24 Whether it was cabin owners or who, we don't know. But it
25 would get broken once in awhile, so we would go over and
26 re-weld it for Ed Watt, our former tenant. And it had a

1 long necked lock that would latch through the eye on the
2 slider part to the solid ring on the one side of the gate,
3 and it was a key lock.

4 THE COURT: Thank you.

5 Q. (By Mr. Essner) That was going to be my next
6 question.

7 It was a keyed locked?

8 A. A keyed locked, right.

9 Q. And who had keys to the gate?

10 A. Every tenant.

11 Q. Let me just stop. Those are the tenants --

12 A. Cabin owners.

13 Q. -- that lived in the cabins in the community?

14 A. Right, right.

15 Q. And approximately -- let's talk about when the
16 gate first went in in the late 1950s.

17 Approximately, how many cabins were down at
18 Martins Beach?

19 A. Let's see, one was lost -- well, in the '50s,
20 that one still would have been there. So there's probably
21 46.

22 Q. Okay. So each cabin owner had a key; is that
23 right?

24 A. Right.

25 Q. Okay. Who else had a key as far as you knew?

26 A. I don't believe anybody. Even us, as property

1 owners, I don't believe we had a key until the later years,
2 you know, when I got big enough where I wanted to drive
3 down. We didn't even, as owners, have a key to it. It was
4 just the cabin owners, our tenant, Ed Watt.

5 Q. And Ed Watt was the gentleman that was operating
6 the property and managing the property?

7 A. That's right.

8 Q. So he had a key as well?

9 A. Oh, yes.

10 Q. Okay. So it was the cabin owners and the
11 property manager that had a key?

12 A. Right.

13 Q. As far as you know, did anyone from the public
14 have a key?

15 A. No.

16 Q. As far as you know, other than the cabin owners
17 and Mr. Watt, who was managing the property, did anyone
18 else have a key?

19 A. No.

20 Q. Let's talk about when the gate would be locked.
21 Okay?

22 So the gate would be locked at times; is that
23 right?

24 A. Sure. Yeah.

25 Q. Can you tell the Court when the gate would be
26 locked?

1 A. Well, our tenant would usually open it in the
2 mornings when he was open for business. And he would latch
3 it, both sides open, and he would keep it open during
4 daylight and business hours. I believe he closed at like
5 four o'clock, and then it would be latched back up. And
6 then, you know, I mean, there was times that he had other
7 things to do and stuff, and it was left locked all day as
8 well, you know. But for the days that it was open, he ran
9 and opened and closed it at his -- whatever interval he
10 wanted.

11 Q. So is it your recollection that there would be
12 days that the beach was open and the gate would be open and
13 days that the beach would be closed and the gate would be
14 locked?

15 A. Correct.

16 Q. Okay. And it was Mr. Watt's decision on when to
17 open and close the gate?

18 A. That's right.

19 Q. Okay. Was the gate always locked at night?

20 A. Yes, it was. It was never -- I don't even
21 remember any time that he had outside parties or anything,
22 in my own personal memory, where he would have had it open
23 for other things. I just don't recall any time.

24 Q. You said that Mr. Watt ran a business; is that
25 right?

26 A. That's right, yeah.

1 Q. What was the business that he ran?

2 A. Well, he had -- he collected the tolls for the
3 toll road, for cars coming down.

4 Q. Let's just stop right there.

5 How would you describe that business? Would that
6 be the business of charging for access to the beach?

7 MR. BUESCHER: Objection. Leading.

8 THE COURT: Objection is overruled. You may
9 answer the question.

10 Go ahead.

11 THE WITNESS: Answer?

12 THE COURT: Yes, you may answer.

13 THE WITNESS: Yes. He collected for cars. And,
14 at that time, he didn't collect them all the way at the
15 bottom. There's old railroad tracks that ran through
16 there. He most of the time always had a collector up
17 there, so you could see the coast highway. And it was the
18 only real access to the place, and he would have a person
19 up there collecting for him.

20 Q. And do you know whether Mr. Watt allowed
21 pedestrians to walk down the road to access the beach?

22 A. No. No, he never did.

23 Q. How do you know that?

24 A. Well, a lot of what went on down there, we could
25 see from -- we lived in the brick house by the highway,
26 and, at that time, I was pretty young. And once in awhile,

1 we would see -- surfers were a pretty rare item. It's not
2 known as a great surfing beach.

3 Q. What time frame are you talking about right now?

4 A. Oh, back in late '50s, mid '60s up to the '70s,
5 probably.

6 We could see -- I mean, we were feeding cattle,
7 working with cattle up around by the brick house, which is
8 the one closest to the access. We could see -- I mean, we
9 had dogs. Dogs would always bark if anyone would be
10 walking, and we would hear them bark, and we would go look.
11 If they got caught down there, he would tell them, "Hey,
12 you got to go back and get your car and pay, if you're
13 going to enter."

14 Q. So if people walked down the road, they would be
15 asked to leave?

16 A. Yes, and go back and get their car. If they were
17 to enter, they had to bring their car in.

18 Q. Do you recall if you ever, while you owned the
19 property, had an occasion to call the Sheriff to ask
20 trespasses to leave?

