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### III. ASSIGNMENTS OF ERROR

1. Finding 9 does not support conclusions 2, 3, 4, 5, 6, 7, or 8.
2. Finding 10 does not support conclusions 2, 3, 4, 5, 6, 7 or 8.
3. Finding 11 does not support conclusions 2, 3, 4, 5, 6, 7 or 8.
4. Finding 12 does not support conclusions 2, 3, 4, 5, 6, 7 or 8.
5. Finding 14 is not supported by substantial evidence.
6. Finding 14 does not support conclusion 4.
7. Finding 16 does not support conclusions 2, 3, 4, 5, 6, 7 or 8.
8. Finding 17 is not supported by substantial evidence.
9. Finding 17 does not support conclusions 2, 3, 4, 5, 6, 7 or 8.
10. Finding 21 is not supported by substantial evidence.
11. Finding 21 does not support conclusions 2, 3, 4, 5, 6, 7 or 8.
12. The trial court erred in conclusion 2 by concluding that respondent had proved all of the elements of adverse possession and was entitled to the disputed area.
13. The trial court erred in conclusion 3 by concluding that respondent and her father have made exclusive, actual and uninterrupted, open and notorious, and hostile use of the disputed area.
14. The trial court erred in conclusion 4 by concluding that respondent and her family have made such use of the property as would be

expected of a property owner given the characteristics of the property.

15. The trial court erred in conclusion 5 by concluding that respondent's use of the property put all of respondent's neighbors on notice of her claim.
16. The trial court erred in conclusion 6 by concluding that appellant and his predecessor made occasional and transitory use of the boat platform and disputed area, but such use was permitted by respondent as a neighborly accommodation.
17. The trial court erred in conclusion 7 by concluding that appellant and his predecessor had actual notice of respondent's use of the disputed area.
18. The trial court erred in conclusion 8 by concluding that respondent's use of the disputed areas was continuous beginning at least as early as the 1980's and that use was not interrupted.
19. The trial court erred in admitting Exhibit 10.
20. The trial court erred in admitting Exhibit 11.
21. The trial court erred entering the judgment.
22. The trial court erred in its order on reconsideration

#### **IV. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Does respondent's admission that she did not exclude appellant's family from the disputed area, coupled with evidence of long-standing joint use of the disputed area by appellant and respondent, and evidence of a trail built by appellant through the disputed area, negate the element of respondent's exclusive possession of the disputed area? (Pertains to Assignments of Error Nos. 5, 6, 12, 13, 14, 16, 21, 22).
2. Is finding 17, that use by appellant's family of the disputed area was transitory, supported by substantial evidence, in light of evidence of decades of recreational use of the disputed parcel by appellant's family, appellant's storage of boats and oars in the disputed area, and the presence of a trail cut by appellant through the disputed area? (Pertains to Assignments of Error Nos. 8, 9, 12, 13, 14, 16, 21, 22).
3. Is finding 21, that the testimony of witness established that a single trail ran from Lot 17 to the beach, supported by substantial evidence, in light of testimony by appellant and others that a second trail ran down the south boundary of Lot 17, across the disputed area, to the beach? (Pertains to Assignments of Error Nos. 10, 11, 12, 13, 14, 16, 21, 22).
4. Does a presumption that respondent's entry into the disputed area was permissive negate the element of hostile possession? (Pertains to Assignments of Error Nos. 12, 13, 16, 21, 22).

5. Did the trial court err in failing to enter a finding whether respondent's use of the disputed area was permissive? (Pertains to Assignments of Error Nos. 12, 13, 21, 22).
6. Does the trial court's failure to make a finding whether respondent's use of the disputed area was permissive constitute an implied negative finding on that issue? (Pertains to Assignments of Error Nos. 12, 13, 21, 22).
7. Does the trial court's finding that respondent's ex-husband planted and later cut down trees in the disputed area, installed a log boom, planted a redwood, and cut salmonberry in the disputed area support the trial court's conclusions that respondent had proved all the elements of adverse possession, and had made actual and uninterrupted, open and notorious, and hostile use of the disputed parcel for a period beginning in the 1950's? (Pertains to Assignments of Error Nos. 1, 2, 13, 21, 22).
8. Do the trial court's findings, that respondent's neighbors testified that they saw grass growing in the disputed area, and respondent's daughter testified that respondent planted a lawn in the 1980's, support the trial court's conclusions that respondent had proved all the elements of adverse possession, and had made actual and uninterrupted, open and notorious, and hostile use of the disputed parcel for a period beginning in the 1950's? (Pertains to Assignments of Error Nos. 2, 3, 4, 12, 13, 21, 22).

9. Does respondent's failure to establish that that her adverse use occurred within a well-defined area preclude the trial court's conclusions that respondent had proved all the elements of adverse possession, and had made actual and uninterrupted, open and notorious, and hostile use of the disputed parcel for a period beginning in the 1950's? (Pertains to Assignments of Error Nos. 12, 13, 21, 22).

10. Does respondent's admission that she never excluded appellant's family from the disputed area, plus evidence of decades of use of the disputed area by the appellant's family to recreate, to store their boats and oars, and evidence of the trail cut by appellant through the disputed area, preclude the trial court's conclusions that that respondent had proved all the elements of adverse possession, and had made exclusive use of the disputed area for a period beginning in the 1950's? (Pertains to Assignments of Error Nos. 12, 13, 21, 22).

11. Does evidence of decades of use of the disputed area by the appellant's family to recreate, to store their boats and oars, and evidence of the trail cut by appellant through the disputed area, preclude the trial court's conclusion that appellant and his predecessor had made transitory use of the boat platform and disputed area, but such use was permitted by respondent as a neighborly accommodation? (Pertains to Assignments of Error Nos. 12, 13, 16, 21, 22).

12. Does appellant's admission that foliage was sometimes allowed to grow up in the disputed area, and testimony from neighbors that the grass weeds and brush in respondent's yard were sometimes high, and testimony of respondent's daughter that the standard for the lawn went up in 1997, preclude the trial court's conclusion that respondent's use of the disputed area was continuous from at least as early as the 1980's, and not interrupted? (Pertains to Assignments of Error Nos. 12, 13, 18, 21, 22).
13. Did the trial court abuse its discretion in admitting Exhibit 10? (Pertains to Assignments of Error Nos. 19, 21, 22).
14. Did the trial court abuse its discretion in admitting Exhibit 11? (Pertains to Assignments of Error Nos. 20, 21, 22).
15. Did the trial court err in entering the judgment for respondent? (Pertains to Assignments of Error Nos. 21, 22).
16. Did the trial court err in entering the order on reconsideration? (Pertains to Assignments of Error Nos. 22).

## V. STATEMENT OF THE CASE

### A. FACTS

Appellant, Guy Soderlind (Guy) is a resident of Burien.<sup>1</sup> Guy is the owner of Lot 17, Ludlow Beach Tracts No. 2, Jefferson County Washington.<sup>2</sup> The plat of Ludlow Beach Tracts No. 2 was filed in 1948.<sup>3</sup> Lot 17 was purchased by Guy's great uncle, Philip Joray, in 1948.<sup>4</sup> When Mr. Joray passed away in the mid-1980's, Lot 17 passed to Guy's grandmother, Charlotte Soderlind, who disclaimed it to Guy's father, Guy Soderlind, Sr.<sup>5</sup> When Guy Sr. died, title to Lot 17 passed to Guy.<sup>6</sup>

Lot 17 is approximately 1 acre in size, with about 140 feet of frontage on Port Ludlow Bay.<sup>7</sup> Most of the lot is in a natural state, covered with trees and shrubs.<sup>8</sup> At the north end of Lot 17, the uplands are marked by a high bank.<sup>9</sup> At the northwest corner of Lot 17, a slope descends to a flat area near the beach adjacent to the boundary with Lot 16.<sup>10</sup> The flat

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<sup>1</sup> RP VII at 745.

<sup>2</sup> CP 11; RP VII at 745.

<sup>3</sup> EX 46.

<sup>4</sup> RP VII at 745.

<sup>5</sup> RP VII at 746.

<sup>6</sup> RP VII at 747.

<sup>7</sup> EX 46, 51

<sup>8</sup> EX 52, 53, 56, 64, 72

<sup>9</sup> EX 47, 72.

<sup>10</sup> RP VII at 758, 840; EX 72.

area is very wet in winter.<sup>11</sup> The flat area is the focal point of this case, and is hereafter referred to as the disputed area.

Respondent, Jean Simmonds (Jean), is a resident of Seattle.<sup>12</sup> Jean was formerly married to Dr. Benjamin Bryant (Ben).<sup>13</sup> Jean and Ben were married in 1947.<sup>14</sup> Jean and Ben separated in 1987.<sup>15</sup> Jean's father, C. A. Solberg, purchased Lot 16 of Ludlow Beach Tracts No. 2 in 1950.<sup>16</sup> Jean purchased Lot 16 from her father on a real estate contract in 1981.<sup>17</sup> Jean finished payment on the contract in 1988.<sup>18</sup> C.A. Solberg conveyed title to Lot 16 to Jean in 1993.<sup>19</sup> C. A. Solberg died in 1993.<sup>20</sup>

Lot 16 lies to the south of Lot 17.<sup>21</sup> Lot 16 also has frontage on Port Ludlow Bay.<sup>22</sup> In contrast to Lot 17, Lot 16 has low bank frontage on the water.<sup>23</sup> A creek runs through the south part of Lot 16.<sup>24</sup>

In the summer of 1951, C. A. Solberg commenced building a cabin on the north side of Lot 16.<sup>25</sup> Ben helped on weekends to assemble the

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<sup>11</sup> RP VII at 759.

<sup>12</sup> RP IV at 387.

<sup>13</sup> RP IV at 473;

<sup>14</sup> RP I at 23.

