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SUPREME COURT
STATE OF WASHINGTON
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NO. 92623-9

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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Barlow Point Land Company, LLC, a Delaware limited liability
company; and PORT OF LONGVIEW, a municipal corporation,

Plaintiffs/Respondents,

vs.

Keystone Properties I, LLC,

Defendant/Appellant.

APPEAL FROM THE SUPERIOR COURT

HONORABLE STEPHEN WARNING

REPLY ON PETITION FOR REVIEW

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I. Identity of Replying Party.

This reply is made on behalf of Defendant and Petitioner Keystone Properties I, LLC (Keystone).

II. Issue Discussed in This Reply.

In the Answer to Petition for Review, Plaintiffs and Respondents Barlow Point Land Company, LLC (Barlow Point) and Port of Longview (the Port) requested the Court to address what they refer to as the Wardell Doctrine if the Court accepts review of this matter. Answer to Petition for Review, p. 14. This Reply will be addressed solely to that request. RAP 13.4(d)

III. Statement of the Case Pertaining to the Issue Discussed in This Reply.

The dispute here requires the interpretation of the legal description in the 2006 deed from Terra Firma, Inc., to Stephen J. Wilson. That legal description is the following:

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PARCELA:

Lot 2 of short subdivision No. 91-001, as recorded in Volume 6 of short plats, page 83, under Auditor's File No. 910204032; and being a portion of the George Barlow D.L.C.; together with all tidelands of the second class, situated in front of, adjacent to or abutting the above described uplands and as conveyed in Parcel "J" of said deed, Volume 977, page 242 (fee no. 8400924042).

PARCEL B:

All that portion of George Barlow D.L.C. and George Fisher D.L.C. lying outside of Columbia River Dike of Consolidated Diking Improvement District No. 1, said dike being described by Deed in Volume 121, page 391, Auditor's File No. 51256;

EXCEPTING THEREFROM that portion lying northerly of a line that is parallel to and 1,765.70 feet south of the south line of Section 22, Township 8 North, Range 3 West of the W.M.

The issue in the case is whether this legal description includes the tidelands abutting what the legal description refers to as Parcel B. The Port and Barlow Point argued that those tidelands were included based upon, among other things, the Wardell Doctrine. The Court of Appeals decided the matter on other grounds. It declined to address the applicability of the Wardell Doctrine in its opinion. Opinion, p. 19.

IV. Argument.

a. There Are No Grounds for Review of This Issue.

While the Port and Barlow Point ask the Court to consider what they refer to as the Wardell Doctrine if it takes review, they make no argument as to why it should do so based on the considerations set out in RAP 13.4(b). For that reason alone, the issue should not be considered on review.

In any event, none of those considerations are present here. Since the Court of Appeals made no decision based on the Wardell Doctrine, its decision cannot conflict with any decision of the Supreme Court or the Court of Appeals. RAP 13.4(d)(1),(2) The Wardell Doctrine presents no issue of substantial public interest. RAP 13.4(d)(4) The issue is a rarely used judicially created doctrine. It is not discussed in Stoebuck and Weaver *Real Estate: Property Law and Transactions*, at 17 Wash.Prac. and 18 Wash.Prac., Washington's well recognized treatise on real property law. The cases cited below appear to represent the only reported decisions discussing this doctrine. Finally, since the Wardell Doctrine is judicially created, it raises no constitutional questions. RAP 13.4(d)(3)

Since none of the considerations for acceptance review apply to consideration of the Wardell Doctrine, the Court should not accept review of this issue.

b. The Wardell Doctrine Does Not Apply Here.

Tidelands are the area between ordinary high tide and extreme low tide. They will be exposed at low tide and covered with water at high tide. They are therefore between the shore and the center of the stream. *Stoebuck & Weaver Real Estate: Transactions* 18 Wash.Prac. § 13.5

The Wardell Doctrine is based on the presumption first discussed in *Wardell v. Commercial Waterway District #1*, 80 Wash. 495, 141 P. 1045 (1914), and later referred to in *Knutson v. Reichel*, 10 Wn.App. 293, 518 P.2d 233 (1973), and *Bernhard v. Reischman*, 33 Wn.App. 569, 574-575, 658 P.2d 2 (1983). Stated simply, the rule provides that a grantor is presumed to have conveyed title to the center or thread of a stream if that stream is called out as a boundary in the deed's legal description. As has been stated:

. . .there seems to be no reason why a conveyance by an upland proprietor of land, describing it as bound by a certain stream, in the absence of a reservation, should not convey all the land which such proprietor owns, even to the thread of the stream, if he should own so far. . .

