

In the Name of the State of Texas.

To all to Whom These Presents Shall Come, Know Ye,

I, O. B. Colquitt, Governor of the State aforesaid, by virtue of the power vested in me by Law, and in accordance with the Laws of said State, in such case made and provided, do, by these presents, Grant to The United States Government ~~two~~ or assigns, Forever, Six Hundred and Fifty-eight (658) Acres of Land, situated and described as follows: In Galveston County,

Being the entire northerly end of Galveston Island, about 2 1/2 miles N. 35 E. from the City of Galveston. By virtue of an act of the Legislature of the State of Texas approved March 11, 1911, ceding, granting and transferring said land to the United States Government. Beginning at a point in the S. Bdry. of the Fort San Jacinto Military Reservation, marked by a drift bolt in the center of the shore branch of the Galveston South Jetty at Station 69+82.6 of said jetty whence Fort Point Light House has N. 35 27 35 E. S. 179.3 ft. Thence N. 82 W. along the S. Bdry. and its extension westerly to the easterly harbor line of Galveston Channel as established by the United States. Thence northerly along said harbor line, including all accretions and all tide lands of the State of Texas westerly of said harbor line and contiguous thereto, to the intersection with a line parallel with the center line of the Galveston South Jetty and 100 ft. northwesterly therefrom; then north-easterly, and easterly along said line parallel with the center line of the said jetty and 100 ft. distant therefrom, and along the extension of said parallel line, to a point whence a line drawn southerly at right angles to the eastern end of said parallel line, will pass 100 ft. easterly to the base of the end of the jetty, including all accretions and all tide lands of the State of Texas northwesterly and northerly of said parallel line and the extension described, and contiguous to said line and its extension. Thence southerly along said line drawn at right angles, and passing 100 ft. easterly of the base of the end of the jetty 200 ft., including all accretions and all tide lands of the State of Texas easterly of said line and contiguous thereto. Thence westerly along a line parallel with the center line of said jetty and 100 ft. southerly therefrom to low water line of the Gulf of Mexico, including all accretions and all tide lands of the State of Texas southerly of said parallel line and contiguous thereto. Thence southwestly along said low water line, including all accretions and all tide lands of the State of Texas easterly thereof, to the South Bdry. of the said U. S. Military Reservation. Thence N. 82 W. along the said boundary to the place of beginning.

Galveston Scrip.

File 103.

Hereby relinquishing to the said United States Government ~~and~~ or assigns Forever, all the right and title in and to said Land, heretofore held and possessed by the said State, and I do hereby issue this Letter Patent for the same.

IN TESTIMONY WHEREOF, I have caused the Seal of the State to be affixed, as well as the Seal of the General Land Office.

Done at the City of Austin, on the Twenty-eighth day of June in the year of our Lord one thousand nine hundred and Twelve.

Seal.

Seal.

J. H. Walker, Chf. Clk + Acty. Commissioner of the General Land Office.

O. B. Colquitt, Governor.

Galveston Co. Sk. File 53

6-27-1912

1338-804-1m.

File

103

Galveston
County

Ab 662

Galveston Scrip

" United States of
America "

658 acres
The entire northern
end of Galveston
Island ceded to the
United States by the
State of Texas.

Act March 16th 1911.

Correct on map of
Galveston County for
658 acres June 27/1912
S. von Rosenberg

Print to Original
6/27/12 Whitcomb

Patented June 28, 1912.

no. 47. 5039.

Shaler.

M&Ptd on Reg
Mgl. 100869

atoh vol. 35

Map - 7-6-12
O.O.T.

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No. 1. Certificate.

No. 2 & 3. Field Notes.

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No fees chargeable
6/27/12.

Pat form to Lock
McDaniel 7/1/12

DESCRIPTION OF AREA FOR WHICH PATENT IS DESIRED.

about 2 1/2 miles N 35° E from the city of Galveston

The entire northerly end of Galveston Island and all tide lands of the State of Texas adjacent thereto, lying northerly of the south boundary of the Fort San Jacinto U. S. Military reservation as hereinafter described, extended easterly to the Gulf of Mexico and westerly to the easterly harbor line of Galveston channel as said harbor line now exists or as it may hereafter be amended by the United States, and including the site of the Galveston South jetty, the more specific description of said tract being as follows:

Beginning at a point in the said south boundary of the Fort San Jacinto Military Reservation, marked by a drift bolt in the center of the shore branch of the Galveston South Jetty at station 69+02.6 of said jetty, whence Fort Point Light House bears N. 35° 27' 35" E. 3,179.3 feet; thence N. 82° W., along the said south boundary and its extension westerly, to the easterly harbor line of Galveston Channel as established by the United States; thence northerly along said harbor line, including all accretions and all tide lands of the State of Texas westerly of said harbor line and contiguous thereto, to the intersection with a line parallel with the center line of the Galveston South Jetty and 100 feet northwesterly therefrom; then northeasterly, and easterly along said line parallel with the center line of the said jetty and 100 feet distant therefrom, and along the extension of said parallel line, to a point whence a line drawn southerly at right

angles to the eastern end of said parallel line, will pass 100 feet easterly to the base of the end of the jetty, including all accretions and all tide lands of the State of Texas northwesterly and northerly of said parallel line and the extension described, and contiguous to said line and its extension; thence southerly along said line drawn at right angles, and passing 100 feet easterly of the base of the end of the jetty 200 feet, including all accretions and all tide lands of the State of Texas easterly of said line and contiguous thereto; thence westerly along a line parallel with the center line of said jetty and 100 feet southerly therefrom, to low water line of the Gulf of Mexico, including all accretions and all tide lands of the State of Texas southerly of said parallel line and contiguous thereto; thence southwesterly along said low water line, including all accretions and all tide lands of the State of Texas easterly thereof, to the south boundary of the said U. S. Military Reservation; thence N. 82° W. along the said boundary to the place of beginning. *Containing 658 acres*

The coordinates of the point of beginning, with respect to the origin, the flagstaff of the Hendley Building, City of Galveston, are North 7,770.3 feet and East 5,918.0 feet.

All bearings are referred to the true meridian.

State of Texas,)
County of Galveston,)

I, R. M. SIAS, County Surveyor for Galveston County, Texas, do hereby certify that the foregoing survey was made by me in accordance with the requirements of Article 4144 of the Revised Statutes of the State of Texas, as follows:-

First: The land is situated in the County of Galveston, in the State of Texas.

Second: The survey was made under authority and by virtue of Senate Bill 121, of the State of Texas, approved March 16, 1911.

Third: The said field notes show the calls and connections for identification, clearly, in varas.

Fourth: That the blue print attached to said field notes shows the location of the land surveyed with reference to adjoining lands and channels, clearly.

Fifth: The magnetic variation was 7° 32' E

Sixth: In making the foregoing survey the chain was carried by Mr. Harry Robinson and Mr. J. J. Simmler

Seventh: The survey was made on the tenth day of March, 1911.

Eighth: The survey was made in the field on the ground according to law, and the field notes of same are duly recorded in the office of the County Surveyor of said Galveston County, in Book H, page 110.

Witness my hand this tenth day of March, 1911.

R. M. Sias
County Surveyor, Galveston County,
Texas.

General Land Office

J. T. ROBISON, COMMISSIONER
J. H. WALKER, CHIEF CLERK

AUSTIN, TEXAS, July 1 1954

Jack M. Daniel
Houston, Texas

Dear Sir:

Enclosed find patent for land in *Galveston* County,
issued to *United States Government*
Patent No. *47*, Vol. *39* Class *Scip*

Respectfully

Yours truly,

J. T. Robison
Commissioner.

the original papers in each case, to the county clerk of said county, and the said county clerk shall file the same and enter said cases on the respective dockets for trial by said court.

SEC. 9. The said court shall also have the power to hear and determine all motions against sheriffs and other officers of the court for failure to pay over moneys collected under the process of said court or other defalcation of duty in connection with such process, and shall have power to punish by fine not exceeding one hundred dollars, and by imprisonment in the county jail not exceeding three days, any person guilty of contempt of said court, and shall also have all other powers and jurisdiction conferred on county courts by the Constitution and general laws of this State.

SEC. 10. The terms of said court shall commence on the fourth Monday in February, and on the fourth Monday in May, and on the fourth Monday in August, and on the fourth Monday in November of each year, and shall continue in session for each term until the business may be disposed of; provided that the county commissioners court of said county may hereafter change the terms of said court whenever it may be deemed necessary.

SEC. 11. All laws and parts of laws in conflict with this Act be, and the same are hereby expressly repealed in so far as they relate to Oldham county.

SEC. 12. The importance of the passage of this measure to the people of Oldham county creates an emergency and an imperative necessity that the Constitutional rule requiring bills to be read on three several days in each House be suspended, and they are hereby suspended, and that this Act take effect from and after its passage, and it is so enacted.

Approved March 16, 1911.

Becomes a law ninety days after adjournment.

TRANSFER OF LANDS—PROVIDING FOR THE TRANSFER
OF CERTAIN TIDE-WATER LANDS IN GALVESTON
COUNTY, TEXAS, TO THE UNITED STATES
GOVERNMENT FOR A MILITARY
RESERVATION.

S. B. No. 121.]

CHAPTER 71.

An Act to grant and transfer to the United States Government land belonging to the State of Texas, situated on Galveston Island, in Galveston county, Texas, comprising what is known as the Fort San Jacinto Military Reservation, on which to locate, construct and maintain a military post and fortification, and to grant, cede and transfer to said United States Government the tide lands in front of and all future accretions and accumulations to all of said lands; and for the cession by the State of Texas to the United States Government of jurisdiction over all such lands or the accretions thereto, or the accumulations thereof.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. That so much of the land belonging to the State of Texas, in amount nine hundred and seventy-eight acres more or

less, situated on Galveston Island, in Galveston county, of said State, described as follows:

The entire northerly end of Galveston Island and all tide lands of the State of Texas adjacent thereto, lying northerly of the south boundary of the Fort San Jacinto United States Military Reservation as hereinafter described, extended easterly to the Gulf of Mexico and westerly to the easterly harbor line of Galveston channel as said harbor line now exists, or as it may hereafter be amended by the United States, and including the site of the Galveston south jetty, the more specific description of said tract being as follows:

Beginning at a point in the said south boundary of the Fort San Jacinto Military Reservation, marked by a draft bolt in the center of the shore branch of the Galveston south jetty at Station 69, plus 02.6 of said jetty, whence Fort Point light house bears N. 35 degrees 27 minutes 35 seconds E. 3179.3 feet; thence No. 82 degrees W., along the said south boundary and its extension westerly, to the easterly harbor line of Galveston channel as established by the United States; thence northerly along said harbor line, including all accretions and all tide lands of the State of Texas, westerly of said harbor line and contiguous thereto, to the intersection with a line parallel with the center line of the Galveston south jetty and 100 feet northwesterly therefrom; thence northeasterly and easterly along said line parallel with the center line of the said jetty and 100 feet distant therefrom, and along the extension of said parallel line, to a point whence a line drawn southerly at right angles to the eastern end of said parallel line, will pass 100 feet easterly of the base of the end of the jetty, including all accretions and all tide lands of the State of Texas northwesterly and northerly of said parallel line and the extension described, and contiguous to said line and its extensions; thence southerly along said line drawn at right angles, and passing 100 feet easterly of the base of the end of the jetty 200 feet, including all accretions and all tide lands of the State of Texas easterly of said line and contiguous thereto; thence westerly along a line parallel with the center line of said jetty and 100 feet southerly therefrom, to low water line of the Gulf of Mexico, including all accretions and all tide lands of the State of Texas southerly of said parallel line and contiguous thereto; thence southwesterly along said low water line, including all accretions and all tide lands of the State of Texas easterly thereof, to the south boundary of the said United States military reservation; thence N. 82 degrees W. along the said boundary to the place of beginning.

The co-ordinates of the point of beginning, with respect to the origin, the flagstaff on the Hendley building, city of Galveston, and North 7770.3 feet and East 5918.0 feet. All bearings are referred to the true meridian.

Be and the same is hereby ceded, granted and transferred to the United States Government, on which to locate said fortifications, forts, barracks and other necessary buildings.

SEC. 2. That the United States Government engineer, in charge of the improvements at the harbor of Galveston, shall furnish a plat and field notes of said land ceded and granted by this Act to the United States Government to the Commissioner of the General Land Office

of the State of Texas, giving the correct location of the said land, with the number of acres contained in said field notes; after the said Commissioner has received and has examined the said plat and field notes and found them correct, he shall issue a patent to the United States Government for the amount of land designated in said field notes, and the Governor of the State of Texas is hereby authorized to sign said patent, ceding, granting and transferring said land to the United States Government. Provided, that the tide lands in front of and all future accretions and accumulations, as the result of nature, and resulting from the works for the improvements and defense of the said harbor, to all lands acquired by the United States Government under this Act, are hereby ceded and granted to the United States Government.

SEC. 3. Whenever the United States shall acquire any lands in this State for any of the purposes authorized by this Act, and in the manner authorized by this Act, and shall desire to acquire constitutional jurisdiction over such lands for said purposes, it shall be lawful for the Governor of this State, in the name and in behalf of the State, to cede to the United States exclusive jurisdiction over any lands so acquired when application may be made to him for that purpose accompanied by the patent from the State of Texas authorized to be issued by this Act.