<sup>15</sup> RP IV at 474-75.

<sup>16</sup> RP IV at 473;

<sup>17</sup> RP IV at 475; EX 1.

<sup>18</sup> RP IV at 472.

<sup>19</sup> RP IV at 475-76; EX 2.

<sup>20</sup> RP V at 520.

<sup>21</sup> EX 46.

<sup>22</sup> EX 46.

<sup>23</sup> EX 14, 18, 19, 20, 21 25, 54, 64, 72

<sup>24</sup> RP V at 595-96; EX 82; 93.

<sup>25</sup> RP I at 24;

cabin.<sup>26</sup> The cabin was a former CCC barracks.<sup>27</sup> C. A. Solberg himself surveyed Lot 16.<sup>28</sup> C. A. Solberg made drawings in which he calculated the boundaries of Lot 16.<sup>29</sup> C. A. Solberg sighted the cabin at an angle, as opposed to other houses in the plat.<sup>30</sup> C. A. Solberg cleared a portion of Lot 16 in 1955.<sup>31</sup>

A woodshed was constructed on Lot 16 as a separate structure from the cabin.<sup>32</sup> A space wide enough to park a car exists between the woodshed and the cabin.<sup>33</sup> The structure containing the woodshed was constructed in three stages. A work shop was first constructed, and in 1980, a laundry room was added, and sometime after 1980, the woodshed was constructed.<sup>34</sup> Much later, a roof extending from the house was added to cover the carport, laundry room and shed.<sup>35</sup> The woodshed encroaches on Lot 17.<sup>36</sup>

Jean has an interest in three residential properties.<sup>37</sup> Two of the residences are in Seattle.<sup>38</sup> Jean retired from the University of Washington

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<sup>26</sup> RP I at 25; EX 80.

<sup>27</sup> RP II at

<sup>28</sup> RP I at 95.

<sup>29</sup> RP II at 169.

<sup>30</sup> RP VI at 665; EX 93.

<sup>31</sup> RP V at 515-16; EX 13.

<sup>32</sup> RP I at 37.

<sup>33</sup> RP I at 37-38.

<sup>34</sup> RP IV at 480-81.

<sup>35</sup> RP IV at 481.

<sup>36</sup> RP IV at 450; EX 47.

<sup>37</sup> RP VI at 704.

in 1987.<sup>39</sup> Thereafter, for a couple of years, Jean worked part-time at the University of Washington.<sup>40</sup> Jean was last employed full-time in 1988 or 1989.<sup>41</sup>

In 1978, following the death of her mother, Jean moved into her father's home to care for him as he began to fail.<sup>42</sup> Jean testified that beginning in 1987, she spent about 50 percent of her time at Lot 16.<sup>43</sup> Jean, however, testified in her deposition that the longest time that she has ever been in residence at the cabin on Lot 16 was two months.<sup>44</sup>

The longest time that Ben stayed at Lot 16 was one month in the summer of 1983.<sup>45</sup> Ben also stayed three days a week for a month in 1958 or 1959.<sup>46</sup> Before the dissolution of their marriage was final, Ben would visit Lot 16 one weekend per month.<sup>47</sup> Ben quit visiting the cabin in 1994 or 1995, when Jean met her husband, Bob Simmonds.<sup>48</sup> Jean spent more time at Lot 16 than Ben.<sup>49</sup>

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<sup>38</sup> RP VI at 704.

<sup>39</sup> RP IV at 470-71.

<sup>40</sup> RP IV at 471.

<sup>41</sup> RP VI at 704.

<sup>42</sup> RP VI at 705-06.

<sup>43</sup> RP IV at 472.

<sup>44</sup> RP VI at 715; CP 114.

<sup>45</sup> RP II at 166.

<sup>46</sup> RP II at 167.

<sup>47</sup> RP II at 181.

<sup>48</sup> RP II at 182.

<sup>49</sup> RP I at 26.

In addition to helping to assemble the cabin, Ben cut salmonberry bushes in the disputed area.<sup>50</sup> The salmonberry bushes grew up every year.<sup>51</sup> Ben planted some alder trees in the disputed area.<sup>52</sup> In the 1980's or 1990's, Ben took down the alders that he earlier planted in the disputed property.<sup>53</sup> None of those trees remain.<sup>54</sup> Ben also planted a redwood tree.<sup>55</sup> At some point, after a high tide, a large log washed up on the beach at Lot 16.<sup>56</sup> Ben maneuvered the log, known as the beach log, to a position parallel to the beach, and built a row of rocks so the log would not roll back onto the beach.<sup>57</sup> The beach log is positioned at a right angle to the platform.<sup>58</sup> The beach log ends to the south of the platform.<sup>59</sup>

At some point, Jean planted a lawn in the disputed area. Ben recalled that a lawn was installed at Lot 16 shortly after the cabin was inhabitable, but he did not state whether the lawn included the disputed area.<sup>60</sup> Ben recalled that the lawn was in place when he and Guy Sr. cut down a tree referred to as the "bat tree".<sup>61</sup> Ben claims that the lawn was

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<sup>50</sup> RP II at 44.

<sup>51</sup> RP II at 173.

<sup>52</sup> RP II at 45

<sup>53</sup> RP VI at 690; RP II at 47.

<sup>54</sup> RP VI at 696.

<sup>55</sup> RP I at 47-50.

<sup>56</sup> RP I at 27-28.

<sup>57</sup> RP I at 28; RP II at 190-91; EX 79.

<sup>58</sup> RP I at 29.

<sup>59</sup> RP I at 75-76; RP II at 189-90; EX 38; 69.

<sup>60</sup> RP I at 45.

<sup>61</sup> RP I at 52-53.

present in the disputed area in the 1980's.<sup>62</sup> The lawn appears in photographs taken in the 1990's of the disputed area.<sup>63</sup> Jean never erected a fence or a boundary hedge along the northern line of the disputed parcel.<sup>64</sup> Jean claims to have mowed the lawn in the disputed area.<sup>65</sup> Jean tried to pull blackberries from the disputed area, but she acknowledged that she did not do as good a job as Ben had done.<sup>66</sup> In 2004, Jean hired a company, Brush B Gone, to clear brush in the disputed area.<sup>67</sup>

Jean's efforts to maintain a line between the disputed area and the rest of Lot 17 varied. Jean acknowledged that foliage has sometimes been allowed to grow up south of her claimed line of possession.<sup>68</sup> Jean acknowledged that the trail to the beach near the platform was obscured by brush and spring growth in a photograph taken in 1993.<sup>69</sup> According to Jean's neighbor, Phyllis Blum, sometimes the grass and weeds and brush would be high on Jean's property.<sup>70</sup> Elizabeth Bryant, Jean's daughter, said that the standard for the lawn went up considerably after 1997.<sup>71</sup>

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<sup>62</sup> RP I at 68-69; EX 35.

<sup>63</sup> RP V at 518-43; EX 15-19, 21, 22

<sup>64</sup> RP VI at 690.

<sup>65</sup> RP V at 569; EX 31.

<sup>66</sup> RP V at 572.

<sup>67</sup> RP V at 572-73.

<sup>68</sup> RP VI at 692.

<sup>69</sup> RP V at 534-36; EX 20.

<sup>70</sup> RP IV at 408.

<sup>71</sup> RP III at 293.

Photographs taken in June 2006, and July 2007 reveal substantial growth of grass, weeds and bushes in the disputed area.<sup>72</sup>

Jean recalls that in 1990, a neighbor, Bob Fish, built the platform at the water's edge.<sup>73</sup> At high tide, the water reaches the inland side of the platform.<sup>74</sup> Bob Fish also installed a hand winch in the disputed area in 1990.<sup>75</sup>

Jean purchased a 7.5 foot, 2-person Livingston boat in 1989.<sup>76</sup> Jean stored her boat in the disputed area.<sup>77</sup> Jean would sometimes park her boat on the platform.<sup>78</sup> Other times Jean would park her Livingston boat underneath the deck of her cabin.<sup>79</sup> Jean recalls that it was a common practice for Jean and the Soderlinds to park their boats near the platform.<sup>80</sup>

The Soderlinds also owned many boats, including a dory, a 14-foot Ranger, a smaller Ranger and an Apollo.<sup>81</sup> It was the Soderlinds' custom to park their boats all over the area.<sup>82</sup> Jean's photographs reveal at least

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<sup>72</sup> RP I at 79-81; RP VI at 686-89; RP VIII at 925; EX 39, 64, 71.

<sup>73</sup> RP IV at 490-91; RP V at 531, 553-555; EX 5, 6, 26.

<sup>74</sup> RP V at 542.

<sup>75</sup> RP IV at 490; RP V at 524; EX 5, 17.

<sup>76</sup> RP IV at 491; RP V at 517; EX 7.

<sup>77</sup> RP V AT 527, 532, 537; EX 17, 19, 21.

<sup>78</sup> RP V at 551; EX 25.

<sup>79</sup> RP V at 529-30; EX 18.

<sup>80</sup> RP V at 540.

<sup>81</sup> RP VII at 786-87.

<sup>82</sup> RP VII at 787.

one of the Soderlinds' boats parked in the disputed area.<sup>83</sup> The Soderlinds never removed any of their boats in response to a request from Jean.<sup>84</sup> The Soderlinds stored the oars to their boat against a small alder tree in the disputed area.<sup>85</sup> Guy frequently used the Livingston boat to reach their Apollo boat moored at their buoy.<sup>86</sup> Guy was never denied use of the Livingston.<sup>87</sup> The Soderlinds and their guests also frequently used the platform to recreate, to stage picnics, to sunbathe, and to use their boats.<sup>88</sup>

Guy's family first visited Lot 17 in the 1970's.<sup>89</sup> Guy Sr. moved a 25-foot trailer onto Lot 17 in 1985.<sup>90</sup> The Soderlinds used the trailer as a camper.<sup>91</sup> The trailer was located about 20 feet in from the middle of the road, in the middle of the lot.<sup>92</sup> The trailer was later destroyed by a falling tree and was replaced with a 15-foot trailer.<sup>93</sup>

The Soderlinds constructed two trails to the beach. One trail ran down the south side of the property, through the low part or "meadow", all

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<sup>83</sup> RP VIII at 932-33; EX 18.