Wardell v. Commercial Waterway District #1, supra, 80 Wash. at 499

Generally, a call in a deed to a non-navigable river means to the center (thread) of the stream. . .there exists, moreover, a presumption that when a private individual grants property belonging to him and bounds it generally upon a natural stream, he does not intend to reserve any

land between the upland and the stream, and the grant will carry title to the grantee so far as the grantor owns unless the shore land or bed of the stream be expressly reserved by the grant. . .Furthermore, as to a deed which employs a call to a river, though the thread of the river is not specifically described as a boundary, it can be said in light of the above presumption that the shorelines and bed are appurtenant to this grant. . .

. . .the cumulative effect of these principles is this: a deed which employs a river as one of the calls in its description will be construed against the grantor, and if he owns to the water he will be deemed not to have cutoff the grantee from the water absent an express reservation.

Knutson v. Reichel, *supra*, 10 Wn.App. at 295-296; accord, *Bernhard v. Reischman*, *supra*, 33 Wn.App. at 574. In each of these cases, the legal description in the deed included a call in the boundary to a named river or slough. The court in each case held that the reference to the body of water was presumed to grant title to the land between the uplands and the midpoint or thread of the stream in the absence of an express reservation. This presumption has also been applied when a deed contained a boundary defined as the meander line, or mean high tide line, of the Pacific Ocean. *Vavrek v. Parks*, 6 Wn.App. 684, 495 P.2d 1051 (1972).

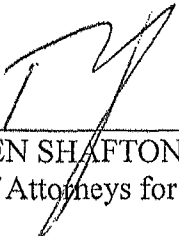
The presumption set out in *Wardell v. Commercial Waterway District #1*, *supra*, and its progeny does not apply here because there is no reference to a body of water—such as the Columbia River—in either the description of Parcel A or Parcel B in the 2006 Deed. As noted

above, the requirement of a call to a body of water in a legal description is part and parcel of the Wardell presumption. The Court of Appeals' decision not to base its conclusion of the Wardell Doctrine was therefore proper.

V. Conclusion.

The Court should grant review in this matter as Keystone has urged in its Petition for Review. However, it should not also base review on what the Port and Barlow Point have referred to as the Wardell Doctrine.

DATED this 8 day of January, 2016.



BEN SHAFTON WSB#6280
Of Attorneys for Keystone Properties I, LLC

NO. 92623-9

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HONORABLE STEPHEN WARNING

REPLY ON PETITION FOR REVIEW

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COMES NOW Sara AhernSawyer and declares as follows:

1. My name is Sara AhernSawyer. I am a citizen of the United States, over the age of eighteen (18) years, a resident of the State of Washington, and am not a party to this action.

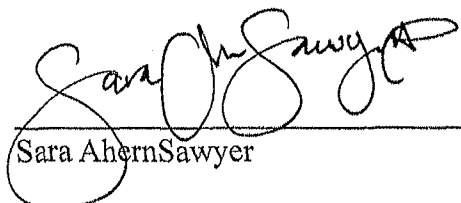
2. On January 8, 2016, I deposited in the mails of the United States of America, first class mail with postage prepaid, a copy of Motion to Publish Opinion to the following person(s):

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HILLIER SCHEIBMEIR VEY & KELLY
PO BOX 939
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MR SETH WOOLSON
CHMELIK, SITKIN & DAVIS
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BELLINGHAM, WA 98225

I DECLARE UNDER PENALTY OF PERJURY AND THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

DATED at Vancouver, Washington, this 8 day of January, 2016.



Sara AhernSawyer

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Please find attached Reply on Petition for Review and Declaration of Mailing.

Thank you.

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