21 A. Yeah. We did multiple times.

22 Q. Multiple times?

23 A. Oh, yes.

24 Q. Explain some of the circumstances that would
25 occur.

26 A. Well, on a rare occasion, one would get down --

1 or usually what would happen, there were some older retired
2 cabin owners that were there all the time. One of them
3 worked out in the garden all the time. If he would see
4 anything, he was a great watch dog for us. He would give
5 us a call. There was like three, and another guy who
6 actually watched the beach sometimes, if we couldn't be
7 there. He had a four wheeler. He actually patrolled,
8 watched the beach, and collected cars sometimes if we
9 weren't around. But they would all know -- if anybody
10 saw -- most of the tenants didn't even like -- the cabin
11 area, they felt was kind of like their area. They didn't
12 want nobody in there. They would -- almost all of them
13 would call us if they saw anybody that happened to get by
14 us, and we would go -- we would catch them, because there's
15 very few -- it's very noticeable of anybody trying to walk
16 in there.

17 Plus, we had -- down by the beach, we had a
18 camera up by the gate. We had two more down by the park --
19 at the guest parking area. So we thought -- every now and
20 then, we would glance at it. It was right close to where
21 we had the cash register in our own business there, and we
22 were pretty well on top of anything -- of anybody ever
23 trying to come in or out.

24 Q. If someone came down the road without paying or
25 without the permission of the owner or the manager, what
26 would you do?

1 A. Well, I would confront them and tell them, "Hey,
2 you can't just walk in here. It's a toll road. If you
3 want to come in, go back, get your car," whether it's a
4 surfboard they're carrying or whatever. Just tell them
5 they got to go get their car. And they're welcome back
6 down. As long as we had parking room, we would tell them
7 to head back down.

8 Q. And as long as they paid?

9 A. Oh, absolutely. Yeah. They had to pay.

10 Q. And what if they refused to leave?

11 A. I had a couple do that. And push come to shove
12 almost a couple of times, and I said, you know, I'm not
13 even going to mess with you. I'll just go call the
14 Sheriff, and I'm going to file charges against you. And I
15 would walk away and try not to even look back because they
16 would think I wasn't serious if I was looking to see what
17 they were doing. When I would hook around the corner to go
18 to the store, they would scurry back up the road. They
19 didn't want to have no confrontation with the Sheriff, so
20 they would leave.

21 And we had pretty responsive Sheriffs that were
22 helping. If there was any problem we had, whether it be
23 there or up along the highway, if we had trespassers, they
24 were pretty good about being out there, I think, because
25 they liked Martins Beach as well. They used to, you know,
26 come in and out of there fairly regular.

1 Q. Did the Sheriff ever refuse to enforce the
2 trespasser laws when you asked them to?

3 A. No, never.

4 Q. And were there occasions where the Sheriff would
5 come out to enforce the trespass laws?

6 A. They came, I would say, only maybe a couple of
7 times in the years that we ran it that they actually had to
8 sit and confront.

9 There was times that people would, you know, give
10 us a bad time, but they usually would turn, and they would
11 be walking out. So the Sheriff really didn't need to say
12 much to them because they were leaving. They didn't -- we
13 never had anybody sit toe to toe and argue too much. Maybe
14 one or two times, it got a little testy.

15 Q. Did the beach, when it was open, have operating
16 hours?

17 A. Yeah. We had certain hours for summer and winter
18 months.

19 Q. What were the hours in the winter months?

20 A. Well, they varied. I mean, a lot of times, if
21 there was bad weather conditions that I didn't like down
22 there or if we had other things to do, we would just close
23 it up and not open it up at all.

24 Q. Let me just --

25 THE COURT: Folks, please. You're talking over
26 each other. The court reporter is trying to take down what

1 you say. She can't do that if you're both talking.

2 MR. ESSNER: I'm sorry. That was my fault. I
3 apologize.

4 THE COURT: Go ahead.

5 Q. (By Mr. Essner) So during the winter, you would
6 close the beach during bad weather?

7 MR. BUESCHER: Objection. Vague as to time and
8 leading.

9 THE COURT: No. Objection is overruled.

10 You may answer the question.

11 THE WITNESS: Yeah. We would close down any time
12 we can't have somebody there to watch the property, keep an
13 eye on it, or if it was real bad weather, we didn't want
14 anybody in there anyway.

15 So, you know, we would just -- you know, it
16 wouldn't be a problem, you know. I mean, for many
17 reasons, it just wasn't good to have them in there. So we
18 would just close it down for any period we felt like
19 closing it.

20 Q. Did anyone ever tell you you weren't allowed to
21 close your beach?

22 A. No.

23 Q. Did the Coastal Commission ever tell you you had
24 to keep your beach open?

25 A. No.

26 Q. Did anyone from the County ever tell you you

1 needed to keep the beach open?