<sup>84</sup> RP VII at 788.

<sup>85</sup> RP VII at 765, 792, 850; RP VIII at 914-15; EX 50, 52, 54.

<sup>86</sup> RP VII at 793.

<sup>87</sup> RP VII at 793.

<sup>88</sup> RP VII at 835, 845; RP VII at 853, 860-61; RP VII at 781-82; EX 54; RP VII at 782-84; RP VII at 784; RP VII at 813-15; RP VII at 786-790, 852; RP VIII at 930-33, 949-950; EX 18, 19, 21, 25; RP VII at 765, 792, 850; RP VIII at 914-15; EX 50, 52, 54.

<sup>89</sup> RP VII at 824.

<sup>90</sup> RP VII at 825.

<sup>91</sup> RP VII at 825.

<sup>92</sup> RP VII at 826.

<sup>93</sup> RP VII at 752.

the way to the beach.<sup>94</sup> Another trail ran to the beach through the middle of the property.<sup>95</sup>

Guy was 14 or 15 when he first visited Lot 17.<sup>96</sup> In 1994, Guy lived in the trailer for just under one year.<sup>97</sup> Guy cleared the flat area, known as the meadow, to pitch a tent to camp in.<sup>98</sup> Guy camped in the meadow by himself and with friends for years.<sup>99</sup>

In 2006, Guy hired Arnold Wood, a licensed surveyor, to conduct a survey of Lot 17.<sup>100</sup> Wood was asked to define Guy's property lines.<sup>101</sup> Wood's survey was recorded with the Jefferson County Auditor in July 2006.<sup>102</sup> The Wood's survey records an encroaching woodshed along the lot line between Lots 16 and 17.<sup>103</sup> Wood's survey records no other encroachment along that line.<sup>104</sup> According to Wood, it is standard practice to show all fences, and buildings suspected of encroaching.<sup>105</sup>

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<sup>94</sup> RP VIII at 915-16; RP VII at 826-27; RP VII at 811-12; RP VII at 774-75; RP VII at 774; EX 75; RP VIII at 843.

<sup>95</sup> RP VIII at 915-16.

<sup>96</sup> RP VII at 747.

<sup>97</sup> RP VII at 747-48.

<sup>98</sup> RP VII at 759-60.

<sup>99</sup> RP VII at 760-61, 807-09.

<sup>100</sup> RP IV at 441; EX 47.

<sup>101</sup> RP IV at 462.

<sup>102</sup> EX 47.

<sup>103</sup> RP IV at 450; EX 47.

<sup>104</sup> RP IV at 464-65; EX 47.

<sup>105</sup> RP IV at 465.

In a second visit to the property, Max Wood, the field man for Wood Surveying, found that a survey marker had been moved.<sup>106</sup> Max Wood found the marker to the side of Jean's yard, lying in the brush.<sup>107</sup> At Jean's request, Max Wood replaced the marker and put it on another line.<sup>108</sup> Max Wood did not replace the marker in its original spot.<sup>109</sup> Instead, Max Wood moved the marker to the edge of Jean's grass.<sup>110</sup> Jean acknowledged that she and no one else moved the marker.<sup>111</sup>

## **B. PROCEDURAL HISTORY**

Jean filed a summons and complaint to quiet title and for adverse possession in February 2007.<sup>112</sup> Guy filed an answer, affirmative defenses and counterclaim in March 2007.<sup>113</sup> In April 2007, Jean filed a reply to Guy's counterclaim.<sup>114</sup>

The matter came on for trial in October 2007.<sup>115</sup> Trial was continued until March 2008.<sup>116</sup> The trial court entered findings of fact and conclusions and a judgment quieting title to the disputed parcel in Jean in

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<sup>106</sup> RP VIII at 899; EX 71.

<sup>107</sup> RP VIII at 901; EX 71.

<sup>108</sup> RP VIII at 901; EX 71.

<sup>109</sup> RP VIII at 902.

<sup>110</sup> RP VIII at 902.

<sup>111</sup> RP VI at 687-88.

<sup>112</sup> CP 1-5.

<sup>113</sup> CP 10-13.

<sup>114</sup> CP 14-15.

<sup>115</sup> RP I, II, II, IV.

<sup>116</sup> RP V, VI, VII, VIII.

July 2008.<sup>117</sup> The trial court denied reconsideration.<sup>118</sup> Guy filed a timely notice of appeal.<sup>119</sup>

## VI. ARGUMENT

### A. THE TRIAL COURT ERRED IN QUIETING TITLE TO THE DISPUTED AREA IN RESPONDENT.

#### 1. STANDARDS OF REVIEW

Adverse possession involves mixed questions of law and fact.

*Peeples v. Port of Bellingham*, 93 Wn. 2d 766, 771, 613 P. 2d 1128 (1980). Adverse possession requires proof of possession that is: (1) open and notorious, (2) actual and interrupted, (3) exclusive, (4) hostile. *ITT Rayonier, Inc. v. Bell*, 112 Wn. 2d 754, 757, 774 P. 2d 6 (1989) (“Possession of the property with each of the necessary concurrent elements must exist for the statutorily prescribed period of 10 years. RCW 4.16.020.”). The presumption of possession is in the holder of legal title. *Peeples v. Port of Bellingham*, 93 Wn. 2d 773. Therefore, the burden of proving each element of adverse possession is on the claimant. *Muench v. Oxley*, 90 Wn. 2d 637, 642, 584 P. 2d 939 (1978); *ITT Rayonier, Inc. v. Bell*, 112 Wn. 2d 757.

Whether adverse possession has been established by the facts as found by the trial court is a question of law reviewable *de novo*. *Happy*

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<sup>117</sup> CP 201-205; CP 206-09; APP 2, 1.

<sup>118</sup> CP 210-212; APP 3.

<sup>119</sup> CP 214-224.

*Bunch, LLC v. Grandview North, LLC*, 142 Wn. App. 81, 88, 173 P. 3d 959, review denied, 164 Wn. 2d 1009 (2008). The trial court’s findings are reviewed for substantial evidence, *i.e.*, evidence of sufficient quantum to persuade a fair-minded person of the truth of the finding. *Harris v. Urell*, 133 Wn. App. 130, 137, 135 P. 3d 530 (2006). If the trial court’s findings are supported by substantial evidence, the court inquires whether the findings support the trial court’s conclusions of law and judgment.

*Ibid.*

**2. THE TRIAL COURT ERRED IN FINDING THAT RESPONDENT USED THE DISPUTED AREA AS A PROPERTY OWNER.**

Guy assigns error to the trial court’s finding 14, that Jean and her family made such use of the property as would be expected of a property owner given the characteristics of the property.<sup>120</sup> Finding 14 addresses the element of exclusive possession necessary for adverse possession. *Crites v. Koch*, 49 Wn. App. 171, 174, 741 P. 2d 105 (1987) (“*In order to be exclusive for purposes of adverse possession, the claimant’s possession need not be absolutely exclusive. Rather, the possession must be of a type that would be expected of an owner under the circumstances.*”).

Shared possession of disputed property by the adverse possessor and the title owner precludes exclusive possession. *Crites v. Koch*, 49 Wn.

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<sup>120</sup> CP 203; APP 2.

App. 174; *Scott v. Slater*, 42 Wn. 2d 366, 369, 255 P. 2d 377 (1953); W. B. Stoebuck, 17 Washington Practice, Real Estate, 8.19 (“*Any sharing of possession with the true owner is particularly sensitive...*”). In this regard, Jean testified that she never excluded the Soderlinds from the disputed parcel: “*Q: Have you ever, or anyone acting for you, ever excluded the Soderlind’s [sic] from use of the property that you claim to own by adverse possession? A: No.*”<sup>121</sup>

Photographs introduced by Jean, and testimony of Guy, Linda Bryan, Garret Ray, Shelia Miller and Jean, detail decades of joint use by Jean, the Soderlinds, and their guests of the area surrounding the platform to recreate, and to store their boats and oars.<sup>122</sup> Jean admitted that she saw Guy Sr. using the platform on several occasions.<sup>123</sup> The beeline trail built by the Soderlinds along the south boundary of Lot 17 traverses the disputed area and ends at the platform.<sup>124</sup> Jean’s admission that she did not exclude the Soderlinds from the disputed area, evidence of longstanding joint use, and the beeline trail negate the element of exclusive possession.

*ITT Rayonier, Inc., v. Bell*, 112 Wn. 2d 758; *Thompson v. Schlittenhart*, 47

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<sup>121</sup> RP VI at 690.

<sup>122</sup> RP VII at 835, 845; RP VII at 853, 860-61; RP VII at 781-82; EX 54; RP VII at 782-84; RP VII at 784; RP VII at 813-15; RP VII at 786-790, 852; RP VIII at 930-33, 949-950; EX 18, 19, 21, 25; RP VII at 765, 792, 850; RP VIII at 914-15; EX 50, 52, 54.

<sup>123</sup> RP VI at 709.

<sup>124</sup> RP VIII at 915-16; RP VII at 826-27; RP VII at 811-12; RP VII at 774-75; RP VII at 774; EX 75; RP VIII at 843.

Wn. App. 209, 734 P. 2d 48, *rev. denied*, 108 Wn. 2d 1019 (1987).