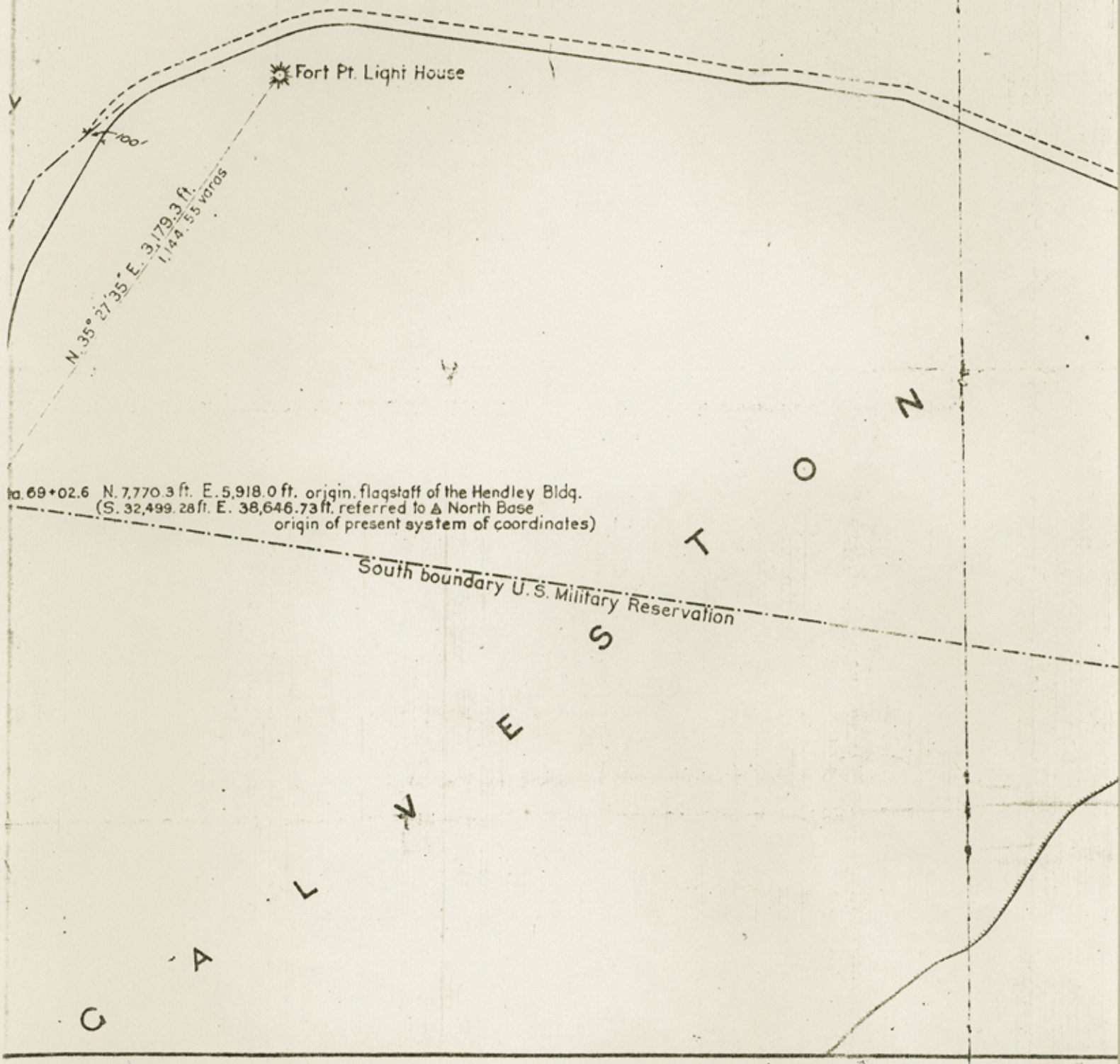
SEC. 4. No such cession or jurisdiction shall ever be made except upon the express condition that the State of Texas shall retain concurrent jurisdiction with the United States over the lands so ceded, and every portion thereof, so far that all process, civil or criminal, issuing under the authority of this State, or of any of the courts or judicial officers thereof, may be executed by the proper officers of this State upon any person amenable to the same within the limits of the lands so ceded in like manner and with like effect as if no such cession has taken place, and such condition shall be always inserted in any instrument of cession under the provisions of this Act.

SEC. 5. The United States shall be secure in their possession and enjoyment of all lands acquired under the provisions of this Act, and such lands and all improvements thereon shall be exempt from any taxation under the authority of this State so long as the same are held, owned, used and occupied by the United States for the purposes expressed in this Act, and not otherwise.

SEC. 6. The provisions of this Act shall not be construed to in any manner affect the title or claim of persons holding under the grant to Juan Seguin or the patent issued to M. B. Menard or the patents issued to W. A. A. Wallace for lands covered by the provisions of this Act. This Act shall in no way give effect to or validate any invalid or void claim, grant or patent to any of the land and accretions thereto on the island of Galveston, Texas, herein provided to be patented to the United States Government.

Approved March 16, 1911.

Becomes a law ninety days after adjournment.



Fort Pt. Light House

N. 35° 27' 35" E. 3,179.3 ft.
1,144.55 varas

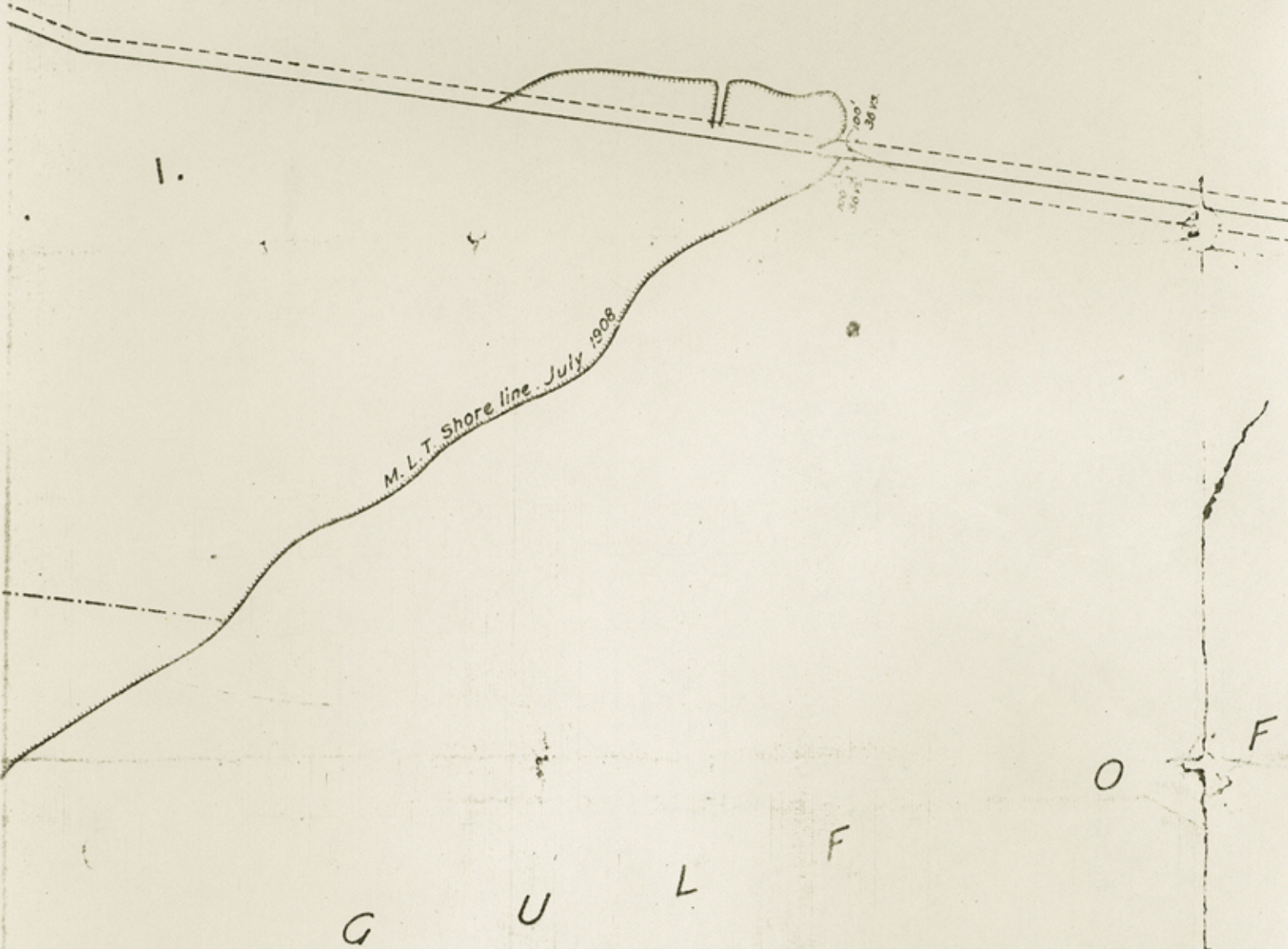
to 69°02.6 N, 7,770.3 ft. E. 5,918.0 ft. origin, flagstaff of the Hendley Bldg.
(S. 32,499.28 ft. E. 38,646.73 ft. referred to Δ North Base
origin of present system of coordinates)

South boundary U.S. Military Reservation

C
A
L
T
O
N

True Meridian

Beginning at a point in the South boundary of the Fort San Jacinto
by a drift bolt in the center of the shore branch of the Galveston
Fort Point Light House bears N. 35° 27' 35" E. $\left. \begin{array}{l} 1144.55 \text{ var.} \\ 3179.3 \text{ Ft.} \end{array} \right\}$ thence N. 82°
its extension westerly to the easterly harbor line of Galveston Channel
thence northerly along said harbor line, including all accretions or
recessions westerly of said harbor line and contiguous thereto, to the intersected
line of the Galveston South Jetty and 100 feet northwesterly therefrom
along said line parallel with the center line of the said jetty and
the extension of said parallel line, to a point whence a line drawn
at an angle of 36° westerly of the base of said parallel line will pass
100 feet easterly of the base of said parallel line and
all tide lands of the State of Texas northwesterly
of the extension described, and contiguous to said line and its



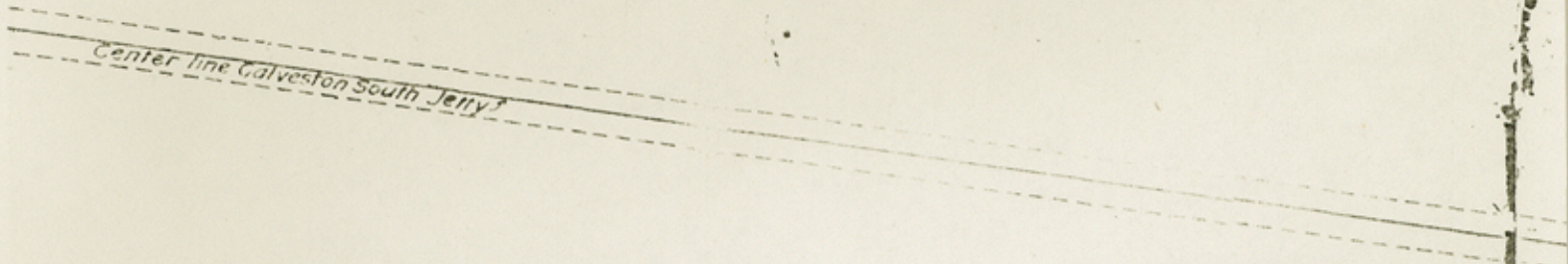
Counter 23537

-DESCRIPTION-

Galveston Military Reservation, marked
 South Jetty, at station 69+02.6, whence
 0° W. along the said south boundary and
 as established by the United States;
 and all tide lands of the State of Texas
 adjacent with a line parallel with the center
 line; then northeasterly and easterly
 36 Var. distant therefrom, and along
 90 feet southerly at right angles to the eastern
 of the end of the jetty, including all
 and northerly of said parallel line
 its extension; thence southerly along

said line drawn at right angles, and passing 36 Var. easterly of
 90 feet, including all accretions and all tide lands of the State of
 contiguous thereto; thence westerly along a line parallel with the center
 southerly therefrom, to low water line of the Gulf of Mexico, including
 the State of Texas southerly of said parallel line and contiguous thereto
 low water line, including all accretions and all tide lands of the State
 south boundary of the said U.S. Military Reservation; thence N. 82° W. to
 beginning.

The coordinates of the point of beginning with respect to the origin
 City of Galveston, are North 7,770.3 feet and East 5,918.0 feet, and
 the present system of coordinates, S. 32° 43' 28" and E. 38,646.73 feet.
 All bearings are referred to the true meridian.