2 A. No.

3 Q. Did anyone from the Sheriff's Department tell you
4 you needed to keep the beach open when you closed it?

5 A. No.

6 Q. Did anyone from the Coastal Commission ever tell
7 you you needed to keep the beach open?

8 A. No.

9 Q. Did anyone from the Coastal Commission ever tell
10 you you needed to get a Coastal Development Permit when you
11 closed the beach?

12 A. No.

13 Q. Let me show you a picture. It's in your binder.
14 It's marked as Exhibit 149-6. It's the -- let me see if
15 you have it.

16 MS. YOB: Your Honor, may I approach to help him?

17 THE COURT: Yes. Thank you.

18 Q. (By Mr. Essner) Do you recognize the picture? I
19 realize it's a little blurry, but the picture of what is
20 depicted in Exhibit 149-6?

21 A. Yeah, I recognize it.

22 Q. Can you describe for the Court what that depicts?

23 A. Well, it pretty much shows the gate. You can't
24 see the signs because they're shaded on the gate. But one
25 side shows clearer than the other, but it shows the
26 swinging gate. One-half of that gate is still in place

1 now. The other half fell over. The side that is shown in
2 this picture, it's been removed.

3 Q. It fell over?

4 A. Fell over, yeah.

5 Q. And so is that the gate that you installed in the
6 late 1950s?

7 A. Yeah. Mr. Watts installed that.

8 MR. BUESCHER: Objection. Misstates --
9 thank you.

10 Q. (By Mr. Essner) Is that the gate you believe was
11 installed in the late 1950s?

12 A. That's it.

13 Q. And is that the side of the gate that has fallen
14 over?

15 A. That's the side that has fallen over, yeah.

16 Q. Now, could you just flip the page one to 149-5.

17 MS. YOB: May I, Your Honor?

18 THE COURT: Yes.

19 THE WITNESS: Got it.

20 Q. (By Mr. Essner) You got it?

21 Do you recognize that gate?

22 A. Yeah, yeah. That's the gate that I put in.

23 Q. You put that gate in?

24 A. I did.

25 Q. Okay. And is that the gate that is currently
26 on -- at the entrance of Martins Beach Road?

1 A. Yes, that's it.

2 Q. And when did you put that gate in?

3 A. I would say 1992.

4 Q. 1992?

5 A. Maybe '91, but I would say '92. I don't know an
6 exact date for that, but right there, right in that
7 neighborhood.

8 Q. And why did you put this gate in?

9 A. Well, the other one, like I was saying, it was
10 kind of a problem gate. It hung off of two posts in the
11 ground. And you get to wet and dry time of the season, it
12 would tend to start leaning. And it was hard to line up
13 those pipes. Tenants were complaining and having problems
14 with it. It was just failing.

15 So I figured it was time to put something in
16 safer and that wouldn't be hard to control, you know, as
17 far as anybody manually latching things up. The safety end
18 of it, it was, you know -- they didn't have to be out there
19 at nighttime, you know, trying to get in and out with a
20 lock or somebody maybe -- you know, because people roaming
21 around at night, you don't know. And it's right on the
22 coastal highway. It wasn't the safest sight for a gate
23 where they had to get in and out to open and close.

24 Q. So the old gate was failing; is that right?

25 A. Absolutely.

26 Q. And you put this in --

1 A. I did.

2 Q. -- to maintain a new gate?

3 A. Right.

4 Q. And when you put this gate in, did anyone from
5 the County tell you you needed a permit?

6 A. No.

7 Q. Did anyone from the Coastal Commission tell you
8 you needed a permit?

9 A. No, no. It was agricultural property. I never
10 thought about replacement of a gate. You know, I just put
11 it in. Never thought about anything being needed.

12 Q. Why do you say it's agricultural property, and
13 you never thought about replacement of a gate needed a
14 permit?

15 A. I don't know. We've replaced gates other places
16 on the coast. And on our ranches, we border -- never heard
17 of anybody even getting a permit to replace a gate on
18 their, you know, ag. zone property, you know. Yet -- it's
19 under the Williamson Act. It's all ag.

20 Now, I think under the contract Martins Beach is
21 excluded from the Williamson Act, but it's, you know, on
22 the same access. We use the same access to go in and out
23 to get our hay out of the fields and do all of our
24 agricultural work. We use the same road.

25 Q. At the time that the old gate was falling apart
26 and you put in this new gate, were you using the property

1 for agricultural purposes?

2 A. We were, yeah.

3 Q. And, at that time, what were the agricultural
4 purposes?

5 A. Might have had some pumpkins in there and hay. I
6 believe right along this road here, I believe my son grew
7 some pumpkins. I'm not sure of the timing, if it's exactly
8 the time we -- it may have been. He might have had
9 pumpkins right in this field here (indicating) about the
10 time we changed that gate. And then we had hay. That was
11 just a very small section. The rest of it was all hay for
12 our cows -- to supplement our cattle feed in the winter
13 months.