Therefore, finding 14, that Jean and her family made such use of the property as would be expected of a property owner given the circumstances, is not supported by substantial evidence, is not binding upon this Court, and should be reversed. *Chmela v. Department of Motor Vehicles*, 88 Wn. 2d 385, 391, 561 P. 2d 1085 (1977); *Smith v. Pacific Pools, Inc.* 12 Wn. App. 578, 582, 530 P. 2d 658, *rev. denied*, 85 Wn. 2d 1016 (1975). Finding 14 will also not support the trial court's conclusion of law 4.<sup>125</sup> *Miles v. Miles*, 128 Wn. App. 64, 71, 114 P. 3d 671 (2005).

**3. THE TRIAL COURT ERRED IN FINDING THAT APPELLANT'S USE OF THE DISPUTED AREA WAS TRANSITORY.**

Guy assigns error to finding 17, that occasional use by Guy Soderlind, Sr. and his guests of the platform and the disputed area was transitory.<sup>126</sup> Such use was neither occasional nor transitory. Guy camped numerous times with his friends in the disputed area since he was 15.<sup>127</sup> Guy's mother, Linda Bryan, sunbathed in the disputed area.<sup>128</sup> Guy Sr.'s friend, Sheila Miller, used the platform several times over the years to sit and read.<sup>129</sup> Guy Sr. socialized with Jean and Ben at the platform.<sup>130</sup> Guy

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<sup>125</sup> CP 205; APP 2.

<sup>126</sup> CP 204; APP 2.

<sup>127</sup> RP VII at 759-61, 784-85, 806-09, 820-22, 833.

<sup>128</sup> RP VII at 835, 845

<sup>129</sup> RP VII at 853, 860-61.

used the platform every time that he was at the beach, approximately 50 times over the years.<sup>131</sup> Guy used the platform to store picnic supplies.<sup>132</sup> Guy and his friends would barbecue on the platform.<sup>133</sup> The Soderlinds stored their boats in the disputed area.<sup>134</sup> The Soderlinds stored the oars for their dinghy against a small alder located in the disputed area near the platform.<sup>135</sup> In the 1980s, Guy Sr. and Linda Bryan cut a trail through the brush down the south boundary of Lot 17.<sup>136</sup> The trail traverses the disputed area.<sup>137</sup> The trail was shorter than the other trail through the center of Lot 17, and it was used by Guy to carry heavy items to and from the beach.<sup>138</sup> The trail passes close to Jean's woodshed, and terminates at the platform.<sup>139</sup> The trail existed as of the time of trial.<sup>140</sup>

The storage of the Soderlinds' boats in the disputed area, as revealed in Jean's photographic exhibits, is uncontroverted, as is Exhibit 54, showing the Soderlinds' oars resting against the "oar tree" next to the platform.<sup>141</sup> Jean admitted that Exhibit 75 depicts a path through the

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<sup>130</sup> RP VII at 781-82; EX 54.

<sup>131</sup> RP VII at 782-84.

<sup>132</sup> RP VII at 784.

<sup>133</sup> RP VII at 813-15.

<sup>134</sup> RP VII at 786-790, 852; RP VIII at 930-33, 949-950; EX 18, 19, 21, 25

<sup>135</sup> RP VII at 765, 792, 850; RP VIII at 914-15; EX 50, 52, 54.

<sup>136</sup> RP VII at 826.

<sup>137</sup> RP VII at 826-27.

<sup>138</sup> RP VII at 774-75, 843.

<sup>139</sup> RP VII at 775.

<sup>140</sup> RP VI at 688-89; RP VII at 827; EX 75.

<sup>141</sup> EX 18, 19, 21, 25; RP VII at 765, 784, 792; EX 50, 54.

disputed area.<sup>142</sup> Therefore, finding 17, that the Soderlind family's use of the disputed area was transitory because it was unseen by neighbors, is not supported by substantial evidence, is not binding upon this Court, and should be reversed. *Chmela v. Department of Motor Vehicles*, 88 Wn. 2d 385; *Smith v. Pacific Pools, Inc.* 12 Wn. App. 582. Finding 17 will also not support the trial court's conclusions of law. *Miles v. Miles*, 128 Wn. App. 71.

**4. THE TRIAL COURT ERRED IN FINDING THAT THE TESTIMONY OF APPELLANT'S WITNESSES ESTABLISHED A SINGLE TRAIL ON LOT 17.**

Guy assigns error to finding 21.<sup>143</sup> Finding 21 mischaracterizes the testimony of Guy and his witnesses as supporting a single trail on 17. To the contrary, Guy testified that there were three trails on Lot 17.<sup>144</sup> Linda Bryan testified that in 1985, the Soderlinds cleared a path down the south side of Lot 17 through what is now the disputed area, to the beach.<sup>145</sup> Garret Ray, Guy's boyhood friend, testified that he and Guy helped build the trail that led right to the dock.<sup>146</sup> Guy called that trail the "beeline", that ran from a large rhododendron in the middle of lot 17 down

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<sup>142</sup> RP VI at 688-89; EX 75.

<sup>143</sup> CP 204; APP 2.

<sup>144</sup> RP VIII at 915-16.

<sup>145</sup> RP VII at 826-27.

<sup>146</sup> RP VII at 811-12.

underneath a large cedar, past Jean's woodshed, to the dock.<sup>147</sup> That trail is shown in Exhibit 75.<sup>148</sup> The beeline trail is the shorter route to the beach.<sup>149</sup> Another trail meanders down the center of Lot 17, turns left and descends the bluff, exiting near the platform.<sup>150</sup> Therefore, finding 21 is not supported by substantial evidence, is not binding upon this Court, and should be reversed. *Chmela v. Department of Motor Vehicles*, 88 Wn. 2d 391; *Smith v. Pacific Pools, Inc.* 12 Wn. App. 582. Finding 21 will also not support the trial court's conclusions of law. *Miles v. Miles*, 128 Wn. App. 71.

**5. THE TRIAL COURT ERRED BY CONCLUDING THAT RESPONDENT HAD MET THE ELEMENTS OF ADVERSE POSSESSION.**

Guy assigns error to the trial court's conclusion of law 2, that Jean had proved the elements of adverse possession regarding the disputed area.<sup>151</sup> Guy also assigns error to conclusion of law 3, that Jean and her father have made exclusive, actual and interrupted, open and notorious, and hostile use of the disputed area under a claim of right in good faith for a period beginning in the late 1950's.<sup>152</sup> The actions of Jean and her father in the disputed area, taken individually or in the aggregate, do not support

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<sup>147</sup> RP VII at 774-75.

<sup>148</sup> RP VII at 774; EX 75.

<sup>149</sup> RP VIII at 843.

<sup>150</sup> RP VII at 773-74, 847-48.

<sup>151</sup> CP 204; APP 2.

<sup>152</sup> CP 205; APP. 2.

the trial court's conclusion that she satisfied the element of hostility. Permissive use is not hostile. *Chaplin v. Sanders*, 100 Wn. 2d 853, 861-62, 676 P. 2d 431 (1984) (“[P]ermission to occupy the land, given by the true title owner to the claimant or his predecessors in interest, will still operate to negate the element of hostility”). From its inception, Jean's use of the disputed area was presumptively permissive. *Peterson v. Port of Seattle*, 94 Wn. 2d 479, 486, 618 P. 2d 67 (1980); *Granston v. Callahan*, 52 Wn. App. 288, 294, 759 P. 2d 462 (1988); *Crites v. Koch*, 49 Wn. App. 171, 177, 741 P. 2d 1005 (1987). As it was permissive in its inception, Jean's use of the disputed area therefore cannot ripen into a prescriptive right unless Jean made a distinct and positive assertion of a right hostile to the owner. *Granston v. Callahan*, 52 Wn. App. 294; *Washburn v. Esser*, 9 Wn. App. 169, 171, 511 P. 2d 1387 (1973); *Ormiston v. Boast*, 68 Wn. 2d 548, 551, 413 P. 2d 969 (1966). In this regard, Jean acknowledged in a 1979 letter to a friend that she asked permission from Mrs. Joray, Guy's predecessor in title to Lot 17, to cut down 6 trees near the northern point of Lot 16 that she claimed were dangerous and overhanging:

Q: Am I correct in understanding that the content, thrust and purpose in Exhibit 3 is to ask permission of your neighbor, the Jorday's[sic], that then owned Lot 17, to go onto their property and cut trees?

A: Yes.<sup>153</sup>

Jean's admission in her 1979 letter constituted recognition of a superior title to the disputed property in Guy's predecessor, thereby removing the element of hostility. *Peeples v. Port of Bellingham*, 93 Wn. 2d 775.

An inference of permissive use is applicable to any situation in which it is reasonable to infer that the use was permitted by sufferance and acquiescence. *Granston v. Callahan*, 52 Wn. App. 294; *Crites v. Koch*, 49 Wn. App. 177. A friendly relationship between the parties is a circumstance more suggestive of permissive use than adverse use. *Granston v. Callahan*, 52 Wn. App. 294; *Miller v. Jarman*, 2 Wn. App. 994, 997, 471 P. 2d 704 (1970). Permission once granted is presumed to continue. *Miller v. Anderson*, 91 Wn. App. 822, 831, 964 P. 2d 365 (1998). Jean and her ex-husband, Ben, maintained friendly relations with the Jorays and Guy's father, mother and Guy for years.<sup>154</sup> Jean's friendly relations with them reinforce the presumption that Jean's use of the disputed areas was permissive.

In *Happy Bunch, supra*, the court concluded that the trial court's findings did not establish that the appellant had met its burden of proving its adverse possession claim, noting the trial court's failure to enter a

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<sup>153</sup> RP IV at 477-78, 483; RP VI at 719; EX 3.