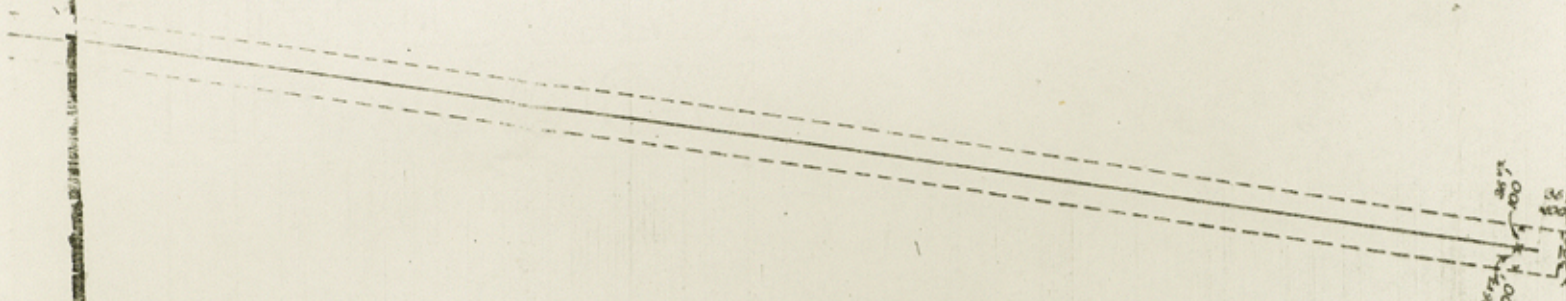


M E X I C O EASTERN
 SHOWING AREA

Coventry 123538

sterly of the base of the end of the jetty
Stat. of Texas easterly of said line and
with the center line of said jetty and $\left. \begin{matrix} 36 \text{ feet} \\ 100 \text{ feet} \end{matrix} \right\}$
including all accretions and all tide lands of
roads hereto, thence southwesterly along said
of the State of Texas easterly thereof, to the
N. 82° W. along the said boundary to the place

the origin, the flagstaff of the Hendley Building,
ref. and from Δ North Base, the origin of
46.73' el.



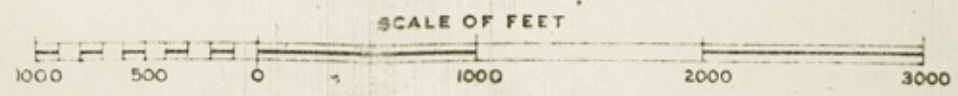
STERLY END OF GALVESTON ISLAND

ARE FOR WHICH PATENT IS DESIRED FROM THE STATE OF TEXAS

Drawn under the direction of

MAJOR EARL I. BROWN, CORPS OF ENGRS. U. S. ARMY

April 1912



5-2-16

Counter 23539

NO. 97,893

GALVESTON EAST BEACH, INC. | IN THE DISTRICT COURT OF
V. | GALVESTON COUNTY, TEXAS
THE STATE OF TEXAS | 10TH JUDICIAL DISTRICT

J U D G M E N T

H. H. TREACCAR
Clerk District Court
Filed
JUN 5 1964
Galveston County Texas
By *Alice Campbell*
Deputy

21/
384-387 Galveston Co. Rld. Sk. 53

counter 23540

GALVESTON EAST BEACH, INC.
V.
THE STATE OF TEXAS

IN THE DISTRICT COURT OF
GALVESTON COUNTY, TEXAS
10TH JUDICIAL DISTRICT

J U D G M E N T

On the 24th day of March, 1964, came on to be heard the above styled and numbered cause, and came the Plaintiff, Galveston East Beach, Inc., by its attorneys, Owen D. Barker and Robert G. Coltzer, of the firm of Barker, Barker and Coltzer, and Griffith D. Lambdin, of the firm of Armstrong, Bedford and Lambdin, and came the Defendant, The State of Texas, and the Attorney General of Texas, by Ben M. Harrison and J. Arthur Sandlin, Assistant Attorneys General of Texas, and Jules Damiani, Jr., Criminal District Attorney of Galveston County, Texas, representing the State of Texas and the public, pursuant to authority granted by Article 5415d, Vernon's Texas Civil Statutes, and such other authority as may be afforded by law, and a jury having been waived, the parties, plaintiff and defendant, announced ready for trial, and the court, after reading the pleadings and hearing the evidence and argument of counsel, is of the opinion and finds that plaintiff is the owner in fee simple of a good and indefeasible title, subject to the easement hereinafter mentioned, to all the land known and referred to as the 384 acre tract described in the deed from the United States of America to Plaintiff dated September 24, 1959, recorded in Book 1339, pages 44 to 47, inclusive, Deed Records of Galveston County, Texas, and accretions thereto, which land is more fully described ^{as follows:} ~~in Exhibit A~~

~~(attached hereto and hereby expressly made a part hereof),
and the court further finds that the plaintiff's land aforesaid fronts upon the Gulf of Mexico for a distance of two)~~

Deleted
6-4-64
D.M.M.
Judge.

The following described tract or parcel of land in Galveston County, Texas, being part of a tract of land conveyed to the United States Government by Maco Stewart by deed dated May 11, 1917, which deed is recorded in Book 303, pages 265-266, Deed Records of Galveston County, Texas, said tract formerly being part of the Fort San Jacinto Reservation, and further described by metes and bounds and courses and distances as follows:

Start at a point in the South boundary of the Fort San Jacinto Military Reservation marked by a drift bolt in the center of the shore branch of the Galveston South Jetty at Station 69 plus 02.6 whence the former Fort Point Lighthouse bears North $35^{\circ} 27' 35''$ East 3179.3 feet (1144.55 varas);

Thence, parallel with the numbered streets in the City of Galveston, Texas, approximately South $16^{\circ} 43' 09''$ East to the Southeasterly boundary of the Galveston seawall right of way, said Southeasterly boundary line being parallel to and 225 feet perpendicular distance on the seaward side from the center line of the top of the seawall structure, which center line is 2 feet 6 inches landward of the seaward edge of said top of the seawall structure, for the place of beginning of this description;

Thence, continuing South $16^{\circ} 43' 09''$ East to the high water line on the shore of the Gulf of Mexico;

Thence, Northerly and Easterly with the meanders of the said high water shore line of the Gulf of Mexico, to the intersection of this line with the present South boundary of a tract of land deeded to the United States of America by the Galveston City Company by Special Warranty Deed dated March 17, 1898, which deed is recorded in Vol. 245, page 187, Deed Records of Galveston County, Texas;

Thence, with the said South boundary of the said tract North 82° West to a point 1400 feet South 82° East of the Southeasterly right-of-way boundary of the Galveston seawall, said Southeasterly boundary line being parallel to and 225 feet perpendicular distance on the seaward side from the center line of the top of the seawall structure, which center line is 2 feet 6 inches landward of the seaward edge of said top of the seawall structure;

Thence, South $27^{\circ} 09'$ West parallel to the Galveston seawall a distance of 4400 feet;

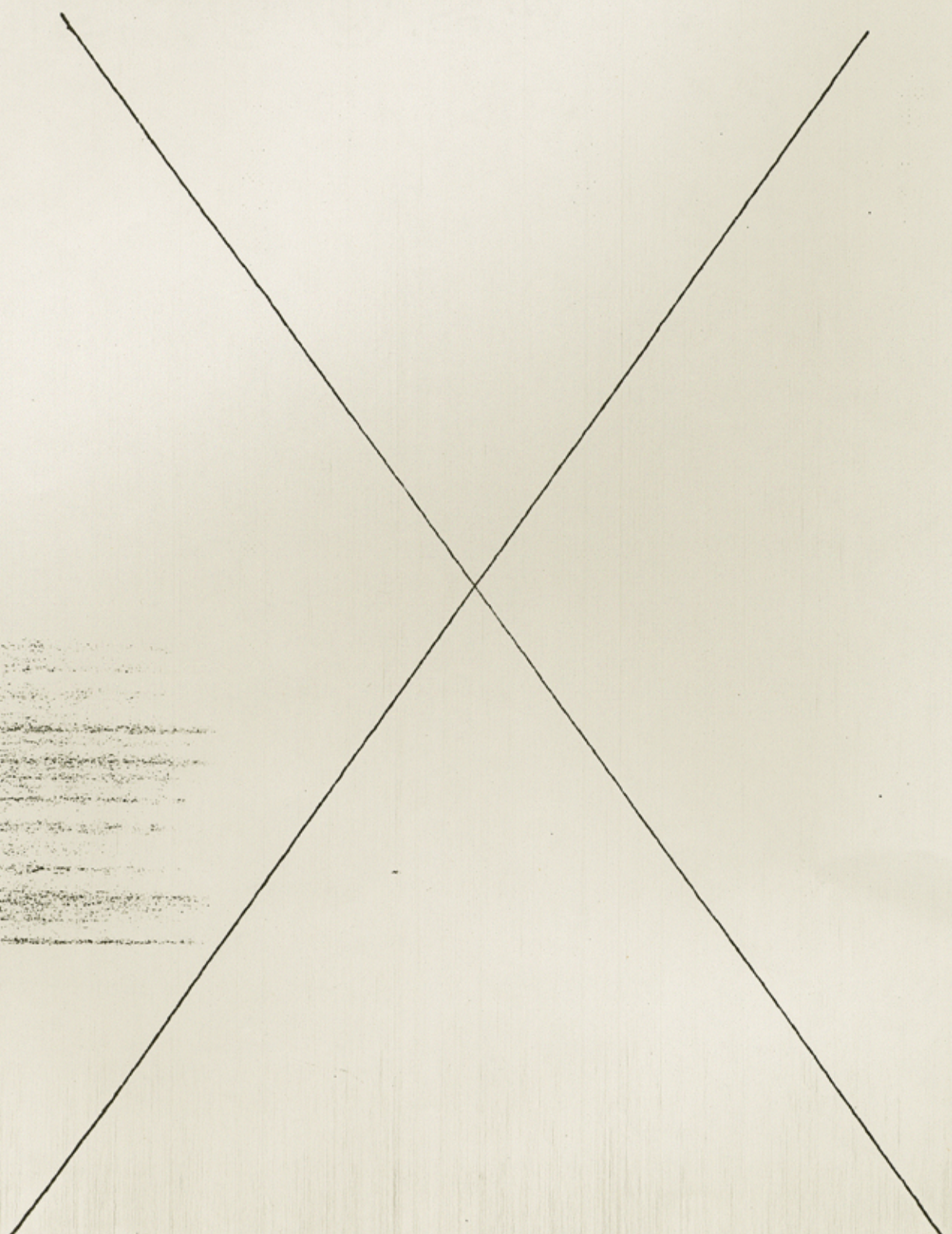
Thence, North 82° West a distance of 1400 feet, more or less, to the Southeasterly right-of-way boundary of the Galveston seawall, said Southeasterly boundary line being parallel to and 225 feet perpendicular distance on the seaward side from the center line of the top of the seawall structure, which center line is 2 feet 6 inches landward of the seaward edge of said top of the seawall structure;

Thence, South $27^{\circ} 09'$ West with the Southeasterly boundary of said seawall right of way 1100 feet, more

or less, to an angle point in said seawall right-of-way boundary;

Thence, continuing along the said seawall right-of-way boundary South 35° 21' West 1500 feet, more or less, to the point of beginning together with the Government's interest in and to the land between the said high water shore line and the low water shore line extending from the most Southerly boundary, extended, to the most Northerly boundary, extended, of the above described tract, including all future accretions and accumulations as a result of nature, or the construction of public works for the improvement and defense of the Harbor, and containing 384 acres, more or less.

and the court further finds that the plaintiff's land aforesaid fronts upon the Gulf of Mexico for a distance of two



miles, more or less, and that the public owns an easement upon and over the beach area on the said seaward border of said land, running from the line of mean low tide to the line of vegetation, which beach area shall now and hereafter be taken to be a strip along the seaward side of the said land at all times adhering to the shore, extending from the line of mean low water (as it may exist from time to time taking into account changes therein caused by the natural processes of accretion and erosion) inland a distance of three hundred fifty (350) feet at all points along the Gulf of Mexico boundary line of plaintiff's said land; and the court further finds that defendant is entitled to a permanent injunction against plaintiff prohibiting the barricading of the beach area aforesaid and ordering the removal at plaintiff's expense of any existing barricades on said property.

It is, accordingly, ORDERED, ADJUDGED AND DECREED by the Court as follows:

1. That plaintiff is the owner in fee simple of a good and indefeasible title in and to the land above described by metes and bounds, together with any accretions which may have extended or which may hereafter extend said land seaward, and including the beach area aforesaid seaward to the line of mean high water, subject to the public easement hereinafter mentioned.

2. For purposes of this judgment, the area of the beach shall be all of the area along the entire seaward side of said land along the Gulf of Mexico, lying within a strip 350 feet wide at all points on the two-mile shoreline aforesaid, measured from mean low water inland, in accordance with the applicable datum of the United States Coast and Geodetic Survey. It is intended and decreed

~~4~~

that as and when the line of mean low water changes from time to time by the natural processes of accretion and/or erosion, the public easement decreed herein along the seashore aforesaid shall always follow the sea, and cover the area from mean low water to 350 feet inland.

3. The public owns and shall have an easement to, upon, across and over the entire beach area above described as a public way for pedestrian and vehicular travel, and for swimming, fishing, boating, camping and other like uses and recreational purposes, and for ingress and egress to the waters of the Gulf of Mexico.