14 Q. And when you put in this gate, did you continue
15 to open -- when did the Watts stop operating the beach?

16 A. I believe '92.

17 Q. And in '92, who started operating the beach?

18 A. My family, not just me. Me and -- my wife ran
19 the store or was the manager of the store. My daughter --
20 at that time, I believe just my oldest daughter lived
21 there. I'm trying to think if my son lived there or not.
22 I don't think he did quite then.

23 But we, as a family, everybody chipped in, worked
24 there everyday, seven days a week. We were pretty well
25 tied down to it as far as the family. And it was good that
26 we had as many people as we did, you know, to see to it

1 that all the needs were met and taken care of and watched
2 over.

3 Q. At some point in time when you owned the
4 property, did you find that the business of selling daily
5 access to the beach declined?

6 A. Yeah. Through the years, it definitely declined.
7 Back when I was young, we used to go down there, and we
8 could catch fish by the truckloads, if you really wanted to
9 catch smelt.

10 Q. How many years ago was that?

11 A. I'm 65. So since the time I was maybe 12, we --
12 so that's like 60 -- on back in the '60s. It was a -- it's
13 always been noted as a fishing beach. And through the
14 years, you know, I think it's just like a global warming
15 and everything else. It's a cycle we're going through.
16 And, you know, it reverts back eventually. But as of now,
17 the fishing and all of that end of it, the real business
18 part of the public access, it had been slipping for a long
19 time. It's not what it was years ago. They used to have
20 large crowds and big demand. I think food source, you
21 know, people didn't buy it all out of the stores back then.
22 They went and fished and caught their own food, you know.

23 Q. And when you began operating the business of
24 selling access to the beach, did you find that visitors
25 declined?

26 A. It was declining a long -- for quite a few years,

1 and it continued to decline because we went some years
2 there, I would say, sometimes two, three years with hardly
3 any fish at all. We had a few old diehards that would
4 still come pretty regular. I think more for the love of
5 the beach than just the fishing, you know. But the fishing
6 business was definitely on a big decline. And it still is.
7 It's not good yet. I don't know this year. There's a few
8 fish being caught north, but stripers. I haven't heard of
9 any smelts in yet. I don't know where they're going to
10 spawn now, but they don't seem to be coming there.

11 Q. What about surfers, was this a big surf beach?

12 A. No. On normal -- some days, you wouldn't see any
13 surfers at all. On our better days, you might see one or
14 two.

15 The only time Martins Beach is known for a good
16 surf beach, is if you get a south swell. That might only
17 happen twice a year.

18 Q. Twice a year?

19 A. Yeah, for two -- maybe a couple days at a time.
20 Very rarely you got that south swell. But when it would
21 come, we got a big influx of surfers.

22 Q. And did you continue to operate the beach when
23 your family took over so that when -- if you didn't have
24 someone available, you would close the beach?

25 A. Yeah. We closed, you know, on multiple
26 occasions, you know, for -- you know, anything taking

1 place. And we also occasionally had a private party that
2 we would close it down to the public and have that private
3 party thing going on.

4 We had a location kind of on the south end there
5 that was kind of secluded and more to itself and a good
6 area for family parties or something like that. Sometimes,
7 like I say, we would have family that would -- and there
8 was other groups in there, too. I don't know that it was
9 all family, but just a private party once in awhile.

10 Q. So at least once a month, you would close the
11 beach down and, essentially, rent it out to someone else?

12 MR. BUESCHER: Objection. Misstates the
13 testimony and leading.

14 THE COURT: Objection is sustained.

15 THE WITNESS: Yeah --

16 Q. (By Mr. Essner) Let me rephrase the question.

17 A. Sure.

18 Q. How often would you close the beach down and rent
19 it out to a private party?

20 A. It kind of varied. You know, there was times it
21 would happen more often. And then sometimes, it would go
22 quite a little while before we would do it. But, you know,
23 it was back and forth. There's just no figuring how or why
24 there would be another need. But whenever something like
25 that came up, we closed.

26 Q. And on the occasions when you closed the beach to

1 the public and made a business decision to rent it out to a
2 private party, did anyone from the Coastal Commission
3 approach you and tell you you couldn't do that?

4 A. No, no. There was nobody that ever questioned
5 us.

6 Q. Anyone from the County ever tell you you couldn't
7 do that?

8 A. No.

9 Q. Anyone from the County or the Coastal Commission
10 tell you that you needed a Coastal Development Permit to do
11 that?

12 A. No.

13 Q. And when you and your family were operating the
14 beach after the 19 -- after approximately 1990 -- is that
15 what you said, 1990?

16 A. Yeah. I believe he ran it -- see, we gave new
17 leases to the cabin owners at that time, negotiated a new
18 lease. And we took it over directly instead of Mr. Watt
19 doing it. We leased directly to cabin owners. He
20 continued running the beach for one year. I would say we
21 actually took it over in '92 about.

22 Q. Did you continue to enforce the rules that no
23 pedestrians were allowed to walk down the road?

24 A. Yes, we did. It's -- yeah. There's never been
25 anybody allowed to walk in. You create too big of a
26 nuisance and a problem. If we ever let it get started, it

1 would just develop and get worse. So we just never allowed
2 it to get started.