<sup>154</sup> RP I at 91; RP VI at 709-10, 719; RP VII at 766, 776, 830, 852; EX 3; EX 54.

finding whether the appellants' use was permissive. 142 Wn. App. 90. Here, as in *Happy Bunch*, the trial court made no finding whether Jean's use of the disputed area was permissive. Therefore, as in *Happy Bunch*, the trial court's findings do not support the trial court's conclusions regarding adverse possession. The failure of the trial court to make a finding on permissiveness also constitutes an implied negative finding on that issue. *Rhodes v. Gould*, 12 Wn. App. 437, 441, 576 P. 2d 914, *rev. denied*, 90 Wn. 2d 1026 (1978); *Pacific NW Life Ins. Co. v. Turnbull*, 51 Wn. App. 692, 702, 754 P. 2d 1262, *rev. denied*, 111 Wn. 2d 1014 (1988).

Finding 9 does not support the trial court's conclusion 2, that Jean had established all of the elements of adverse possession. Finding 9 recites the actions of Jean's former husband, Ben, in planting trees in the disputed areas, installing a "beach log", cutting down alder trees, planting a redwood tree, and cutting salmonberry bushes along what he thought was the edge of Lot 17.<sup>155</sup> Ben's actions are insufficient to support the trial court's conclusion that Jean had established adverse possession of the disputed area. Ben testified that he installed the beach log after it floated up on the beach after a high tide.<sup>156</sup> Ben built a row of rocks in front of the log to keep it from rolling back onto the beach.<sup>157</sup> Ben thought that the

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<sup>155</sup> CP 203; APP 2.

<sup>156</sup> RP I at 28.

<sup>157</sup> RP I at 28; RP II at 190.

log defined the beach limits of their property.<sup>158</sup> Ben acknowledged that the log is located at a right angle to the platform, and that the log ends before the platform.<sup>159</sup> Photographs introduced at trial by Jean show the log covered with moss.<sup>160</sup> Jean testified that the rocks get covered with sand.<sup>161</sup> In *Hunt v. Matthews*, 8 Wn. App. 233, 238, 505 P. 2d 819 (1973), a deteriorated fence did not give notice of the adverse claimant's claim to the disputed parcel. Here, as in *Hunt*, a mossy beach log and sand-covered rocks were likewise insufficient to provide Guy or his father with notice of Jean's claim of adverse possession of the disputed strip.

Ben's planting of alders and a redwood in the disputed area, and subsequent cutting of the alders, is likewise insufficient to establish Jean's adverse possession of the disputed strip. In *Anderson v. Hudak*, 80 Wn. App. 398, 404, 907 P. 2d 305 (1995), in reversing the trial court's finding that the plaintiff had established all of the elements of adverse possession, the court concluded that the planting of a line of trees on the disputed parcel, without evidence that the plaintiffs maintained or cultivated the trees, was insufficient to establish hostile possession. Here, Ben testified that he planted, and later cut down, some alder trees in the disputed

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<sup>158</sup> RP I at 29.

<sup>159</sup> RP I at 29, 75-76; RP II at 189; EX 69.

<sup>160</sup> RP I at 76; EX 38.

<sup>161</sup> RP V at 596, 599-600; EX 83.

area.<sup>162</sup> Ben also testified that he planted a redwood tree in the disputed area.<sup>163</sup> Neither Ben nor Jean offered any evidence that they cultivated or maintained the alders or the redwood planted by him. Therefore, as in *Anderson v. Hudak*, the trees planted by Ben do not support the trial court's conclusion that Jean satisfied all the elements of adverse possession.

*Riley v. Andres*, 107 Wn. App. 391, 27 P. 3d 618 (2001) does not compel a contrary conclusion here. In *Riley*, the adverse claimants planted shrubs and installed a sprinkler system in a strip of land between two houses in a plat, and thereafter maintained those plants for 25 years. The strip of land was amenable to landscaping, and was marked by stakes. The character of the adverse use in *Riley* was far different from the actions of Jean and Ben in this case, as was the land adversely possessed.

Ben's cutting of salmonberry bushes, without more, is insufficient to establish adverse possession. What constitutes adverse possession necessarily depends in large part upon the character and locality of the property involved and the uses to which it is ordinarily adapted or applied. *Frolund v. Frankland*, 71 Wn. 2d 812, 817, 431 P. 2d 188 (1967); *Lingvall v. Bartmess*, 97 Wn. App. 245, 255, 982 P. 2d 690 (1999). In this regard, “[g]reater use of a vacant lot would be required to be notorious to an

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<sup>162</sup> RP I at 45-46, 47.

<sup>163</sup> RP I at 47-50.

*absentee owner than to one occupying the land who would observe an offensive encroachment daily.” Hunt v. Matthews, 8 Wn. App. 237.*

Although not vacant, Lot 17 was frequently unoccupied for considerable periods. Under *Hunt*, Jean was required to provide greater notice to Guy, his father and the Jorays than by Ben cutting salmonberry bushes. Jean and Ben therefore did not give adequate notice of their adverse use of the disputed strip to Guy, his father or the Jorays. Finding 9 therefore does not support conclusions 2, 3, 4, 5, 6, 7, or 8.<sup>164</sup>

Findings 10, 11, 12 address Jean’s planting and maintaining a lawn on the disputed strip.<sup>165</sup> Finding 16 found that the photographs and testimony show that the “yard” was maintained when those photographs were taken in the early 1980’s and into the early 1990’s.<sup>166</sup> Jean’s actions in planting and maintaining a lawn do not constitute actual possession of the disputed strip. In *Hunt v. Matthews*, the plaintiff claimed adverse possession a portion of an adjacent wooded and undeveloped lot by reason of an irregular and undefined extension of the lawn on the plaintiff’s lot. The plaintiff also maintained a garden in the extended lawn. The remnants of an old fence bordered part of the western fringe of the disputed parcel when the plaintiff went into possession, but the fence was

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<sup>164</sup> CP 204-05; APP 2.

<sup>165</sup> CP 203; APP 2.

<sup>166</sup> CP 203-04; APP 2.

later pushed to the ground. The remainder of the western periphery of the disputed lot was bordered by a tangle of blackberry bushes. The plaintiff left the bushes as a barrier. The trial court's finding that the plaintiff had not made a prima facie case was affirmed on appeal. In *Hunt*, neither the dilapidated fence nor the plaintiff's maintenance of an irregular and undefined extension of a lawn on the disputed parcel was sufficient to constitute adverse possession.

Similarly, in *Wood v Nelson*, 57 Wn. 2d 539, 540, 358 P. 2d 312 (1961), the court agreed that cutting of wild grass, by itself, would not establish adverse possession of wild, unimproved, or unfenced land.

*Hunt* and *Wood* compel the same conclusion here with regard to Jean's efforts to extend her lawn on the disputed parcel. In this case, as in *Hunt*, Ben never saw a fence between Lots 16 and 17.<sup>167</sup> Jean never erected a fence or a boundary hedge along the northern line of the disputed parcel.<sup>168</sup> Max Wood, the field man for the surveyor hired by Guy in 2006 to conduct the survey of Lot 17, found no evidence of a fence post, and saw no evidence of a straight line of trees along Jean's alleged line of use.<sup>169</sup> Lot 17 is indistinguishable from the defendants' undeveloped lot in *Hunt*. As in *Hunt* and *Wood*, Jean's efforts to create and maintain a lawn

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<sup>167</sup> RP II at 172.

<sup>168</sup> RP VI at 690.

<sup>169</sup> RP VIII at 903.

on the disputed parcel do not constitute actual possession, and were not sufficiently open and notorious. Findings 10, 11, 12, and 16 therefore do not support conclusions 2, 3, 4, 5, 6, 7 or 8.<sup>170</sup>

The absence of a well defined boundary, such a fence or boundary hedge, to the disputed area is fatal to Jean's claim of adverse possession. *Scott v. Slater*, 42 Wn. 2d 368. The absence of such a line of demarcation on the northern boundary of the disputed parcel distinguishes this case from the decisions in *Lingvall v. Bartmess*, 97 Wn. App. 245, 982 P. 2d 690 (1999), *Bryant v. Palmer Coking Coal Co.*, 86 Wn. App. 204, 936 P. 2d 1163 (1997), *Lloyd v. Montecucco*, 83 Wn. App. 846, 924 P. 2d 927 (1996), *Heriot v. Lewis*, 35 Wn. App. 496, 668 P. 2d 589 (1983), *Krona v. Brett*, 72 Wn. 2d 535, 433 P. 2d 858 (1967); *Frolund v. Frankland*, 71 Wn. 2d 60, 426 P. 2d 467 (1967); *Butler v. Anderson*, 71 Wn. 2d 60, 426 P. 2d 467 (1967), and *Mesher v. Connolly*, 63 Wn. 2d 552, 388 P. 2d 144 (1964). Unlike the facts of this case, in each of those cases, acts of adverse user, such as mowing a lawn or planting shrubbery, were deemed sufficient to establish adverse use, as in each case the adverse use occurred within a well-defined area. In *Lingvall*, all of the adverse claimant's use, consisting of clearing brush, planting ornamental trees and mowing and maintaining the area, occurred in a triangle defined by a road and a cattle

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<sup>170</sup> CP 204-05; APP 2.