4. The Court finds and holds that the parties hereto have by written stipulation on file herein agreed that immediately prior to the execution of the deed conveying the 384 acre tract here involved from Maco Stewart to the United States of America in 1917, the public had acquired by long use, an easement over the said beach where same then existed, which agreement is adopted by the court, and the court finds and holds that such easement followed the beach as it moved seaward to its present location. The court further holds that such easement also exists by virtue of an implied reservation of a public easement for use as aforesaid of the beach area in the original grant of said land from the Republic of Texas to M. B. Menard.

5. The plaintiff shall not have the right to erect barriers or in any way to interfere with or impair the rights of the public to the free use of such beach area for vehicular and pedestrian travel and recreation as aforesaid, and plaintiff is hereby ordered at its expense forthwith to remove any and all obstructions and barriers upon such premises which interfere with the free use of such beach area by the public as aforesaid and plaintiff is

permanently enjoined from erecting other barriers or obstructions upon such beach area and from in any way interfering with the use of said beach area by the public for pedestrian and vehicular travel and recreation. Nothing in this judgment shall be deemed to require the removal of any improvements erected above the vegetation line as herein defined and landward of the public easement on the beach herein provided for in event an avulsive erosion results in such improvements being located within the three hundred fifty (350) foot area of the public easement herein provided, and the rights of the parties in relation to such improvements is left for future adjudication by the court.

6. It is further declared, ordered, adjudged and decreed that the area of such easement as it may now or may hereafter exist shall be subject to such lawful regulation for health, sanitation and safety that may be within the lawful power and discretion of government agencies having jurisdiction thereof.

7. Costs of suit incurred herein are adjudged one-half against plaintiff and one-half against defendant, for which execution may issue in favor of the proper officers of the court.

8. To the action, judgment and decree of the court, finding that the public owns an easement upon and over the beach area on the said seaward border of said land, and the finding that defendant is entitled to a permanent injunction prohibiting the barricading of the beach area, and in adjudging and decreeing the ownership in fee simple of plaintiff in and to the land in controversy to be subject to such public easement and in adjudging and decreeing the existence of the easement as set forth in paragraphs 2, 3 and 4 of the foregoing judgment, plaintiff Galveston East Beach, Inc. duly excepts.

9. To the action, judgment and decree of the court in finding that plaintiff is the owner in fee simple of the said beach area, and in adjudging that such ownership is in plaintiff and in overruling the claim of the State of Texas that it is the full fee simple owner of such beach area because same was added to the upland through the process of artificial accretion, defendant, The State of Texas, duly excepts.

SIGNED, RENDERED AND ENTERED on this the 5th day of June, 1964.

Donald M. Marble
Judge, District Court of
Galveston County, Texas,
10th Judicial District.

APPROVED AS TO FORM:

BARKER, BARKER & COLTZER
and ARMSTRONG, BEDFORD & LAMB DIN

By Owen D. Barker
Attorneys for Plaintiff

WAGGONER CARR, Attorney General
for the State of Texas

By J. Arthur Sandlin
Assistant Attorney General

Brew M. Harrison
Assistant Attorney General

Attorneys for Defendant

STATE OF TEXAS
COUNTY OF GALVESTON

I, V. J. Beninati, Jr., District Clerk of Galveston County Texas, do hereby certify that the foregoing is a true and correct copy of the original record, now in my lawful custody, and that same, as appears of record in Vol. 91 Page 384-387 Minutes of said court are in my office.

Witness my official hand and seal of office, this

18th Day Of May, 1984, A.D.

V. J. BENINATI, JR. DISTRICT CLERK
Galveston County, Texas

By Pattie L. Strother Deputy
Pattie L. Strother

H. H. TREACCAR
Clerk District Court
Filed
JUN 5 1964
Galveston County Texas
By Alice Campbell
Deputy

Counter 23547

No. 97,893

H. H. TREACCAR
Clerk District Court
Filed
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SEP 19 1964
Galveston County Texas
By *Alice Campbell*
Deputy

H. H. TREACCAR
Clerk District Court
Filed.
SEP 21 1964
Galveston County Texas
By *Alice Campbell*
Deputy

GALVESTON EAST BEACH, INC.

V.

THE STATE OF TEXAS

IN THE DISTRICT COURT OF
GALVESTON COUNTY, TEXAS
10th JUDICIAL DISTRICT

REQUEST OF DEFENDANT FOR ADDITIONAL FINDINGS OF FACT

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant, The State of Texas, within the five (5) day period specified in Rule 298, T.R.C.P., respectfully requests the Court to make the following findings of fact, same to be in addition to the original findings of fact heretofore filed herein by the Court on September 15, 1964:

(1) Prior to construction of the south jetty, and going as far back as the days of the Republic of Texas, the eastern tip of Galveston Island was shaped something like a fish hook, curving to the north. After the construction of said jetty, by a process of gradual and imperceptible accretion, the shore line has advanced steadily and continuously seaward in a southerly and easterly direction in the area of such curve, the property in controversy being in the general area of said curve, with the result that there has been a gradual straightening out of the line of such curve, and the south shore line of the island is now substantially a straight line all the way to the jetty.

(2) Due to hurricane Carla, causing temporary erosion, there has been no substantial change in the location of the beach since 1959.

(3) Had the south jetty not been constructed in 1897, and had the same not been in existence since that time, thus permitting the prevailing southeast wind and other natural forces to operate without the interference of such man made obstruction, the geographical area of the present beach would still be submerged land, and the actual beach would be above the present vegetation line.

(4) The grant of land to M. B. Menard from the State of Texas covered the eastern end of Galveston Island, including the area

to which the beach in controversy has accreted. The beach in question is located within the city of Galveston.

(5) When the federal government ceased its war emergency blockade of the beach, the public flooded onto East Beach and continued to use same as a public way for vehicular and pedestrian traffic and for recreation until Plaintiff barricaded the same. Traffic on East Beach by the public since World War II has been very heavy. The crowds have been very large during the peak summer months, during school vacation periods, and thousands of automobiles were on the beach, some parked near the water and others parked higher on the beach as far as the vegetation line.

(6) The public had no intention of abandoning its easement over the beach during the war time blockade by the federal government.

Respectfully submitted,

WAGGONER CARR
Attorney General of Texas

Ben M. Harrison
Ben M. Harrison
Assistant Attorney General

J. Arthur Sandlin
J. Arthur Sandlin
Assistant Attorney General

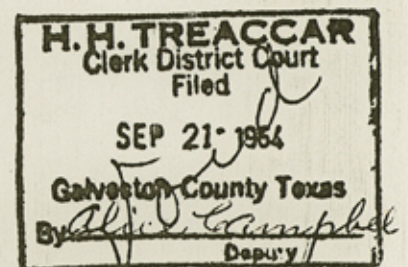
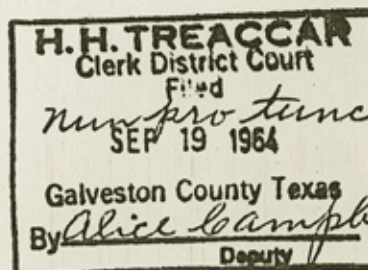
Attorneys for Defendant,
The State of Texas

Capitol Station
Austin, Texas

A TRUE COPY I CERTIFY UNDER MY HAND
AND SEAL OF OFFICE.

V. BENNETH, JR., Clerk District Court,
Galveston County, Texas

By *Lattie L. Steeth* Deputy



H. H. TREACCAR
 Clerk District Court
 Filed
 SEP 15 1964
 Galveston County Texas
 By *Emma Louise Yon*
 Deputy

NO. 97,893

GALVESTON EAST BEACH, INC. | IN THE DISTRICT COURT OF
 VS. | GALVESTON COUNTY, TEXAS
 THE STATE OF TEXAS | TENTH JUDICIAL DISTRICT

In response to the request of the Plaintiff in the above entitled and numbered cause, I hereby make and file the following as my Findings of Fact and Conclusions of Law therein:

FINDINGS OF FACT

1. Galveston East Beach, Inc., which will hereinafter be referred to as Plaintiff, filed this suit for declaratory judgment against the State of Texas, which will hereinafter be referred to as Defendant, on February 15, 1962. The purpose of the suit was to try the title and to adjudge the rights of the Plaintiff in a tract of 384 Acres, more or less, on the shore of the Gulf of Mexico, which Plaintiff had purchased from the United States of America on September 24, 1959.

On June 15, 1962, Defendant filed an application for a restraining order without notice and for temporary injunction to restrain and enjoin Plaintiff from in any way interfering with the right of the public to the free and unrestricted use of the beach area bordering the Gulf of Mexico on the said 384 Acre tract. On February 18, 1963, a hearing was commenced on the Defendant's application for a temporary injunction, which hearing lasted for four days. Briefs were filed on March 22nd and on April 5th, and on May 1, 1963, a temporary injunction was granted by this Court (entered June 21, 1963). On March 24, 1964, a trial on the merits of the entire case was commenced and was completed on March 30th, at which time judgment was pronounced by the Court (entered on June 5 1964), and this appeal is taken from said judgment.

The trial on the merits was greatly shortened by:

- (a) The agreement by both Parties that the record made in the hearing on the application for temporary

injunction could be used in the final trial; and

(b) The stipulation entered into by and between the Parties and filed among the papers in this cause on November 15, 1963.

2. In said stipulation, among other things, Plaintiff and Defendant have agreed:

(a) That the Plaintiff is entitled to judgment quieting its title to the 384 Acre tract above the vegetation line; and

(b) That the vegetation line at the time of trial shall be considered throughout the length of the said 384 Acre tract along the Gulf shore as being 350 feet landward of the line of mean low tide, U. S. Coast and Geodetic Survey, 1929 datum, as shown by the survey of the Galveston County Engineer, dated May, 1963.

All of the facts agreed upon by the Parties in said stipulation are hereby adopted as the findings of this Court where not inconsistent with specific findings made herein by this Court.

As a result of said stipulation, the only part of the said 384 Acre tract remaining in controversy is that part of the land lying along the shore of the Gulf of Mexico, for a distance of approximately two miles, from the aforementioned line of mean low tide to a line 350 feet landward; this strip of land will hereinafter (in the Findings of Fact and in the Conclusions of Law) be referred to as the Beach. The Beach is a part of what is commonly known as East Beach, which is located on the extreme Easterly end of Galveston Island and is approximately three miles in length, lying between Stewart Beach on the West and the South Jetty on the East.

As a further result of said stipulation, there are only two main issues left to be decided, namely:

(a) Who has title to the Beach? and

(b) Does the public have an easement over the Beach (if the State does not have title)?

3. The Beach has accreted to land which was granted to Michael B. Menard by the Republic of Texas on January 25, 1838.

The title to the land to which the Beach has accreted passed to the Galveston City Company in 1840 or 1842, and from the Galveston City Company to Maco Stewart in 1909.

On May 11, 1917, Maco Stewart conveyed the land to which the Beach has accreted to the United States Government, and it became a part of the then existing Fort San Jacinto Military Reservation and remained such until September 24, 1959.

4. As stipulated, prior to May 11, 1917, the public had acquired, by long use, an easement over a strip of land from the vegetation line to the line of mean low tide as a public way and for recreational purposes at the place on the land involved where such beach then existed. Such beach, at that location, however, has not been used by the public for many years; and the place where such easement existed in and before 1917 is now far landward of the present line of vegetation. The Defendant does not claim that the public now has any easement at the place on the land where the easement existed in and before 1917.

5. On September 24, 1959, the United States of America conveyed the said 384 Acre tract to Plaintiff. The Beach was either included in or subsequently accreted to the said 384 Acres.

6. A breakwater, popularly known as the South Jetty, was constructed by the United States Government between the years 1887 and 1897 to protect the channel to the port of Galveston. It ran along the Eastern end of Galveston Island and extended approximately 2 1/2 miles into the Gulf of Mexico. At the time the South Jetty was constructed by the United States Government, title to the upland in the area in controversy was in the Galveston City Company. The South Jetty was not built on or adjacent to the land in controversy, but at the time of this trial, it was located approximately 8/10ths of a mile Easterly from the Easterly end of the Beach. After the said South

Jetty was constructed, accretion began on the Gulf shore on the Easterly end of Galveston Island and has continued, with minor interruptions due to storms and abnormally high tides, to the time of trial. From 1916 to 1959, the shoreline advanced seaward 2,208 feet at the Easterly end of the 384 Acre tract, 1,391 feet at the Westerly end, and 1,832 feet in the middle.

7. The said build-up of the shore between 1916 and 1959 was gradual and imperceptible. As the shore line moved seaward, the public continued to use the strip of beach between the waters of the Gulf and the slowly advancing (seaward) line of vegetation as a public way and for recreational purposes.

8. The existence of the said South Jetty was the major cause of the accretion of the Easterly end of Galveston Island, including the Beach. The South Jetty was constructed from the Easterly end of Galveston Island out into the Gulf of Mexico for a distance of approximately 2 1/2 miles. It created a dead pocket of low wave energy, which prevented sediment in suspension in the waters of the Gulf from being carried into the channel and bay and caused the sediment to be deposited along the shore Westerly of the South Jetty. Minor causes of the accretion to this area were: (1) the natural wave action, the waves usually coming upon the shore from a South-Easterly direction and into the pocket formed by the shore and the South Jetty; (2) the prevailing wind from the South-East; (3) the existence of the accreted shore offered an additional obstruction to the wave action; and (4) the deposit of spoil dredged from the channel into the waters of the Gulf of Mexico offshore from the Beach. Neither the erection of the Seawall nor the placing of groins in the Gulf of Mexico Westerly of the Beach was a cause of the accretion of the Beach.