3 I don't know if we were more strict than the
4 previous owner or -- I mean, previous tenant or less. But
5 I don't think we were any less strict -- you know,
6 restrictive, because we watched it real close. Most
7 everybody didn't like the sound of a four wheeler coming.

8 Q. What do you mean by that, "the sound of a four
9 wheeler coming"?

10 A. Well, we had a little four wheeler that we used
11 as an off-road vehicle. There's only pretty much one way
12 to get down there is down that road. And if they did go
13 down the road, they can't go, you know, and get around us
14 anywhere, you know. And, plus, like I say, we had tenants
15 up there watching. We had cameras. If they would come
16 down that road, we were on them.

17 Q. And you would ask them to leave?

18 A. We would.

19 Q. You had mentioned that the business of charging
20 people access to the beach was in a decline over the years;
21 is that right?

22 A. It was, yeah.

23 Q. Was that one of the reasons why you sold the
24 property?

25 A. It was.

26 Q. Okay. Thank you.

1 A. You're welcome.

2 THE COURT: Alright. Cross-examination?

3 MR. BUESCHER: Yes, Your Honor.

4 CROSS-EXAMINATION BY MR. BUESCHER

5 BY MR. BUESCHER:

6 Q. Good morning, Mr. Deeney. My name is
7 Eric Buescher. I'm an attorney who represents the
8 Surfrider Foundation in this lawsuit. Please let me know
9 if you can't hear any of my questions, and I'll try and
10 speak up.

11 A. I may have to.

12 Q. Do you still have the photo of the gate that you
13 installed in front of you?

14 A. I do.

15 Q. And so I understand this, the old gate that had
16 been installed when you were a child, you completely
17 removed that gate; correct?

18 A. No. One half of it we removed. The other half
19 is still there. And, you know, it gives you an idea where
20 it was at. It's just east of where that -- where this gate
21 here is pictured.

22 Q. I appreciate that clarification.

23 The gate that is currently there, that's
24 reflected in that photograph, are both the north and south
25 halves of that gate, were they both installed in the early
26 '90s?

1 A. Right.

2 Q. And half of the old gate is there, just off to
3 the side?

4 A. Right. The other half fell over, so I had to
5 remove it.

6 Q. But the current gate, no part of it existed prior
7 to you installing it?

8 A. Possibly, the pin. In the north gate, the pin
9 that pins it to the ground there, I think there was a chain
10 off of the old one that lowered down that connected to
11 that. I'm not -- I kind of forget to be honest.

12 Q. And what do you mean by "the pin"?

13 A. Well, there's -- this north part is a swinging
14 gate. It swings in and out. It's hinged. It swings
15 around. And it has a drilled pin that goes through with
16 two things up in the side where a bolt goes through and
17 latches and keeps the bolt from coming up, so the gate
18 can't be removed or swung open.

19 Q. And I want to focus on the north half of the
20 current gate.

21 Is that portion of the current gate automated or
22 motorized?

23 A. No.

24 Q. The south half of the current gate, it slides
25 instead of swinging; correct?

26 A. Right.

1 Q. And is that portion motorized?

2 A. It is.

3 Q. And was it motorized when you installed it?

4 A. Yes.

5 Q. You mentioned that there were cameras both at the
6 gates and down on the beach; is that correct?

7 A. The cameras were -- one was at the gate. There
8 were two down where the road goes to the bottom road and
9 where it turns and goes up to the top road. There were two
10 down there. And then down closer to the bathrooms at the
11 bottom, we had a sensor. If people would walk through
12 there, a little buzzer would go off. It would clue us in
13 someone was passing. Quite often, we would go out, and it
14 was a cabin owner, something like that. It was no problem.
15 But if somebody walked in, it gave us plenty of time to get
16 to them.

17 Q. I want to make sure I understand.

18 There were three cameras plus a motion detector?

19 A. Right.

20 Q. Okay. The camera that was at the gate, is that a
21 video camera or a still photography camera?

22 A. You know, I don't remember much about it. I know
23 we had a camera there. But it was up on the post. It
24 wasn't very visible, you know. As far as -- you know, and
25 I don't know that it worked 100 percent of the time. But
26 just even having a camera there, made people less likely to

1 fool with your gate, if they saw something there.

2 Q. I appreciate that.

3 Do you know when the camera that was at the gate
4 was installed?

5 A. In the '90s -- probably -- probably mid '90s.

6 Q. After you built that current gate?

7 A. Right.

8 Q. Have you ever seen any photographs or video that
9 that camera took?

10 A. Back at the time, but not -- it's nothing we
11 kept.

12 Q. Do you know if that camera is still there?

13 A. No. No, it's gone.

14 Q. Do you know when it was removed?

15 A. I don't.

16 Q. Do you know if it was removed before you sold the
17 property?

18 A. I don't remember seeing it at that time, so I'm
19 guessing that it either was removed or fell down.

20 Q. And then the two cameras that are at where the
21 road turns, you're talking about Martins Beach Road goes
22 west toward the highway and then turns south; correct?