fence. 97 Wn. App. 248-49. In *Bryant*, the adverse claimant's construction of a dirt road across the northern boundary of the disputed area was a sufficient boundary and the erection of structures in the disputed area was a sufficient use to constitute adverse possession. 86 Wn. App. 212-14. In *Lloyd*, the defendants were adverse claimants who had constructed a cyclone fence and a bulkhead that intruded into an adjacent lot, and thereafter for 16 years planted trees, raised a garden and maintained the property on the slope between the fence to the bulkhead, with the knowledge of the previous owner of the adjacent lot. 83 Wn. App. 849-50. In *Heriot*, the adverse use consisted of cutting brush in an area between a fence and the true property line lying north of a state highway. 35 Wn. App. 505-06. In *Krona*, the adverse use consisted of mowing the lawn up to the original fence line, constructing a brick patio, maintaining a compost heap and a flower bed in the disputed area, located between two houses. The disputed area had long been defined by a series of fences that were located off the true property line. 72 Wn. 2d 538-40. In *Butler v. Anderson*, 71 Wn. 2d 60, 426 P. 2d 467 (1967), the acts of adverse user of the disputed strip between two developed lots on a lake consisted of planting a holly hedge, trimming native growth into a hedge, planting trees, berry vines and flowers, installing a gate between the holly hedge and the natural hedge, and mowing the grass on either side of the

native hedge. 71 Wn. 2d 62-63. In *Frolund v. Frankland*, 71 Wn. 2d 812, 431 P. 2d 188 (1967), the disputed area was located between two semi-rural beach front lots. The adverse use consisted of bulldozing the western portion of a triangle between a survey line and an existing line fence, and mowing grass and storing a swimming float. In *Mesher v. Connolly*, 63 Wn. 2d 552, 388 P. 2d 144 (1964), the plaintiff mowed a strip of land north of a sidewalk in an area between two city lots, and maintained a rockery in a strip between a house and a street located to the west. The disputed area in this case does not resemble any of the areas in question in *Lingvall*, *Bryant*, *Lloyd*, *Heriot*, *Krona*, *Frolund*, *Butler*, or *Mesher*.

The trial court erred in conclusion 3, that Jean and her father have made exclusive use of the disputed area.<sup>171</sup> Jean admitted that she never excluded the Soderlinds from the disputed area.<sup>172</sup> In addition, photographs introduced by Jean, and testimony of Guy, Linda Bryan, Garret Ray, Shelia Miller and Jean, detail decades of joint use by Jean and the Soderlinds and their guests of the areas surrounding the platform to recreate, and to store their boats and oars.<sup>173</sup> Jean admitted that she saw

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<sup>171</sup> CP 205; APP 2.

<sup>172</sup> RP VI at 690.

<sup>173</sup> RP VII at 835, 845; RP VII at 853, 860-61; RP VII at 781-82; EX 54; RP VII at 782-84; RP VII at 784; RP VII at 813-15; RP VII at 786-790, 852; RP VIII at 930-33, 949-950; EX 18, 19, 21, 25; RP VII at 765, 792, 850; RP VIII at 914-15; EX 50, 52, 54.

Guy Sr. using the platform on several occasions.<sup>174</sup> The beeline trail built by the Soderlinds along the south boundary of Lot 17 traverses the disputed area and ends at the platform.<sup>175</sup> Jean's admission that she did not exclude the Soderlinds from the disputed area, evidence of longstanding joint use, and the beeline trail negate the element of exclusive possession. *ITT Rayonier, Inc., v. Bell*, 112 Wn. 2d 758; *Thompson v. Schlittenhart*, 47 Wn. App. 209.

The trial court erred in conclusion 6, by concluding that occasional and transitory use of the platform and disputed area by Guy and his predecessor was permitted by Jean as a neighborly accommodation.<sup>176</sup> As in *ITT Rayonier, Inc. v. Bell*, the decades of joint use of the platform and disputed area by Guy, the Soderlinds, and their guests cannot be dismissed neighborly accommodation. 112 Wn. 2d 758-59.

Finding 16 does not support the trial court's conclusion 8, that Jean's use of the disputed area was continuous beginning as early as the 1980's.<sup>177</sup> Jean testified that foliage sometimes was allowed to grow up south of the northern boundary of the disputed area.<sup>178</sup> Jean testified that the trail to the beach near the platform was obscured by brush and spring

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<sup>174</sup> RP VI at 709.

<sup>175</sup> RP VIII at 915-16; RP VII at 826-27; RP VII at 811-12; RP VII at 774-75; RP VII at 774;EX 75; RP VIII at 843.

<sup>176</sup> CP 205; APP 2.

<sup>177</sup> CP 203-04, 205; APP 2.

<sup>178</sup> RP VI at 692.

growth in a photograph taken in 1993.<sup>179</sup> Jean's neighbor, Phyllis Blum, testified that sometimes the grass and weeds and brush would be high on Jean's property.<sup>180</sup> Elizabeth Bryant, Jean's daughter, testified that the standard for the lawn went up considerably after 1997.<sup>181</sup> Therefore, even assuming Jean could acquire the disputed area simply by maintaining a lawn on it, finding 16 is not supported by substantial evidence, is not binding upon this Court, and should be reversed. *Chmela v. Department of Motor Vehicles*, 88 Wn. 2d 391; *Smith v. Pacific Pools, Inc.* 12 Wn. App. 582. Finding 16 will also not support conclusion 8. *Miles v. Miles*, 128 Wn. App. 71.

**6. THE TRIAL COURT ERRED IN ADMITTING EXHIBITS 10 AND 11.**

Guy assigns error to the trial court's admission of Exhibits 10 and 11. Exhibits 10 and 11 were prepared by Wood Surveying, Inc.<sup>182</sup> Arnold Wood is the surveyor who prepared Exhibits 10 and 11.<sup>183</sup> Arnold Wood included in the legal description he prepared an area four feet beyond the north end of the platform.<sup>184</sup> Arnold Wood acknowledged that he had not personally viewed the area.<sup>185</sup> Arnold Wood acknowledged that nothing

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<sup>179</sup> RP V at 534-36; EX 20.

<sup>180</sup> RP IV at 408.

<sup>181</sup> RP III at 293.

<sup>182</sup> RP IV at 442, 457.

<sup>183</sup> RP IV at 442, 457.

<sup>184</sup> RP IV at 452, 458.

<sup>185</sup> RP IV at 445, 455.

in the sand around the platform was reported to him that would be evidence of use.<sup>186</sup> Arnold Wood acknowledged that there were no monuments in the sand to indicate that Jean was claiming ownership by use of the area.<sup>187</sup> Arnold Wood acknowledged that his employees did not find monuments that would fix the seaward corners of the area he described in Exhibits 10 and 11.<sup>188</sup> Arnold Wood explained that “*we did survey the area that she had been using and then assumed that, and this is an assumption on our part, that she should have enough area around the boating platform or whatever to maintain it if she was to receive this land through quiet title.*”<sup>189</sup> Arnold Wood testified that it was only his opinion that Jean should get the land surrounding the platform.<sup>190</sup> Arnold Wood could not identify any authority in law or survey practice to support his opinion.<sup>191</sup> Jean offered no proof that she ever maintained the platform.

Guy objected to Exhibit 10 on the grounds of an unreliable foundation for the exhibit.<sup>192</sup> The trial court admitted Exhibit 10 for illustrative purposes.<sup>193</sup> Guy objected to Exhibit 11 on the grounds that Arnold Wood testified that it was inaccurate, that it was based on an

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<sup>186</sup> RP IV at 453-54.

<sup>187</sup> RP IV at 455-56.

<sup>188</sup> RP IV at 457.

<sup>189</sup> RP IV at 460.

<sup>190</sup> RP IV at 454.

<sup>191</sup> RP IV at 454.

<sup>192</sup> RP IV at 449.

<sup>193</sup> RP IV at 456.

assumption, and as made without reference to a fixed monument or any physical evidence of use or occupation that could extend the disputed area beyond the shore.<sup>194</sup> The trial court admitted Exhibit 11 over Guy's objection.<sup>195</sup> The trial court subsequently incorporated the legal description in Exhibit 11 into the Judgment.<sup>196</sup>

The trial court abuses its discretion if it relies on unsupported facts. *Proctor v. Huntington*, 146 Wn. App. 836, 852, 192 P. 3d 958 (2008). The trial court abused its discretion by admitting the testimony of Arnold Wood regarding his estimate of four feet around the platform, as that estimate was unsupported by fact. The trial court further abused its discretion when it relied upon Wood's flawed legal description by including it in the judgment.

*Lloyd v. Montecucco* does not compel a contrary conclusion here. In *Lloyd*, the court concluded that, based upon the testimony of the previous owner of the adversely possessed property, that he knew that the adverse claimants had maintained the area between a fence and a bulkhead, the trial court did not err in drawing a straight line between the corner of the fence and the edge of the bulkhead. 83 Wn. App. 854. The facts here do not remotely resemble the facts in *Lloyd*.

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<sup>194</sup> RP IV at 460.

<sup>195</sup> RP IV at 461.

<sup>196</sup> CP 209; APP. 1.

**7. THE TRIAL COURT ERRED IN ENTERING THE JUDGMENT.**

Guy assigns error to the judgment quieting title in Jean and barring Guy from asserting any interest in the disputed area.<sup>197</sup> The trial court likewise erred in its order on reconsideration.<sup>198</sup> Guy incorporates herein the arguments and authorities in paragraphs VI A 1-6 above.

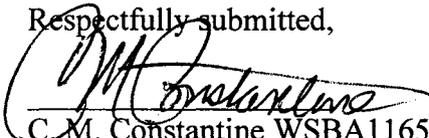
**8. APPELLANT REQUESTS AND AWARD OF COSTS ON APPEAL.**

Pursuant to RAP 14.2, in the event that he substantially prevails on appeal, Guy requests an award of costs.

**VII. CONCLUSION**

The trial court's findings of fact, conclusions of law, judgment and order on reconsideration should be reversed, and appellant should be restored to rightful ownership of the disputed parcel.

Respectfully submitted,

  
C.M. Constantine WSBA11650  
Attorney for Appellant Guy  
Soderlind

---

<sup>197</sup> CP 206-09; APP. 1.

<sup>198</sup> CP 210-212; APP 3.