The building of the South Jetty, Seawall and groins, and the dredging of the channel and disposal of the spoil therefrom, were all works done by the United States Government.

9. As found in Paragraph 3, supra, the title to the land to which the

Beach has accreted was in the United States Government and was a part of the San Jacinto Military Reservation from May 11, 1917 to September 24, 1959.

During World War II, from December of 1941 or January of 1942 until the spring or summer of 1946, which was the first beach season following the termination of the War, the public was excluded from the land to which the Beach has accreted. Due to the continuing accretion, the actual geographic location of the land barricaded by said Government during such period did not include the Beach, but the area so barricaded was situated, at the time of trial, more than 350 feet inland from the line of mean low tide. The Beach was submerged land during and prior to 1946.

The exclusion of the public during the said period by the said Government was a temporary emergency measure for national security purposes, and the said Government had no intention of permanently destroying the public easement.

10. Until June of 1962, except for the said period when the public was excluded during World War II, both the City and County of Galveston, acting separately or together, have expended public funds to clean and maintain the land along the shore, wherever it may have existed at the particular time.

CONCLUSIONS OF LAW

(The decision of the trial court, as set out in the judgment entered herein on June 5, 1964, will not be set out again here.)

A. Title

1. Plaintiff holds title to the portion of the 384 Acre tract which is above the vegetation line (as defined in the Findings of Fact herein) by stipulation and by proof of the record title in the trial of this cause.

2. Plaintiff holds title to the Beach (as defined in the Findings of Fact herein) as the owner of the shore to which belongs imperceptible and gradual additions to the land by alluvial deposit or accretion resulting from both natural and artificial causes, the artificial means not being brought about by the littoral owner. This title is subject to the easement of the public.

B. Easement

1. The public easement stipulated by the Parties to have been in existence in and before 1917 at a place where the beach then existed follows the shore line as the line of mean low water changes from time to time by the natural forces of accretion and/or erosion; it always follows the sea, and with reference to the land in controversy herein covers the area from mean low water to 350 feet inland.

This concept of a rolling or shifting easement is not a new one. In 1905, it was applied in the English case of *Mercer v. Denne*, 2 Chancery Division 538, where the court held that a right to dry nets on a beach attached to a new beach area added to the old beach by accretion--that the drying area in such a case follows the sea.

2. The Beach has accreted to land which was patented by the Republic of Texas to M. B. Menard. There was an implied reservation in

the Menard Grant retaining an easement for the public in the free use of the beaches.

As stated in Galveston City Surf Bathing Co. v. Heidenheimer, 63 Tex. 559, at 562: "From the most ancient times, in all civilized countries, the free use of the waters and the shores of the sea by the public has been recognized as an indisputable right."

3. The Beach is a public road. In Brown v. State, 289 SW (2d) 942, West Beach was judicially declared to be a public road. The public road easement was not lost by adverse possession to the United States Government during the war time barricading because the statute of limitations does not run against public roads. Art. 5517, R. C. S. of Texas.

4. The barricading of the Beach by the United States Government from 1941 or 1942 to 1946 was a temporary war time emergency measure within the war powers of the United States Government and did not result in the destruction of the public easement.

5. An easement by estoppel was not created as a result of the expenditure of public funds by the City and County of Galveston in cleaning and maintaining the Beach.

6. Adverse possession, limitations, prescription, estoppel and laches do not apply against the United States Government. However, the United States Government took title to the Beach subject to the said rolling or shifting easement, and it conveyed it subject to the same easement.

7. Since May 24, 1959, Plaintiff has not granted, either by implication or estoppel, any easement to or for the benefit of the public. However, Plaintiff took title to the Beach subject to the said rolling or shifting easement and holds the Beach burdened with such easement.

H. H. TREACCAR
Clerk District Court
Filed

SEP 15 1964

Galveston County Texas

By Emma Louise Yon
Deputy

Made and filed this 15th day of September, 1964.

A TRUE COPY I CERTIFY UNDER MY HAND

AND SEAL OF OFFICE.

V. J. BENNETT, JR., Clerk District Court

Galveston County, Texas

By Lattie S. Strother
Deputy

Donald M. Marklee
Judge Presiding

12807-2050	7	DAVIS DON SUITE 202 4600 POST OAK PL HOUSTON TEXAS	ISLANDER EAST MODULE #905 LR 909 INC .9215 PCE LOCATED ON 6.43 AC E/GALV ISLAND 77027VOL 1339 PG 44	
12807-2060	6	TOMJANOVICH RUDOLPH & SOPHIA 2225 BELMONT ANN ARBOR MI	ISLANDER EAST MODULE #910 INC .6443 PCE LOCATED ON 6.43 AC 48104E/GALV ISLAND VOL 1339 PG 44	
12807-2070	5	THOMSON RICHARD % ISLANDER E CONDOM 915 SEAWALL BLVD # 911 GALVESTON TX	ISLANDER EAST MODULE #911 INC .6443 PCE LOCATED ON 6.43 AC E/GALV ISLAND VOL 1339 PG 44 77550	
12807-2080	4	LUMPKIN CHRISTINE T 3427 RIVERWAY DR SAN ANTONIO TX	ISLANDER EAST MODULE #912 INC .6443 PCE LOCATED ON 6.43 AC 78230E/GALV ISLAND VOL 1339 PG 44	
12807-2090	3	YOUSSE F ANDRE 17411 RUSTIC PINE HOUSTON TEXAS	ISLANDER EAST MODULE #913 INC .6443 PCE LOCATED ON 6.43 AC 77090E/GALV ISLAND VOL 1339 PG 44	
12807-3000	1	ZUMWALT FRANK E JR 3733 WESTMINSTER # 207 HOUSTON TX	ISLANDER EAST MODULE #914 INC .6443 PCE LOCATED ON 6.43 AC 77027E/GALV ISLAND VOL 1339 PG 44	
12807-3010	0	REUBEL ALFRED LOUIS & WIFE 3509 LEXINGTON AVE DALLAS TEXAS	ISLANDER EAST MODULE #915 INC .6443 PCE LOCATED ON 6.43 AC 75205E/GALV ISLAND VOL 1339 PG 44	
12807-3020	9	ALLRED ERNEST 17403 RUSTIC PINE HOUSTON TEXAS	ISLANDER EAST MODULE #916-917 918 INC 1.90675 PCE LOCATED ON 6.43 AC E/GALV ISLAND VOL 1339 PG 44 77090	
12808-0000	2	GALVESTON EAST BEACH INC PO BOX 475 GALVESTON TEXAS	384 AC TR ON EAST BEACH LESS 12.924 AC 77550	3 9
12808-0010	1	SHINDLER JAMES C TR HARDING & EAVES 4615 SW FRWY SUITE 760 HOUSTON TX	ABST 628 M B MENARD 6.494 ACS OUT OF A 326.2 ISLANDER EAST BEING 1600FT NE OF ISLANDER EAST CONDO 77027	3 3 4
12808-0100	0	REF ISLANDER EAST CONDO SEE ACCT 12807-0000	6.494 AC TR OUT OF 326.2 AC TR OUT OF PARCEL 2	
12808-1000	1	UNITED STATES OF AMERICA	ABST 628 M B MENARD 318 ACS LYING E HWY 87 & N SEAWALL FORMERLY FT SAN JACINTO & IMPS U S COAST GUARD STATION	1 1 31
12808-2000	0	STATE OF TEXAS	ABST 628 M B MENARD 140 ACS PT TR 2 FISH AND WILDLIFE TR BETWEEN SEAWALL & GULF & IMPS	2 14
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12808-3000	9	CITY OF GALVESTON	ABST 628 M B MENARD 264 ACS TR 3 LYING N OF S JETTY RD & S OF GALV BAY	9 28
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12808-4010	7	UNITED STATES OF AMERICA	ABST 628 M B MENARD IMPS ONLY ON 230.840 AC PT TR 6 U S COAST GUARD COMM CENTER	
12808-4020	6	UNITED STATES OF AMERICA	ABST 628 M B MENARD PT OF TR 6 W & ADJ GULF 2 S & ADJ SOUTH JETTYS	6 20
12808-5000	7	CITY OF GALVESTON	7.909 AC TR SO OF SEAWALL AT FIRST ST BOUNDED ON W BY CITY BLKS 301 & 302 DIM IRREG LH 85544-8038 PACER RACER GO CARTS BENNO DELTZ	1
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12809-0020		WADDELL FISH CAMP	IMPS ONLY ON EAST BEACH	

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12807-2070	5	THOMSON RICHARD X ISLANDER E CONDMN 915 SEAWALL BLVD # 911 GALVESTON TX	ISLANDER EAST MODULE #911 INC .6443 PCE LOCATED ON 6.43 AC E/GALV ISLAND VOL 1339 PG 44	77550
12807-2080	4	LUMPKIN CHRISTINE T 3427 RIVERWAY DR SAN ANTONIO TX	ISLANDER EAST MODULE #912 INC .6443 PCE LOCATED ON 6.43 AC E/GALV ISLAND VOL 1339 PG 44	78230E
12807-2090	3	YOUSSE F ANDRE 17411 RUSTIC PINE HOUSTON TEXAS	ISLANDER EAST MODULE #913 INC .6443 PCE LOCATED ON 6.43 AC E/GALV ISLAND VOL 1339 PG 44	77090E
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12807-3010	0	REUBEL ALFRED LOUIS & WIFE 3509 LEXINGTON AVE DALLAS TEXAS	ISLANDER EAST MODULE #915 INC .6443 PCE LOCATED ON 6.43 AC E/GALV ISLAND VOL 1339 PG 44	75205E
12807-3020	9	ALLRED ERNEST 17403 RUSTIC PINE HOUSTON TEXAS	ISLANDER EAST MODULE #916-917 918 INC 1.90675 PCE LOCATED ON 6.43 AC E/GALV ISLAND VOL 1339 PG 44	77090E
12808-0000	2	GALVESTON EAST BEACH INC PO BOX 475 GALVESTON TEXAS	384 AC TR ON EAST BEACH LESS 12.924 AC	77550
12808-0010	1	SHINDLER JAMES C TR HARDING & EAVES 4615 SW FRWY SUITE 760 HOUSTON TX	ABST 628 M B MENARD 6.494 ACS OUT OF A 326.2 ISLANDER EAST BEING 1600FT NE OF ISLANDER EAST CONDO	77027E
12808-0100	0	REF ISLANDER EAST CONDO SEE ACCT 12807-0000	6.494 AC TR OUT OF 326.2 AC TR OUT OF PARCEL 2	
12808-1000	1	UNITED STATES OF AMERICA	ABST 628 M B MENARD 318 ACS LYING E HWY 87 & N SEAWALL FORMERLY FT SAN JACINTO & IMPS U S COAST GUARD STATION	1 1 3
12808-2000	0	STATE OF TEXAS	ABST 628 M B MENARD 140 ACS PT TR 2 FISH AND WILDLIFE TR BETWEEN SEAWALL & GULF & IMPS	1
12808-3000	9	CITY OF GALVESTON	ABST 628 M B MENARD 264 ACS TR 3 LYING N OF S JETTY RD & S OF GALV BAY	6 3 26
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12808-4010	7	UNITED STATES OF AMERICA	ABST 628 M B MENARD IMPS ONLY ON 230.840 AC PT TR 6 U S COAST GUARD COMM CENTER	
12808-4020	6	UNITED STATES OF AMERICA	ABST 628 M B MENARD PT OF TR 6 W & ADJ GULF 3 S & ADJ SOUTH JETTYS	6 23
12808-5000	7	CITY OF GALVESTON	7.909 AC TR SO OF SEAWALL AT FIRST ST BOUNDED ON W BY CITY BLKS 301 & 302 DIM IRREG LH 85544-8038 PACER RACER GO CARTS BENNO DELTZ	1
12808-6000	6	UNITED STATES OF AMERICA	ABST 628 M B MENARD TR 5 S OF FT SAN JACINTO TR & W OF SEAWALL & E OF EAST END FLATS & HWY 87	2 22
12809-0010	9	NASHS LAGOON BAIT CAMP C/O EARL F NASH 1119 PALL GALVESTON TX	IMPS ONLY ON EAST BEACH BODDEKER DRIVE-EAST END	77550
12809-0020	8	WADDELL FISH CAMP 342 LING	IMPS ONLY ON EAST BEACH BODDEKER DRIVE-EAST END	77550

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12807-2050 7 DAVIS DON ISLANDER EAST MODULE #905 LR
 SUITE 202 909 INC .9215 PCE LOCATED ON
 4600 POST OAK PL HOUSTON TEXAS 6.43 AC E/GALV ISLAND
 77027VOL 1339 PG 44

12807-2060 6 TOMJANOVICH RUDOLPH & SOPHIA ISLANDER EAST MODULE #910 INC
 2225 BELMONT .6443 PCE LOCATED ON 6.43 AC
 ANN ARBOR MI 48104E/GALV ISLAND VOL 1339 PG 44