23 A. If you're driving down Martins Beach Road?

24 Q. Yes.

25 A. Yeah. It goes down, makes kind of a swing around
26 and then heads down to the beach. Well, just before the

1 bottom, it heads along the upper cabins, there was two
2 cameras there.

3 Q. And the same question. Do you know when those
4 cameras were installed?

5 A. Probably, early '90s.

6 Q. About the same time as the one at the gate?

7 A. Roughly. The one at the gate might have been
8 just a year or so after.

9 Q. Thank you, sir.

10 And, again, do you know if those were video or
11 still photography cameras?

12 A. I know they projected on a screen that we had
13 down at the store.

14 Q. And do you know if those cameras existed when you
15 sold the property?

16 A. I couldn't answer that for sure. I think they
17 existed. I wouldn't swear 100 percent that they were still
18 operational, but I kind of think if they were turned on,
19 yeah, that they would still be. But I can't swear to that.

20 Q. I appreciate that.

21 You mentioned that your family had leased the
22 beach to Ed Watt and his wife; correct?

23 A. Right.

24 Q. Do you know how long that the Watt family ran the
25 beach?

26 A. Ed Watts' dad started it up. He worked as a

1 blacksmith with my dad in Half Moon Bay. And my dad
2 suggested to him to come down for a weekend job to collect
3 cars at the beach. Maybe, you know, he could strike up a
4 little business there.

5 So that started in -- I believe he started it in
6 '22. Didn't move down there to live and run it 100 percent
7 of the time until '24. And then from then on, he
8 continued. That's when they built most of the cabins, back
9 in the '20s.

10 Q. I apologize.

11 A. Pardon me?

12 Q. I apologize. Go ahead.

13 A. Well, the last one that I know of, I think was
14 built, like, in the '50s.

15 Q. It's fair to say that the Watt family ran the
16 beach for about 70 years?

17 A. Close to it, yeah.

18 Q. And then your family ran it for -- between 15 and
19 20 after that?

20 A. Yeah.

21 Q. Do you surf, sir?

22 A. No.

23 Q. Have you ever?

24 A. No. I went after abalones in the ocean, but no
25 surfing. We went fishing, though.

26 Q. I appreciate that.

1 Were you ever asked -- let me back up.

2 Do you know Mr. Baugher, who is sitting in the
3 courtroom with us?

4 A. I do.

5 Q. Were you ever asked by Mr. Baugher when the
6 current gate was constructed?

7 A. I don't recall if he mentioned it or asked. I
8 don't know.

9 Q. Were you ever asked by any of the attorneys for
10 the LLC when the current gate was constructed?

11 A. I don't know that they did. We talked about the
12 building of it, but I didn't know nothing about -- I don't
13 think any question of how or when it was constructed.

14 Q. What do you mean when you say "we talked about
15 the building of it"?

16 A. That I had put that gate there.

17 Q. And when was that conversation, approximately?

18 A. Jeez, I guess a couple of weeks ago.

19 Q. You mentioned there was a store down on the
20 beach; correct?

21 A. Correct.

22 Q. And both the Watt family and then, eventually,
23 your family -- I believe your wife ran that store?

24 A. Yeah. My wife ran it from the time we took it
25 over.

26 Q. Were there also restrooms for the public on the

1 beach?

2 A. There was.

3 Q. Was the store open at the time you sold the
4 property?

5 A. Yeah. I believe it still was. Usually, only
6 summer months. The rest of the time, no. It was -- it was
7 closed more than it was open. But we did open in the
8 summer months when we had people come fishing.

9 Q. Do you know if the restrooms functioned at the
10 time that you sold the property?

11 A. I think pretty much so, yeah. They were, you
12 know, in need of repair, but they were, you know -- I
13 believe they were still working.

14 Q. Did you ever provide any instruction to the Watt
15 family about the hours of operation that they would run the
16 beach?

17 A. No.

18 Q. Are you aware of whether anyone in your family
19 did?

20 A. Not that I'm aware of, no.

21 Q. So they made that decision, as far as you know,
22 on their own?

23 A. As far as how and when they open and closed and
24 all of that?

25 Q. Correct.

26 A. Yes, they did. I don't know if I should add

1 this, but they actually closed -- had a shorter day than
2 what we did when we ran it.

3 Q. In terms of --

4 A. Hours.

5 Q. -- the hours?

6 A. Yeah.

7 Q. You mentioned that when your family ran the
8 beach, it was a seven-day-a-week job?

9 A. For sure.

10 Q. Does that mean that the beach was open seven days
11 a week?

12 A. Not always, no.

13 Q. More often than not?

14 MR. ESSNER: Objection. Vague.

15 THE COURT: The objection is overruled.

16 THE WITNESS: It was open more than it was not
17 open, yes. On occasion, it was shut down completely as
18 well, though.