## **VIII. APPENDICES**

1. Judgment
2. Findings of Fact and Conclusions of Law
3. Order on Reconsideration

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JEFFERSON COUNTY  
RUTH GORDON, CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF JEFFERSON

JEAN I. SIMMONDS, a married woman )  
as her separate estate, )

NO. 07-2-00048-7

Plaintiff, )

FINDINGS OF FACT &  
CONCLUSIONS OF LAW

-vs-

GUY SODERLIND, individually, and as )  
Personal Representative of the Estate of Guy )  
Egan Soderlind, deceased; and as Personal )  
Representative of the Estate of Charlotte J. )  
Soderlind, deceased; and all other )  
persons or parties unknown claiming any )  
right, title, estate, lien, or interest in the real )  
estate described in the complaint herein; )

Defendants. )

This matter coming on for trial on October 15 and 16, 2007, and March 31 and April 1, 2008, plaintiff appearing personally and through her attorney; Richard L. Shaneyfelt; defendant Guy Soderlind, Jr., appearing personally and as Personal Representative of the named estates and with his attorney, W. John Sinsheimer of Sinsheimer & Meltzer, Inc., P.S., and the court, having considered the file in this matter and the testimony of Dr. Benjamin Bryant, Mark Murphy, Jane Pingrey, Karen Jensen, Elizabeth Bryant, Ben Bryant, Robert Bradley, Phyllis Blum, Arnold Wood, Jean Simmonds, Mark Pearson, Guy Soderlind, Jr., Steven Glucoft, Garrett Ray, Linda Bryan, Sheila Miller, Scott Baker, and Max Wood; the court having also considered the ninety-three (93) admitted exhibits and, with the permission of the parties and not in their

ORIGINAL

1 presence, having viewed the property on October 16, 2007, and now being fully advised by argument of able  
2 counsel, makes the following:

3 **FINDINGS OF FACT**

4 1. Plaintiff Jean I. Simmonds, formerly known as Jean I. Bryant, is a married woman who holds  
5 title to Tract 16, Ludlow Beach Tracts No. 2, official records of Jefferson County, Washington.

6 2. Defendant Guy Soderlind is a single man and Personal Representative of the Estate of Guy  
7 Egan Soderlind, his father, King County Cause No. 03-4-01067-4KNT, and was also Personal Representative  
8 of the Estate of Charlotte J. Soderlind, deceased, also a King County probate. Guy Soderlind, as their  
9 successor, now holds title to Lot 17, Ludlow Beach Tracts No. 2, official records of Jefferson County,  
10 Washington.

11 3. Plaintiff first acquired title by virtue of a real estate contract recorded on April 20, 1981; and  
12 second, by virtue of a Statutory Warranty Deed, subject to a life estate in the name of her father, recorded on  
13 February 4, 1993 under Jefferson County AFN 357148. Plaintiff's father, C. Alvin Solberg, is deceased.

14 4. Alvin Solberg built a cabin, now known as the "house" as shown on Exhibit 12 on Lot 16 in  
15 approximately 1951. Plaintiff's ex-husband, Dr. Benjamin Bryant assisted in building that cabin.

16 5. Jean Simmonds also spent weekends on the property beginning in the 1950's. She produced  
17 evidence that she and her family and guests used a triangular shaped .0309 acre beach front area abutting Lot  
18 17 since the 1950's and considered it to be a part of their property.

19 6. Defendant had Lot 17 surveyed by Wood Surveying and that survey included the .0309 acres  
20 in Lot 17. (Exhibit 47) The disputed area was later mapped by Wood Surveying (Exhibit 10) and legally  
21 described in Exhibit 11.

22 7. Defendant maintains that the Simmonds did not use the disputed area in a manner sufficient  
23 to constitute adverse possession and that he and his family/guests also used the area, thus defeating Plaintiff's  
24 adverse possession claim. Defendant also counterclaimed for damages for trespass and removal of timber,  
25 requesting treble damages pursuant to RCW 64.12.030.

26 8. The disputed area was cleared by the Simmonds family in the 1950's. (Exhibits 12, 13, and  
27 testimony of Jean Simmonds and Dr. Ben Bryant.)

1           9.       Dr. Bryant testified that he planted trees in the “disputed area,” put in the “beach log” or “log  
2 boom” along the edge of the beach in the disputed area, cut down the alder trees years later, planted a  
3 redwood tree in the “disputed area,” cut salmonberry along the edge of what he thought was Lot 17 and that  
4 the property today had the “same lay of the land” as it did in the 1980’s.

5           10.       Jane Pingrey testified that after Bob Fish built the boat platform or “dock”, she observed the  
6 grass yard extending from the dock to the Simmonds’ cabin. She visited the property almost every weekend  
7 in the 1980’s since she was a nearby resident.

8           11.       Karen Jensen testified that her neighboring property has been in her family since 1948 and  
9 during her visits to the property she observed the Simmonds property on her walks in the summers and saw  
10 the grass area or lawn, in a line with the platform going back to the left side of the shed and house. She never  
11 noticed a difference in that line for as long as she can remember. She has known Ms. Simmonds since 1958.

12           12.       Elizabeth Bryant, Plaintiff’s daughter, testified as to the maintained lawn area since the  
13 platform was built in 1990. She testified that her mother planted the lawn in the 1980’s and it was well  
14 maintained after her mother married “Bob” (Robert Simmonds) in 1997.

15           13.       Jean Simmonds testified as to her continued use of the disputed area to store her crabbing  
16 boat which she purchased in 1989 (Exhibit 7), and to launch and retrieve the boat using the pulley system she  
17 installed, maintained and kept covered which is located in the “disputed area.” Her 1987 calendar (Exhibit 9)  
18 documents her use of the cabin and the disputed area during that year.

19           14.       The property at issue is recreational, beach front property and testimony establishes that Ms.  
20 Simmonds and her family made such use of the property as would be expected of a property owner given the  
21 characteristics of that property.

22           15.       Mr. Soderlind testified that he and his friends camped in the disputed area but none of the  
23 neighbors who testified as witnesses saw them camping or saw any evidence of their camping in the disputed  
24 area. Mr. Soderlind testified that he, his father, and their guests would make use of the boat platform built by  
25 the Simmonds in 1990 (Exhibits 4, 5 and 6) which is shown in many of the photograph exhibits. Mr.  
26 Soderlind testified that the “yard” which made up most of the disputed area was not maintained.

27           16.       The photographs and testimony show the “yard” was maintained when those pictures were  
28

1 taken in the early 1980's and into the early 1990's. (Exhibits 14, 15, 16, 17, 18, 19, for example.)

2 17. Guy Soderlind, Sr., and his guests occasionally did use the platform when socializing with  
3 the Simmonds family, but any other use of the platform and the disputed area was transitory since none of the  
4 neighbors who testified witnessed use by the Soderlind family or its guests.

5 18. It is clear that when the Soderlinds visited their property, they knew that the Simmonds were  
6 using the "disputed area." on their Lot 17 from the encroaching woodshed on the south to the eastern side of  
7 the boat platform on the beach. It is clear that all of the neighbors and persons who walked the beach area  
8 who testified on Plaintiff's behalf assumed that the disputed area was an integral portion of the Simmonds'  
9 property. Phyllis Blum testified that from 1984 until 2006, she walked by Lot 16 almost daily, observed the  
10 dock or platform being built, the encroaching woodshed, the grassy flat area in-between, saw Ms. Simmonds  
11 maintaining the property and always believed that the "disputed area" was part of the Simmonds' property.

12 19. There is no question that Guy Soderlind Sr., knew of the encroaching platform, beach log  
13 along the beachfront and the rocks placed by Dr. Benjamin Bryant extending along the shore from the stream  
14 on the other side of the Simmonds' property through the disputed area and to the east of the boat platform..

15 20. Mr. Soderlind's witness, Mr. Baker, testified that after reviewing the stumps, he believed the  
16 trees were cut five to six years ago. Mr. Soderlind testified that he was aware that the trees were cut around  
17 the same time as his father died in November of 2003. It was not clear from the evidence exactly which trees  
18 were at issue nor where they were located in relation to the "disputed area."

19 21. Mr. Soderlind alleged that a trail ran from Lot 17 down through the wooded area of that lot  
20 to the beach. The testimony of Steven Glucoft, Linda Bryan and Sheila Miller indicated that the trail ended  
21 at the beach to the east of the "spring" and was located to the east of the "disputed area."

22 From the foregoing Findings of Fact, the court makes the following:

### 23 CONCLUSIONS OF LAW

- 24 1. The court has jurisdiction over the parties and subject matter of this action.
- 25 2. Plaintiff, Jean I. Simmonds, is the owner of Tract 16 of Ludlow Beach Tracts No. 2 and has  
26 proved the elements of adverse possession and is entitled to that portion of Lot 17 described in Exhibit 10  
27 admitted herein.

1           3.       Plaintiff, and her father before her, have made exclusive, actual and uninterrupted, open and  
2 notorious, and hostile use of the disputed area under a claim of right made in good faith for a period  
3 beginning in the 1950's.

4           4.       Neither party nor predecessors used these premises as a permanent residence since the  
5 property at issue is recreational, beach front property. Plaintiff and her family made such use of the property  
6 as would be expected of a property owner given the characteristics of that property.

7           5.       Plaintiff's use of the property clearly put all of Plaintiff's neighbors on notice of her claim.

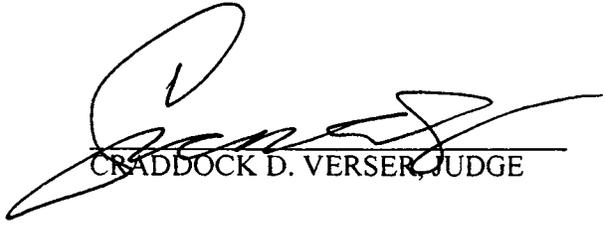
8           6.       Defendant and his predecessor did make occasional and transitory use of the boat platform  
9 and disputed area, but the use was permitted by Plaintiff as a "neighborly accommodation."