12807-2070 5 THOMSON RICHARD ISLANDER EAST MODULE #911 INC
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 915 SEAWALL BLVD # 911 GALVESTON TX E/GALV ISLAND VOL 1339 PG 44
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12807-2080 4 LUMPKIN CHRISTINE T ISLANDER EAST MODULE #912 INC
 3427 RIVERWAY DR .6443 PCE LOCATED ON 6.43 AC
 SAN ANTONIO TX 78230E/GALV ISLAND VOL 1339 PG 44

12807-2090 3 YOUSSE F ANDRE ISLANDER EAST MODULE #913 INC
 17411 RUSTIC PINE .6443 PCE LOCATED ON 6.43 AC
 HOUSTON TEXAS 77090E/GALV ISLAND VOL 1339 PG 44

12807-3000 1 ZUMWALT FRANK E JR ISLANDER EAST MODULE #914 INC
 3733 WESTMINSTER # 207 .6443 PCE LOCATED ON 6.43 AC
 HOUSTON TX 77027E/GALV ISLAND VOL 1339 PG 44

12807-3010 0 REUBEL ALFRED LOUIS & WIFE ISLANDER EAST MODULE #915 INC
 3509 LEXINGTON AVE .6443 PCE LOCATED ON 6.43 AC
 DALLAS TEXAS 75205E/GALV ISLAND VOL 1339 PG 44

12807-3020 9 ALLRED ERNEST ISLANDER EAST MODULE #916-917
 17403 RUSTIC PINE 918 INC 1.90675 PCE LOCATED ON
 HOUSTON TEXAS 770906.43 AC E/GALV ISLAND
 VOL 1339 PG 44

12808-0000 2 GALVESTON EAST BEACH INC 384 AC TR ON EAST BEACH LESS
 PO BOX 475 GALVESTON TEXAS 12.924 AC
 77550

12808-0010 1 SHINDLER JAMES C TR ABST 628 M B MENARD 6.494 ACS
 HARDING & EAVES OUT OF A 326.2 ISLANDER EAST
 4615 SW FRWY SUITE 760 HOUSTON TX BEING 1600FT NE OF ISLANDER
 77027EAST CONDO

12808-0100 0 REF ISLANDER EAST CONDO 6.494 AC TR OUT OF 326.2 AC TR
 SEE ACCT 12807-0000 OUT OF PARCEL 2

12808-1000 1 UNITED STATES OF AMERICA ABST 628 M B MENARD 318 ACS LYING E HWY 87 & N
 SEAWALL FORMERLY FT SAN JACINTO & IMPS U S COAST GUARD STATION

12808-2000 0 STATE OF TEXAS ABST 628 M B MENARD 140 ACS
 PT TR 2 FISH AND WILDLIFE TR BETWEEN SEAWALL & GULF
 & IMPS

12808-3000 9 CITY OF GALVESTON ABST 628 M B MENARD 264 ACS
 TR 3 LYING N OF S JETTY RD & S OF GALV BAY

12808-4001 6 CITY OF GALVESTON ABST 628 M B MENARD PT TR 6
 E & ADJ SEAWALL ROW & S OF S JETTYS LH 85544-8032 NASH BAIT
 CAMP LH 85544-8036 ANGELOS FISHERMANS REEF RESTAURANT

12808-4010 7 UNITED STATES OF AMERICA ABST 628 M B MENARD IMPS ONLY
 ON 230.840 AC PT TR 6 U S COAST GUARD COMM CENTER

12808-4020 6 UNITED STATES OF AMERICA ABST 628 M B MENARD PT OF TR 6
 W & ADJ GULF & S & ADJ SOUTH JETTYS

12808-5000 7 CITY OF GALVESTON 7.909 AC TR SO OF SEAWALL AT
 FIRST ST BOUNDED ON W BY CITY BLKS 301 & 302 DIM IRREG
 LH 85544-8034 PACER RACER GO CARTS BENNO DELTZ

12808-6000 6 UNITED STATES OF AMERICA ABST 628 M B MENARD TR 5
 S OF FT SAN JACINTO TR & W OF SEAWALL & E OF EAST END
 FLATS & HWY 87

12809-0010 9 NASHS LAGOON BAIT CAMP IMPS ONLY ON EAST BEACH
 C/O EARL F NASH 800DEKER DRIVE-EAST END
 1119 PALL GALVESTON TX 77550

12809-0020 9 WADDELL FISH CAMP IMPS ONLY ON EAST BEACH
 77550

Counter
 23557

Bruce Smith

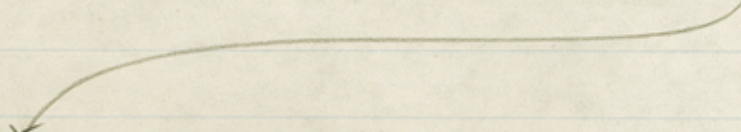
① Book 1339

Copy of 44 - 45 - 46 - 47

David Quiroga

USA SOLD TO GALVESTON EAST BEACH, INC. (for \$ 386,112.00)

That tract of land conveyed to U.S. Gov. by MACO STEWART
by deed of 5/11/1917 recorded in



② Book 303

pages 265-266

MACO STEWART to U.S.A Gov. (for \$ 1.00)

Sold for purposes of erection of a seawall or other
STRUCTURES for Gov. purposes.

OCT 29, 1917

③ Book 245

pages 186 - 187

(This is on pg ~~4~~ 461 U of
Filing index # 17 - out of
"date order" - in
w/ 1910-1911 stuff.)

1910 - Galv. City Co. to USA "the EAST end of the Island"

Book	pg	Date	Filing Date	GRANTOR	GRANTEE
245-187		3-17-98	8-10-1910	GALV. CITY CO.	USA (- Prior to 1898 - base title to MENARD GRANT)
257-376		6-28-1912	8-19-1912	STATE OF TEXAS	USA
303-265		5-11-1917	10-29-1917	MACO STEWART	USA
303-29		8-14-1909	6-18-1917	GALV. CITY CO.	MACO STEWART

Book # 139

check 1/379 also

2397-444 SLB TO Citi

2112-149 Islander EAST

Repub. of TEXAS

TO

James Love

Book Vol

on 2

217-55

2/10/1846

James Hamilton et al

204-13

1/26/39

George Fisher

178-195

4/13/1839

Pt. Bolivar Festival - 684-3992

USA TO GALV. E. BEACH, INC. - Deed w/o WARRANTY 9-24-59 - 9-29-59 1339-44

GALV. E. BEACH INC. TO DAVID S. PHILLIPS, Tr., USA - 9/24/59 - 1338-461 - 384 Ac.

GALV. EAST BEACH INC - VS - STATE OF TEXAS Suit for Declar. Judgement - BOOK #97,893

Pt. of TR. conv. to U.S. Court by MARGO STEWART of REC. in 303/265 - Lying

EAST of STEWART BEACH & S of SEWELL R/W - 1339/44

GALV. E. BEACH, INC TO EAST BEACH AMUSEMENT PARK INC 2-7-1973/2-12-73 - 2331-119

384 AC. Being a part of certain tract of land conveyed GALV. E. BEACH INC.
record 1339/44 - being an irregular tract desc. by M/B CONT
280,280 sq/ft.

EAST BEACH, AMUSEMENT PARK INC TO ISLANDERS EAST 2-9-73/2-12-73 - 2331-133

TR. CONT. 280,280 sq. ft by M/B out of certain tract by
M/B desc. in 1339/44

CITY OF GALV. TO STATE OF TEXAS 7/7/1962 - 1-18-1963 7.921 AC. Submerged land

Immediately W. of U.S. GOVT. S. JETTY

City of Galv.

NO. 97,893

GALVESTON EAST BEACH, INC. | IN THE DISTRICT COURT OF
V. | GALVESTON COUNTY, TEXAS
THE STATE OF TEXAS | 10TH JUDICIAL DISTRICT

J U D G M E N T

H. H. TREACCAR
Clerk District Court
Filed
JUN 5 1964
Galveston County Texas
By *Alice Campbell*
Deputy

91/
384-387 Galveston Co. Sk file 53

counter 23564

GALVESTON EAST BEACH, INC.		IN THE DISTRICT COURT OF
V.		GALVESTON COUNTY, TEXAS
THE STATE OF TEXAS		10TH JUDICIAL DISTRICT

J U D G M E N T

On the 24th day of March, 1964, came on to be heard the above styled and numbered cause, and came the Plaintiff, Galveston East Beach, Inc., by its attorneys, Owen D. Barker and Robert G. Coltzer, of the firm of Barker, Barker and Coltzer, and Griffith D. Lambdin, of the firm of Armstrong, Bedford and Lambdin, and came the Defendant, The State of Texas, and the Attorney General of Texas, by Ben M. Harrison and J. Arthur Sandlin, Assistant Attorneys General of Texas, and Jules Damiani, Jr., Criminal District Attorney of Galveston County, Texas, representing the State of Texas and the public, pursuant to authority granted by Article 5415d, Vernon's Texas Civil Statutes, and such other authority as may be afforded by law, and a jury having been waived, the parties, plaintiff and defendant, announced ready for trial, and the court, after reading the pleadings and hearing the evidence and argument of counsel, is of the opinion and finds that plaintiff is the owner in fee simple of a good and indefeasible title, subject to the easement hereinafter mentioned, to all the land known and referred to as the 384 acre tract described in the deed from the United States of America to Plaintiff dated September 24, 1959, recorded in Book 1339, pages 44 to 47, inclusive, Deed Records of Galveston County, Texas, and accretions thereto, which land is more fully described ^{as follows:} ~~in Exhibit A~~

~~(attached hereto and hereby expressly made a part hereof,)~~
~~and the court further finds that the plaintiff's land aforesaid fronts upon the Gulf of Mexico for a distance of two)~~

Deleted
6-4-64
D.M.M.
Judge.

~~CONFIDENTIAL~~

The following described tract or parcel of land in Galveston County, Texas, being part of a tract of land conveyed to the United States Government by Maco Stewart by deed dated May 11, 1917, which deed is recorded in Book 303, pages 265-266, Deed Records of Galveston County, Texas, said tract formerly being part of the Fort San Jacinto Reservation, and further described by metes and bounds and courses and distances as follows:

Start at a point in the South boundary of the Fort San Jacinto Military Reservation marked by a drift bolt in the center of the shore branch of the Galveston South Jetty at Station 69 plus 02.6 whence the former Fort Point Lighthouse bears North $35^{\circ} 27' 35''$ East 3179.3 feet (1144.55 varas);

Thence, parallel with the numbered streets in the City of Galveston, Texas, approximately South $16^{\circ} 43' 09''$ East to the Southeasterly boundary of the Galveston seawall right of way, said Southeasterly boundary line being parallel to and 225 feet perpendicular distance on the seaward side from the center line of the top of the seawall structure, which center line is 2 feet 6 inches landward of the seaward edge of said top of the seawall structure, for the place of beginning of this description;

Thence, continuing South $16^{\circ} 43' 09''$ East to the high water line on the shore of the Gulf of Mexico;

Thence, Northerly and Easterly with the meanders of the said high water shore line of the Gulf of Mexico, to the intersection of this line with the present South boundary of a tract of land deeded to the United States of America by the Galveston City Company by Special Warranty Deed dated March 17, 1898, which deed is recorded in Vol. 245, page 187, Deed Records of Galveston County, Texas;

Thence, with the said South boundary of the said tract North 82° West to a point 1400 feet South 82° East of the Southeasterly right-of-way boundary of the Galveston seawall, said Southeasterly boundary line being parallel to and 225 feet perpendicular distance on the seaward side from the center line of the top of the seawall structure, which center line is 2 feet 6 inches landward of the seaward edge of said top of the seawall structure;

Thence, South $27^{\circ} 09'$ West parallel to the Galveston seawall a distance of 4400 feet;