19 Q. (By Mr. Buescher) Did you ever close the beach
20 permanently?

21 A. How do you define "permanently"?

22 Q. Did you ever make a decision that you were going
23 to close the beach and no longer allow the public to enter?

24 A. No, we did not.

25 Q. And you indicated that there was some diehards
26 that would come down for the love of the beach; correct?

1 A. Some of our fisherman, yes.

2 Q. Is it fair to say that there were people who
3 treasured Martins Beach and would come there?

4 A. Treasured it? The fishing, probably.

5 Q. And you -- both you, and the Watt family before
6 you, provided this service to the public so that they could
7 use this beach?

8 A. Yeah, we provided access.

9 Q. With respect to the times that the beach was open
10 or closed, are you aware of any written documents that
11 reflected the hours of operation?

12 A. There were no written documents.

13 Q. Was there any written policy reflecting when
14 access would or would not be provided?

15 A. No.

16 Q. Do you know if there was anything in writing that
17 reflected that people were not allowed to walk down
18 Martins Beach Road?

19 A. On one of our signs, we had written on it, "No
20 Walk-ins."

21 Q. Where was that sign?

22 A. Up by the highway, up close to the road.

23 Q. Was it on the gate itself?

24 A. I don't know if it was on the gate or posted,
25 like, maybe that first post right past, but it was right
26 close. It was visible from the gate area.

1 Q. You mentioned that a couple of times the Sheriff
2 came down to the property when there was a dispute with
3 somebody who was there; correct?

4 A. Uh-huh.

5 Q. Did you ever file charges against any individual
6 for trespassing on the property?

7 A. We never needed to, no.

8 Q. Are you aware of whether the County ever
9 prosecuted an individual for trespassing on the property?

10 A. I don't believe for trespassing. There could
11 have been a disturbance a time or two.

12 Q. What do you mean by "disturbance"?

13 A. Well, somebody on the beach getting into a tussle
14 with somebody else. I don't know what took place in those
15 days. It wasn't during the time that we ran it.

16 Q. But during the time that you ran the beach, from
17 1992 or so until the sale, you never filed charges against
18 anyone for trespassing?

19 A. No. We did -- through the Farm Bureau, they gave
20 us citations for -- in case somebody was trespassing on the
21 property. I put one of those on a car one time.

22 Q. A trespassing citation?

23 A. Yeah.

24 Q. On a car that had parked on the beach?

25 A. No, up at the highway. I don't know that they
26 were on the property, but I put it there anyway to kind of

1 deter them from ever thinking it, that they could go in. I
2 don't know that the County followed up on those. I don't
3 know how valuable, you know, they were.

4 Q. Fair enough.

5 And during the winter months when -- let's start
6 with the time that your family ran the property -- the
7 beach was open to the public sometimes?

8 A. On and off, yeah.

9 Q. But you didn't close it for the entire winter?

10 A. Entire winter, no.

11 Q. Have you been to the property recently?

12 A. I go down there almost everyday. Well, I
13 shouldn't say, "everyday." Probably, three days a week.

14 Q. And do you go down the road?

15 A. I go as far as the water system. The old
16 railroad tracks across at the end of the first
17 straightaway, they go to the north and south.

18 Q. You go past the gate?

19 A. Oh, yes.

20 Q. The sun -- I apologize.

21 A. Oh, I'm sorry.

22 I also, you know, watch the fields, as we always
23 have, because I don't want people going out into the fields
24 and messing up our farm crops.

25 Q. Are the crops that are grown at Martins Beach
26 your family's property?

1 A. The crop itself, yes.

2 Q. Are you aware as to whether the signs that are
3 just past the gate that you described, the one that used to
4 say, "No Walk-ins," for example, of whether those signs
5 still exist now?

6 A. You know, I don't know. I'm not sure. I kind of
7 don't watch it the way I used to. My son kind of watches
8 over and manages it. If I see something kind of out of
9 line, I always try to inform them. But I try not to get
10 too involved in it. I don't want to say the wrong thing.

11 Q. I just want you to be honest with me.

12 A. Sure.

13 Q. You mentioned that you used to get large crowds
14 down at the beach sometimes as well; correct?

15 A. Uh-huh.

16 Q. That would be for fishing or certain times when
17 the surf was very good?

18 A. Usually, the large crowd days were, I would say,
19 on holiday weekends, like 4th of July. The fishing thing
20 depleted considerably. There was never, when we had it,
21 large crowds from fishing crowds, which -- the history of
22 the beach is the fishing part of the beach. That's what
23 people wanted to go there for.

24 Q. Going back all the way to the 1920s?

25 A. Yeah.

26 Q. And you mentioned that periodically you would

1 close for private events and that sort of thing?

2 A. Right.

3 Q. What kind of events are we talking about?

4 A. Oh, there were parties, like organizations that
5 had parties there. We closed for those. There were
6 occasions that a family member who was watching it at the
7 time couldn't watch it, and we would close for that period.
8 If I was gone, and -- anytime something didn't, you know,
9 work out good for us to have people watching, we would just
10 lock it up for the day.

11 Q. But it was always your intention to reopen it to
12 the public?

13 A. Yeah. We usually always reopened back
14 eventually, you know -- I mean, at the end of whatever the
15 reason for closing was.

16 Q. So somebody may rent it out for a Friday
17 afternoon party or that evening, but then that weekend, it
18 would be reopened?

19 A. Yes.

20 MR. BUESCHER: I have no further questions.

21 THE COURT: Thank you.

22 Redirect?

23 MR. ESSNER: Just a couple of quick questions.

24 REDIRECT EXAMINATION BY MR. ESSNER

25 BY MR. ESSNER:

26 Q. Did you ever have occasion to have cars towed

1 that were parked at Martins Beach, if they didn't pay the
2 admission fee?

3 A. Right. We did -- we had it posted for -- with a
4 local towing company's number. And, you know, I forget
5 exactly what it said, but, if your car has been towed,
6 please contact whatever the company's name was. But we had
7 several towed through the years.

8 Q. So if they didn't pay, they would get towed?

9 A. Right.

10 (Defendants' Exhibit No. 148 Was Marked For
11 Identification.)

12 MR. ESSNER: And let me ask you to turn to
13 Exhibit 148.

14 MS. YOB: May I approach, Your Honor.

15 THE COURT: Yes.

16 MR. BUESCHER: I'm going to object, Your Honor.
17 This document was not produced to us during discovery. It
18 was produced in other litigation. They've had it for a
19 substantial amount of time. The first time we saw it was
20 when they disclosed their exhibit list the day of trial.

21 THE COURT: Your response?

22 MR. ESSNER: This document is available on Web
23 pages, and it's a publicly-available document.

24 MR. BUESCHER: We produced several photos that
25 were publicly available on Web pages. We have never seen
26 this document before trial.

1 THE COURT: So the issue is: Why didn't you
2 produce it?

3 MR. ESSNER: I didn't know it existed until I did
4 the Web search.

5 MR. BUESCHER: Your Honor, it has a Bates stamp
6 FMB-31. That's Friends of Martins Beach. That's the other
7 litigation that Ms. Essner and Ms. Yob represent the
8 defendants in.

9 MR. ESSNER: I don't see any Bates stamp.

10 THE COURT: I don't either.

11 MR. BUESCHER: In the lower right-hand corner of
12 the bottom right parking pass, it says FMB-31.

13 THE COURT: Mine just says, "Defendants'
14 Exhibit." Anyway, okay.

15 MR. BUESCHER: Will you agree with me that it's
16 Bates stamped?

17 MR. ESSNER: I didn't see it. I agree with you.

18 THE COURT: So any further response?

19 MR. ESSNER: No. I think it should be admitted.

20 THE COURT: Alright. Well, no. The Court is
21 going to deny that request.

22 MR. ESSNER: Would the Court allow me to ask
23 questions about this?

24 THE COURT: Yes, you can.

25 MR. ESSNER: Thank you.

26 Q. (By Mr. Essner) When a car entered the property

1 and they paid their fee, were they given some sort of
2 piece of paper to place on their windshield to indicate
3 that they had paid?

4 A. Right. The guest -- at the bottom, we usually
5 had multiple-colored parking tickets we would use, and we
6 would trade them off certain days. And a lot of times,
7 they would be dated, so we knew it was good for that date.
8 I mean, occasionally, somebody would try to come in and
9 falsify one, but it's not something that works. But we
10 always gave them tickets -- entry tickets.

11 Q. And the tickets had a coloring system, so, for
12 example, on a certain day, you would give out red tickets
13 and then on a different day, you would give out a different
14 color?

15 A. Right. It made it easy to spot, you know. If
16 they came in, we could tell which color and whether it was
17 current.

18 Q. And were the licensees, the people paying the
19 money to come onto the beach, were they told to display the
20 ticket on their dashboard?

21 MR. BUESCHER: Objection. Legal conclusion as to
22 "licensees."

23 THE COURT: Restate the question, please.

24 Q. (By Mr. Essner) The people that paid the money
25 to come onto the beach for the day, were they told to
26 place the ticket on their dashboard?

1 A. Yeah. We preferred they put it on their
2 dashboard instead of putting it under the windshield wiper,
3 because it's too easy for somebody to grab it and hand it
4 off or whatever.

5 Q. If the car didn't have the ticket displayed, it
6 was at risk of being towed?

7 A. Correct.

8 Q. And you did tow cars?

9 A. Oh, yes.

10 Q. Frequently?

11 A. It varied. We would run in streaks. Sometimes
12 you wouldn't have a problem for a long time. Pretty soon,
13 you would get a few.

14 Q. When you sold the property to my client, were
15 there any contents inside the store, do you recall?

16 A. I don't believe very much. I think we cleaned
17 the place out pretty much. I don't know. There might have
18 been an old stove or something.

19 MR. ESSNER: Thank you.

20 MR. BUESCHER: Nothing further, Your Honor.

21 THE COURT: I will indicate that I do see about,
22 I would say, two inches from the bottom there, there's the
23 FMB-31. So I do see that.

24 MR. BUESCHER: Thank you, Your Honor.

25 THE COURT: Thank you, sir. You may step down.

26 THE WITNESS: That does it?