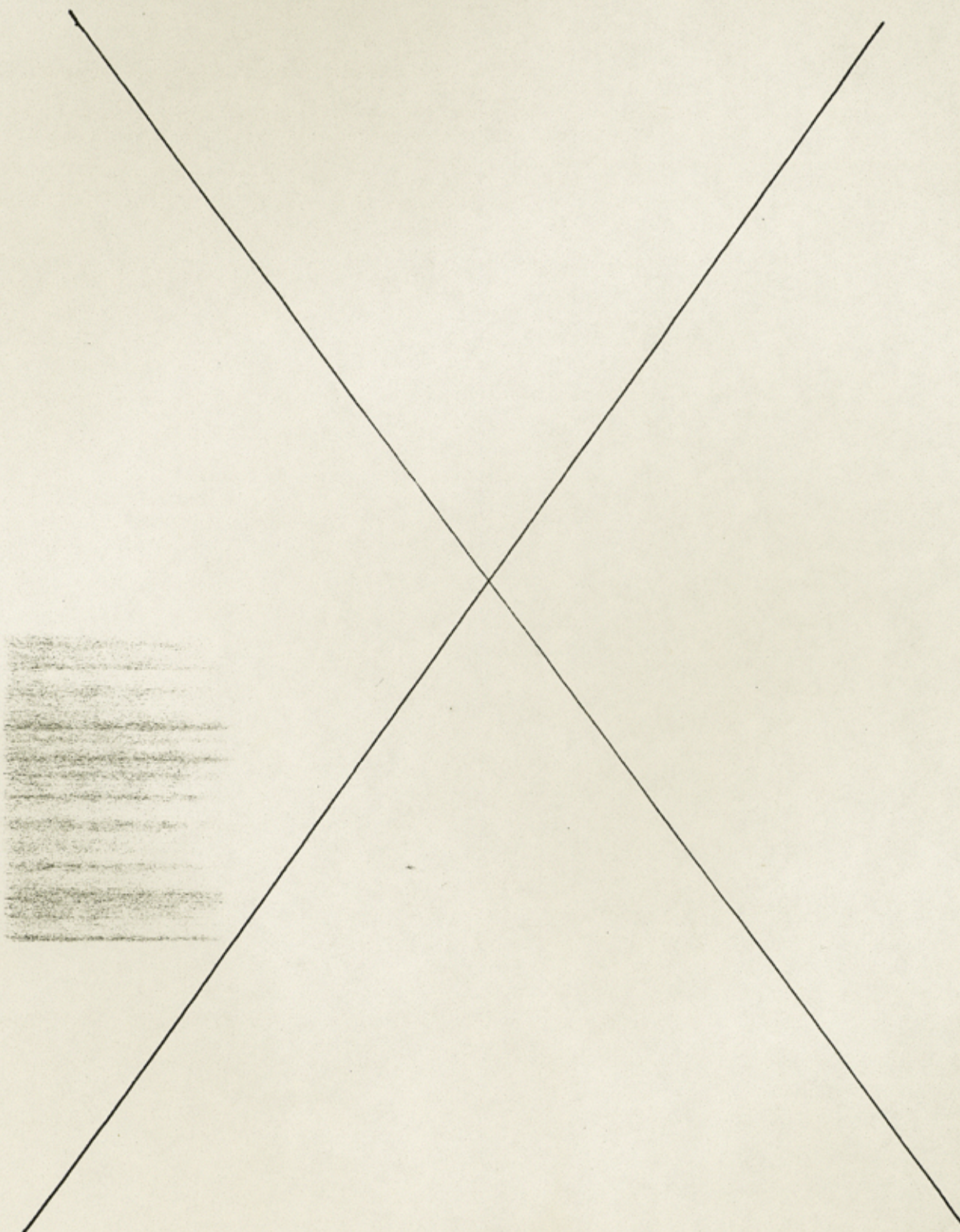
Thence, North 82° West a distance of 1400 feet, more or less, to the Southeasterly right-of-way boundary of the Galveston seawall, said Southeasterly boundary line being parallel to and 225 feet perpendicular distance on the seaward side from the center line of the top of the seawall structure, which center line is 2 feet 6 inches landward of the seaward edge of said top of the seawall structure;

Thence, South $27^{\circ} 09'$ West with the Southeasterly boundary of said seawall right of way 1100 feet, more

or less, to an angle point in said seawall right-of-way boundary;

Thence, continuing along the said seawall right-of-way boundary South 35° 21' West 1500 feet, more or less, to the point of beginning together with the Government's interest in and to the land between the said high water shore line and the low water shore line extending from the most Southerly boundary, extended, to the most Northerly boundary, extended, of the above described tract, including all future accretions and accumulations as a result of nature, or the construction of public works for the improvement and defense of the Harbor, and containing 384 acres, more or less.

and the court further finds that the plaintiff's land aforesaid fronts upon the Gulf of Mexico for a distance of two



miles, more or less, and that the public owns an easement upon and over the beach area on the said seaward border of said land, running from the line of mean low tide to the line of vegetation, which beach area shall now and hereafter be taken to be a strip along the seaward side of the said land at all times adhering to the shore, extending from the line of mean low water (as it may exist from time to time taking into account changes therein caused by the natural processes of accretion and erosion) inland a distance of three hundred fifty (350) feet at all points along the Gulf of Mexico boundary line of plaintiff's said land; and the court further finds that defendant is entitled to a permanent injunction against plaintiff prohibiting the barricading of the beach area aforesaid and ordering the removal at plaintiff's expense of any existing barricades on said property.

It is, accordingly, ORDERED, ADJUDGED AND DECREED by the Court as follows:

1. That plaintiff is the owner in fee simple of a good and indefeasible title in and to the land above described by metes and bounds, together with any accretions which may have extended or which may hereafter extend said land seaward, and including the beach area aforesaid seaward to the line of mean high water, subject to the public easement hereinafter mentioned.

2. For purposes of this judgment, the area of the beach shall be all of the area along the entire seaward side of said land along the Gulf of Mexico, lying within a strip 350 feet wide at all points on the two-mile shoreline aforesaid, measured from mean low water inland, in accordance with the applicable datum of the United States Coast and Geodetic Survey. It is intended and decreed

~~4~~

that as and when the line of mean low water changes from time to time by the natural processes of accretion and/or erosion, the public easement decreed herein along the seashore aforesaid shall always follow the sea, and cover the area from mean low water to 350 feet inland.

3. The public owns and shall have an easement to, upon, across and over the entire beach area above described as a public way for pedestrian and vehicular travel, and for swimming, fishing, boating, camping and other like uses and recreational purposes, and for ingress and egress to the waters of the Gulf of Mexico.

4. The Court finds and holds that the parties hereto have by written stipulation on file herein agreed that immediately prior to the execution of the deed conveying the 384 acre tract here involved from Maco Stewart to the United States of America in 1917, the public had acquired by long use, an easement over the said beach where same then existed, which agreement is adopted by the court, and the court finds and holds that such easement followed the beach as it moved seaward to its present location. The court further holds that such easement also exists by virtue of an implied reservation of a public easement for use as aforesaid of the beach area in the original grant of said land from the Republic of Texas to M. B. Menard.

5. The plaintiff shall not have the right to erect barriers or in any way to interfere with or impair the rights of the public to the free use of such beach area for vehicular and pedestrian travel and recreation as aforesaid, and plaintiff is hereby ordered at its expense forthwith to remove any and all obstructions and barriers upon such premises which interfere with the free use of such beach area by the public as aforesaid and plaintiff is

permanently enjoined from erecting other barriers or obstructions upon such beach area and from in any way interfering with the use of said beach area by the public for pedestrian and vehicular travel and recreation. Nothing in this judgment shall be deemed to require the removal of any improvements erected above the vegetation line as herein defined and landward of the public easement on the beach herein provided for in event an avulsive erosion results in such improvements being located within the three hundred fifty (350) foot area of the public easement herein provided, and the rights of the parties in relation to such improvements is left for future adjudication by the court.

6. It is further declared, ordered, adjudged and decreed that the area of such easement as it may now or may hereafter exist shall be subject to such lawful regulation for health, sanitation and safety that may be within the lawful power and discretion of government agencies having jurisdiction thereof.

7. Costs of suit incurred herein are adjudged one-half against plaintiff and one-half against defendant, for which execution may issue in favor of the proper officers of the court.

8. To the action, judgment and decree of the court, finding that the public owns an easement upon and over the beach area on the said seaward border of said land, and the finding that defendant is entitled to a permanent injunction prohibiting the barricading of the beach area, and in adjudging and decreeing the ownership in fee simple of plaintiff in and to the land in controversy to be subject to such public easement and in adjudging and decreeing the existence of the easement as set forth in paragraphs 2, 3 and 4 of the foregoing judgment, plaintiff Galveston East Beach, Inc. duly excepts.

9. To the action, judgment and decree of the court in finding that plaintiff is the owner in fee simple of the said beach area, and in adjudging that such ownership is in plaintiff and in overruling the claim of the State of Texas that it is the full fee simple owner of such beach area because same was added to the upland through the process of artificial accretion, defendant, The State of Texas, duly excepts.

SIGNED, RENDERED AND ENTERED on this the 5th day of June, 1964.

Donald M. Marble.
Judge, District Court of Galveston County, Texas, 10th Judicial District.

APPROVED AS TO FORM:

BARKER, BARKER & COLTZER
and ARMSTRONG, BEDFORD & LAMBDIN

By Owen B. Barker
Attorneys for Plaintiff

WAGGONER CARR, Attorney General
for the State of Texas

By J. Arthur Sandlin
Assistant Attorney General
Brew M. Harrison
Assistant Attorney General

Attorneys for Defendant

STATE OF TEXAS
COUNTY OF GALVESTON

I, V. J. Beninati, Jr., District Clerk of Galveston County Texas, do hereby certify that the foregoing is a true and correct copy of the original record, now in my lawful custody and possession, as appears of record in Vol. 91 Page 384-387 Minutes of said court on file in my office.

Witness my official hand and seal of office, this

18th Day Of May, 1984, A.D.

V. J. BENINATI, JR. DISTRICT CLERK
Galveston County, Texas

By Pattie L. Strother Deputy
Pattie L. Strother

H. H. TREACCAR
Clerk District Court
Filed
JUN 5 1964
Galveston County Texas
By Alice Campbell
Deputy

Counter 23571

File No. Sketch File No. 53

Galveston

County

Ct. Judgment cause No. 97,893

Filed July 11 19 84

GARRY MAURO, Com'r

By Douglas Howard

in finding that the said...
the said...
is in violation...
of Texas...
because...
the process...
of Texas, this...
SIGNED, RENDERED AND ENTERED on this the 11th day

1984

Douglas Howard
Judge, District Court of
Galveston County, Texas
1001 Judicial District

APPROVED AS TO FORM:

BARKER, BARKER & COTTNER
AND ARRESTING, BIRDSONG & LAMBERT

BY Douglas Howard
Attorneys for Plaintiff

WAGBOMER GARR, Attorney General
for the State of Texas

BY Douglas Howard
Assistant Attorney General

Douglas Howard
Assistant Attorney General

Attorneys for Defendant

STATE OF TEXAS
COUNTY OF GALVESTON
I, V. J. BARKER, Clerk of Galveston County,
do hereby certify that the within and
above entitled cause was filed in
Court No. 97,893, District Court of
Galveston County, Texas.

CLERK OF DISTRICT COURT
GALVESTON COUNTY, TEXAS
1001 JUDICIAL DISTRICT

LAST DAY OF MAY, 1984
V. J. BARKER, Clerk of Galveston County,
Galveston County, Texas
Deputy

No. 97,893

H. H. TREACCAR
Clerk District Court
Filed
non pro tunc
SEP 19 1964
Galveston County Texas
By *Alice Campbell*
Deputy

H. H. TREACCAR
Clerk District Court
Filed.
SEP 21 1964
Galveston County Texas
By *Alice Campbell*
Deputy

GALVESTON EAST BEACH, INC.
V.
THE STATE OF TEXAS

IN THE DISTRICT COURT OF
GALVESTON COUNTY, TEXAS
10th JUDICIAL DISTRICT

REQUEST OF DEFENDANT FOR ADDITIONAL FINDINGS OF FACT

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant, The State of Texas, within the five (5) day period specified in Rule 298, T.R.C.P., respectfully requests the Court to make the following findings of fact, same to be in addition to the original findings of fact heretofore filed herein by the Court on September 15, 1964:

(1) Prior to construction of the south jetty, and going as far back as the days of the Republic of Texas, the eastern tip of Galveston Island was shaped something like a fish hook, curving to the north. After the construction of said jetty, by a process of gradual and imperceptible accretion, the shore line has advanced steadily and continuously seaward in a southerly and easterly direction in the area of such curve, the property in controversy being in the general area of said curve, with the result that there has been a gradual straightening out of the line of such curve, and the south shore line of the island is now substantially a straight line all the way to the jetty.

(2) Due to hurricane Carla, causing temporary erosion, there has been no substantial change in the location of the beach since 1959.

(3) Had the south jetty not been constructed in 1897, and had the same not been in existence since that time, thus permitting the prevailing southeast wind and other natural forces to operate without the interference of such man made obstruction, the geographical area of the present beach would still be submerged land, and the actual beach would be above the present vegetation line.

(4) The grant of land to M. B. Menard from the State of Texas covered the eastern end of Galveston Island, including the area

to which the beach in controversy has accreted. The beach in question is located within the city of Galveston.

(5) When the federal government ceased its war emergency blockade of the beach, the public flooded onto East Beach and continued to use same as a public way for vehicular and pedestrian traffic and for recreation until Plaintiff barricaded the same. Traffic on East Beach by the public since World War II has been very heavy. The crowds have been very large during the peak summer months, during school vacation periods, and thousands of automobiles were on the beach, some parked near the water and others parked higher on the beach as far as the vegetation line.

(6) The public had no intention of abandoning its easement over the beach during the war time blockade by the federal government.

Respectfully submitted,

WAGGONER CARR
Attorney General of Texas

Ben M. Harrison
Ben M. Harrison
Assistant Attorney General

J. Arthur Sandlin
J. Arthur Sandlin
Assistant Attorney General

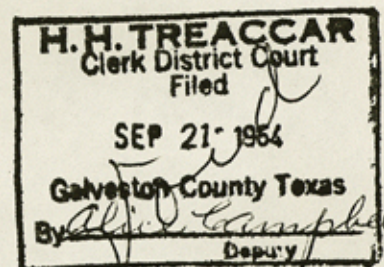
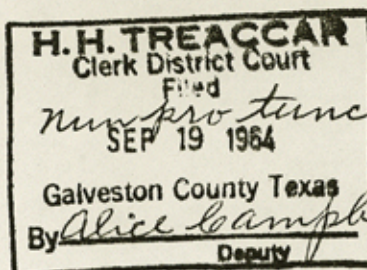
Attorneys for Defendant,
The State of Texas

Capitol Station
Austin, Texas

A TRUE COPY I CERTIFY UNDER MY HAND
AND SEAL OF OFFICE.

V. I. BENINATI, JR., Clerk District Court,
Galveston County, Texas

By *Lattie D. Strother* Deputy



File No. Sketch File No. 53

Galveston County
Ct. Judgment Cause No. 97,893

Filed July 11 1984

GARRY MAURO, Com'r

By Douglas Howard

H. H. TREACCAR
 Clerk District Court
 Filed
 SEP 15 1964
 Galveston County Texas
 By *Emma Louise Yon*
 Deputy

NO. 97,893

GALVESTON EAST BEACH, INC. | IN THE DISTRICT COURT OF
 VS. | GALVESTON COUNTY, TEXAS
 THE STATE OF TEXAS | TENTH JUDICIAL DISTRICT

In response to the request of the Plaintiff in the above entitled and numbered cause, I hereby make and file the following as my Findings of Fact and Conclusions of Law therein:

FINDINGS OF FACT

1. Galveston East Beach, Inc., which will hereinafter be referred to as Plaintiff, filed this suit for declaratory judgment against the State of Texas, which will hereinafter be referred to as Defendant, on February 15, 1962. The purpose of the suit was to try the title and to adjudge the rights of the Plaintiff in a tract of 384 Acres, more or less, on the shore of the Gulf of Mexico, which Plaintiff had purchased from the United States of America on September 24, 1959.

On June 15, 1962, Defendant filed an application for a restraining order without notice and for temporary injunction to restrain and enjoin Plaintiff from in any way interfering with the right of the public to the free and unrestricted use of the beach area bordering the Gulf of Mexico on the said 384 Acre tract. On February 18, 1963, a hearing was commenced on the Defendant's application for a temporary injunction, which hearing lasted for four days. Briefs were filed on March 22nd and on April 5th, and on May 1, 1963, a temporary injunction was granted by this Court (entered June 21, 1963). On March 24, 1964, a trial on the merits of the entire case was commenced and was completed on March 30th, at which time judgment was pronounced by the Court (entered on June 5 1964), and this appeal is taken from said judgment.

The trial on the merits was greatly shortened by:

- (a) The agreement by both Parties that the record made in the hearing on the application for temporary

Galveston Co. Sk. File 53

Counter 23576

injunction could be used in the final trial; and

(b) The stipulation entered into by and between the Parties and filed among the papers in this cause on November 15, 1963.

2. In said stipulation, among other things, Plaintiff and Defendant have agreed:

(a) That the Plaintiff is entitled to judgment quieting its title to the 384 Acre tract above the vegetation line; and

(b) That the vegetation line at the time of trial shall be considered throughout the length of the said 384 Acre tract along the Gulf shore as being 350 feet landward of the line of mean low tide, U. S. Coast and Geodetic Survey, 1929 datum, as shown by the survey of the Galveston County Engineer, dated May, 1963.

All of the facts agreed upon by the Parties in said stipulation are hereby adopted as the findings of this Court where not inconsistent with specific findings made herein by this Court.

As a result of said stipulation, the only part of the said 384 Acre tract remaining in controversy is that part of the land lying along the shore of the Gulf of Mexico, for a distance of approximately two miles, from the aforementioned line of mean low tide to a line 350 feet landward; this strip of land will hereinafter (in the Findings of Fact and in the Conclusions of Law) be referred to as the Beach. The Beach is a part of what is commonly known as East Beach, which is located on the extreme Easterly end of Galveston Island and is approximately three miles in length, lying between Stewart Beach on the West and the South Jetty on the East.

As a further result of said stipulation, there are only two main issues left to be decided, namely:

(a) Who has title to the Beach? and

(b) Does the public have an easement over the Beach (if the State does not have title)?

3. The Beach has accreted to land which was granted to Michael B. Menard by the Republic of Texas on January 25, 1838.

The title to the land to which the Beach has accreted passed to the Galveston City Company in 1840 or 1842, and from the Galveston City Company to Maco Stewart in 1909.

On May 11, 1917, Maco Stewart conveyed the land to which the Beach has accreted to the United States Government, and it became a part of the then existing Fort San Jacinto Military Reservation and remained such until September 24, 1959.

4. As stipulated, prior to May 11, 1917, the public had acquired, by long use, an easement over a strip of land from the vegetation line to the line of mean low tide as a public way and for recreational purposes at the place on the land involved where such beach then existed. Such beach, at that location, however, has not been used by the public for many years; and the place where such easement existed in and before 1917 is now far landward of the present line of vegetation. The Defendant does not claim that the public now has any easement at the place on the land where the easement existed in and before 1917.

5. On September 24, 1959, the United States of America conveyed the said 384 Acre tract to Plaintiff. The Beach was either included in or subsequently accreted to the said 384 Acres.

6. A breakwater, popularly known as the South Jetty, was constructed by the United States Government between the years 1887 and 1897 to protect the channel to the port of Galveston. It ran along the Eastern end of Galveston Island and extended approximately 2 1/2 miles into the Gulf of Mexico. At the time the South Jetty was constructed by the United States Government, title to the upland in the area in controversy was in the Galveston City Company. The South Jetty was not built on or adjacent to the land in controversy, but at the time of this trial, it was located approximately 8/10ths of a mile Easterly from the Easterly end of the Beach. After the said South

Jetty was constructed, accretion began on the Gulf shore on the Easterly end of Galveston Island and has continued, with minor interruptions due to storms and abnormally high tides, to the time of trial. From 1916 to 1959, the shoreline advanced seaward 2,208 feet at the Easterly end of the 384 Acre tract, 1,391 feet at the Westerly end, and 1,832 feet in the middle.

7. The said build-up of the shore between 1916 and 1959 was gradual and imperceptible. As the shore line moved seaward, the public continued to use the strip of beach between the waters of the Gulf and the slowly advancing (seaward) line of vegetation as a public way and for recreational purposes.

8. The existence of the said South Jetty was the major cause of the accretion of the Easterly end of Galveston Island, including the Beach. The South Jetty was constructed from the Easterly end of Galveston Island out into the Gulf of Mexico for a distance of approximately 2 1/2 miles. It created a dead pocket of low wave energy, which prevented sediment in suspension in the waters of the Gulf from being carried into the channel and bay and caused the sediment to be deposited along the shore Westerly of the South Jetty. Minor causes of the accretion to this area were: (1) the natural wave action, the waves usually coming upon the shore from a South-Easterly direction and into the pocket formed by the shore and the South Jetty; (2) the prevailing wind from the South-East; (3) the existence of the accreted shore offered an additional obstruction to the wave action; and (4) the deposit of spoil dredged from the channel into the waters of the Gulf of Mexico offshore from the Beach. Neither the erection of the Seawall nor the placing of groins in the Gulf of Mexico Westerly of the Beach was a cause of the accretion of the Beach.

South Jetty
major cause
of accretion.

The building of the South Jetty, Seawall and groins, and the dredging of the channel and disposal of the spoil therefrom, were all works done by the United States Government.

9. As found in Paragraph 3, supra, the title to the land to which the

Beach has accreted was in the United States Government and was a part of the San Jacinto Military Reservation from May 11, 1917 to September 24, 1959.

During World War II, from December of 1941 or January of 1942 until the spring or summer of 1946, which was the first beach season following the termination of the War, the public was excluded from the land to which the Beach has accreted. Due to the continuing accretion, the actual geographic location of the land barricaded by said Government during such period did not include the Beach, but the area so barricaded was situated, at the time of trial, more than 350 feet inland from the line of mean low tide. The Beach was submerged land during and prior to 1946.

The exclusion of the public during the said period by the said Government was a temporary emergency measure for national security purposes, and the said Government had no intention of permanently destroying the public easement.

10. Until June of 1962, except for the said period when the public was excluded during World War II, both the City and County of Galveston, acting separately or together, have expended public funds to clean and maintain the land along the shore, wherever it may have existed at the particular time.

CONCLUSIONS OF LAW

(The decision of the trial court, as set out in the judgment entered herein on June 5, 1964, will not be set out again here.)

A. Title

1. Plaintiff holds title to the portion of the 384 Acre tract which is above the vegetation line (as defined in the Findings of Fact herein) by stipulation and by proof of the record title in the trial of this cause.

2. Plaintiff holds title to the Beach (as defined in the Findings of Fact herein) as the owner of the shore to which belongs imperceptible and gradual additions to the land by alluvial deposit or accretion resulting from both natural and artificial causes, the artificial means not being brought about by the littoral owner. This title is subject to the easement of the public.

*and artificial
causes,
not brought about
by littoral owner*

B. Easement

1. The public easement stipulated by the Parties to have been in existence in and before 1917 at a place where the beach then existed follows the shore line as the line of mean low water changes from time to time by the natural forces of accretion and/or erosion; it always follows the sea, and with reference to the land in controversy herein covers the area from mean low water to 350 feet inland.

This concept of a rolling or shifting easement is not a new one. In 1905, it was applied in the English case of *Mercer v. Denne*, 2 Chancery Division 538, where the court held that a right to dry nets on a beach attached to a new beach area added to the old beach by accretion--that the drying area in such a case follows the sea.

2. The Beach has accreted to land which was patented by the Republic of Texas to M. B. Menard. There was an implied reservation in

the Menard Grant retaining an easement for the public in the free use of the beaches.

As stated in Galveston City Surf Bathing Co. v. Heidenheimer, 63 Tex. 559, at 562: "From the most ancient times, in all civilized countries, the free use of the waters and the shores of the sea by the public has been recognized as an indisputable right."

3. The Beach is a public road. In Brown v. State, 289 SW (2d) 942, West Beach was judicially declared to be a public road. The public road easement was not lost by adverse possession to the United States Government during the war time barricading because the statute of limitations does not run against public roads. Art. 5517, R. C. S. of Texas.

4. The barricading of the Beach by the United States Government from 1941 or 1942 to 1946 was a temporary war time emergency measure within the war powers of the United States Government and did not result in the destruction of the public easement.

5. An easement by estoppel was not created as a result of the expenditure of public funds by the City and County of Galveston in cleaning and maintaining the Beach.

6. Adverse possession, limitations, prescription, estoppel and laches do not apply against the United States Government. However, the United States Government took title to the Beach subject to the said rolling or shifting easement, and it conveyed it subject to the same easement.

7. Since May 24, 1959, Plaintiff has not granted, either by implication or estoppel, any easement to or for the benefit of the public. However, Plaintiff took title to the Beach subject to the said rolling or shifting easement and holds the Beach burdened with such easement.

estoppel - previous action or words to the contrary

laches - negligence in discharge of duty or opportunity in due diligence in asserting a right

establishment of a claim of title to something under common law can be by use enjoyment for a period fixed by statute
PRESCRIPTION

H. H. TREACCAR
Clerk District Court
Filed
SEP 15 1964
Galveston County Texas
By *Emma Louise Yon*
Deputy

Made and filed this 15th day of September, 1964.

A TRUE COPY I CERTIFY UNDER MY HAND AND SEAL OF OFFICE.
V. J. BENINATI, JR., Clerk District Court
Galveston County, Texas
By *Lattie B. Strother*
Deputy

Donald M. Marklee
Judge Presiding

Counter 23582

Galveston

File No. Sketch File No. 53

Judgement: cause No. 97893 County
384ac.

Filed July 11 19 84

GARRY MAURO, Com'r

By Douglas Howard

the free use of the waters and the shores of the sea by the public has been
 recognized as an inalienable right.

3. The Beach is a public road. In Brown v. State, 283 S.W. (2d) 942,
 West Beach was judicially declared to be a public road. The public road
 easement was not lost by adverse possession to the United States Government
 during the war time partitioning because the statute of limitations does not
 run against public roads. Art. 5517, R.C.S. of Texas.

4. The partitioning of the Beach by the United States Government
 from 1941 to 1942 to 1945 was a temporary war time emergency measure
 within the war powers of the United States Government and did not result in
 the destruction of the public easement.

5. An easement by estoppel was not created as a result of the
 expenditures of public funds by the City and County of Galveston in cleaning
 and maintaining the Beach.

6. Adverse possession, limitations, prescription, estoppel and
 laches do not apply against the United States Government. If they did,
 United States Government took title to the Beach subject to the said rolling
 or shifting easement, and it conveyed it subject to the same easement.

7. State May 24, 1952. Plaintiff has not examined, either by graph-
 ical or estoppel, any easement or for the benefit of the public. However,
 Plaintiff took title to the Beach subject to the said rolling or shifting easement
 and holds the Beach partitioned with each easement.

and filed this 15th day of September, 1984.
 A TRUE COPY HEREBY UNDER MY HAND
 and Seal of Office, this 15th day of September, 1984.
 GARRY MAURO, Com'r
 County Clerk
 Galveston County, Texas

Douglas Howard
 Attorney at Law
 Galveston, Texas

counter 23583