10          7.       Defendant and his predecessor had actual notice of the Simmonds' use of the disputed area.

11          8.       Plaintiff's use of the disputed area was continuous beginning at least as early as the 1980's  
12 and that use was not interrupted.

13          9.       Defendants' counterclaim alleging timber trespass was filed in March 2007, more than three  
14 years after the trees at issue were cut and the evidence, although not clear, did not establish that Plaintiff took  
15 trees without permission on Defendants' property outside the disputed area. Therefore, Defendants'  
16 counterclaim for trespass and timber trespass should be dismissed.

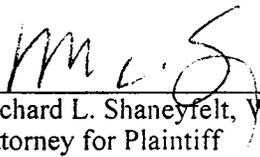
17                   DONE IN OPEN COURT this 1 day of July, 2008.

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20                     
21                   CRADDOCK D. VERSER, JUDGE

22  
23 Presented by:

Approved for Entry, Notice  
Of Presentation Waived, Copy Received:

SINSHEIMER & MELTZER, INC., P.S.

24  
25                     
26                   Richard L. Shaneyfelt, WSBA #2969  
27                   Attorney for Plaintiff

By: \_\_\_\_\_  
W. John Sinsheimer, WSBA#2193  
Attorney for Defendants

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JEFFERSON COUNTY  
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF JEFFERSON

JEAN I. SIMMONDS, a married woman )  
as her separate estate, )  
 )  
Plaintiff, )  
 )  
-vs- )  
 )  
GUY SODERLIND, individually, and as )  
Personal Representative of the Estate of Guy )  
Egan Soderlind, deceased; and as Personal )  
Representative of the Estate of Charlotte J. )  
Soderlind, deceased; and all other )  
persons or parties unknown claiming any )  
right, title, estate, lien, or interest in the real )  
estate described in the complaint herein; )  
 )  
Defendants. )

NO. 07-2-00048-7  
JUDGMENT AND DECREE  
CLERK'S ACTION REQUIRED:  
ENTER PROPERTY/MONEY  
JUDGMENT

I. REAL PROPERTY JUDGMENT SUMMARY

[X] Real Property Judgment Summary is set forth below:

Assessor's property tax parcel or account number:	TPN 969 000 017
Legal Description of the property awarded:	A PARTION OF: - (EDU 71107) Lot 17, Ludlow Beach Tracts 2, Section 16, Township 28N, Range 1E
	See Exhibit A for full legal description.

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II. JUDGMENT SUMMARY

- 1  
2 A. Judgment Creditor : JEAN I. SIMMONDS, a married woman  
as her separate estate  
3  
4 B. Judgment Debtor : GUY SODERLIND, JR.  
5 C. Principal judgment amount: \$ -0-  
6 D. Interest to date of judgment: \$ -0-  
7 E. Attorney's fees \$ 200.00  
8 F. Costs \$ 225.00  
9 G. Other recovery amount \$ \_\_\_\_\_  
10 H. ~~Principal judgment shall bear interest at 18% per annum.~~ *aw 7/1/08*  
11 I. Attorney's fees, costs and other recovery amounts shall bear interest at 12 % per annum.  
12 J. Attorney for judgment creditor: Richard L. Shaneyfelt  
1101 Cherry St.  
Port Townsend, WA 98368  
(360) 385-0120  
13  
14 K. Attorney for judgment debtor: W. John Sinsheimer  
Sinsheimer & Meltzer, Inc., P.S.  
1001 - Fourth Avenue Plaza, Suite 2120  
Seattle, WA 98154-1109  
(206) 340-4700  
15  
16  
17 L. Other:

18 This matter having come before the court for trial; having heard the testimony of the parties and their  
19 witnesses; having heard the argument of counsel; after considering the evidence and having made and entered  
20 its Findings of Fact and Conclusions of Law,

21 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that fee simple  
22 title in that portion of Lot 17, Ludlow Beach Tracts No. 2, official records of Jefferson County, Washington  
23 described in Exhibit "A" attached hereto and incorporated by reference is hereby quieted, established and  
24 confirmed in the name of Plaintiff Jean I. Simmonds, also known as Jean I. Bryant, as her separate estate.

25 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendants' counterclaim for  
26 trespass and timber trespass is hereby dismissed with prejudice.  
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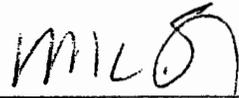
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IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the defendants and all other persons or parties unknown, claiming any right, title, estate, lien or interest in or to said real estate or any portion thereof, and all persons claiming under the defendants, or any of them, be and they are hereby forever barred from having or asserting any right, title, estate, lien or interest in the Property, or any part thereof, adverse to Plaintiff.

DONE IN OPEN COURT this 1 day of July, 2008.

  
CRADDOCK D. VERSER, JUDGE

Presented by:

  
Richard L. Shaneyfelt, WSBA #2969  
Attorney for Plaintiffs

Approved for Entry, Notice  
Of Presentation Waived, Copy Received:  
SINSHEIMER & MELTZER, INC., P.S.

By: \_\_\_\_\_  
W. John Sinsheimer, WSBA#2193  
Attorney for Defendants

**DESCRIPTION OF QUIET TITLE AREA AS DEPICTED UPON EXHIBIT "A"**

That Portion of Lot 17, Ludlow Beach Tracts No. 2, as same is depicted in Volume 3 of Plats, at page 38 thereof, Records of Jefferson County, State of Washington, described as follows:

Commencing at the Southeast Corner of said Lot 17, as same is depicted in said Ludlow Beach and upon that certain Record of Survey filed under Auditor's Fee Number 513308, in Volume 30 of Surveys, at page 157 thereof; thence North  $41^{\circ}18'48''$  West, along the Southerly Limits of said Lot 17, a distance of 215.70 feet to the TRUE POINT OF BEGINNING; thence continuing North  $41^{\circ}18'48''$  West, a distance of 91.86 feet; thence North  $42^{\circ}55'51''$  East, a distance of 29.46 feet, to a point that bears North  $24^{\circ}08'08''$  West from the TRUE POINT OF BEGINNING; thence South  $24^{\circ}08'08''$  East, a distance of 99.24 feet to the TRUE POINT OF BEGINNING.

Situate in the County of Jefferson, State of Washington

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JEFFERSON COUNTY  
RUTH GORDON, CLERK

SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF JEFFERSON

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6 JEAN I. SIMMONDS, a married woman as  
7 her separate estate,

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9 Plaintiff,

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11 vs.

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13 GUY SODERLIND, individually, and as  
14 Personal Representative of the Estate  
15 of Guy Egan Soderlind, deceased; and  
16 as Personal Representative of the  
17 Estate of Charlotte J. Soderlind,  
18 deceased; and all other persons or  
19 parties unknown claiming any right,  
20 title estate, lien, or interest in the  
21 real estate described in the complaint  
22 herein;

23  
24 Defendants.  
25

Case No.: 07-2-00048-7

ORDER ON RECONSIDERATION

26  
27 This matter came on for hearing on June 27, 2008 for the court to  
28 consider argument regarding presentation of Plaintiff's proposed findings of  
29 fact, conclusions of law, and judgment. Plaintiff appeared through her  
30 attorney, Richard L. Shaneyfelt. Mr. Soderlind appeared personally and  
31 through his attorney, W. John Sinsheimer. Mr. Soderlind took exception to  
32 the court's memorandum opinion and presented opposing findings and  
33 conclusions. The court will consider the arguments of Mr. Soderlind through  
34 his attorney as a motion for reconsideration.  
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CRADDOCK D. VERSER  
JUDGE

Jefferson County Superior Court  
P.O. Box 1220  
Port Townsend, WA 98368

1  
2 Noting that there is no direct evidence that Montecuccos  
3 actually possessed every square yard of the disputed tract, we  
4 conclude nonetheless that the trial court's demarcation was  
5 proper. Courts may create a penumbra of ground around areas  
6 actually possessed when reasonably necessary to carry out the  
7 objective of settling boundary disputes. ... Regarding the  
8 straight line the trial court drew between the fence and the  
9 bulkhead, courts will project boundary lines between objects  
10 when reasonable and logical to do so.

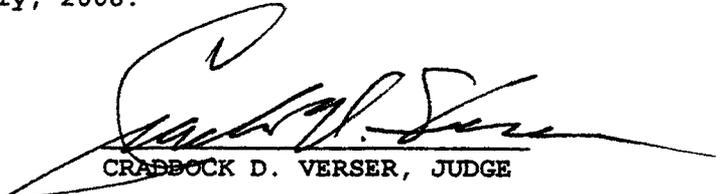
11  
12 *Lloyd, supra.*, at 83 Wn. App. 853-854.

13  
14 Thus the court concludes that projecting the boundary line in this  
15 case was both reasonable and necessary to carry out the objective of  
16 settling this matter with a definite boundary. The line from the shed to  
17 the dock is not arbitrarily created by the whim of the surveyor or at the  
18 direction of Ms. Simmonds. It reasonably and rationally defines the  
19 boundary of the area adversely possessed as identified by the testimony and  
20 exhibits admitted into evidence.

21  
22 CONCLUSION

23  
24 For the foregoing reasons, Defendant's motion for reconsideration is  
25 denied.

26  
27  
28 Dated this 1<sup>st</sup> day of July, 2008.

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34 CRADDOCK D. VERSER, JUDGE

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Jefferson County Superior Court  
P.O. Box 1220  
Port Townsend, WA 98368

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FEB 25 2009

CLERK OF COURT OF APPEALS DIV II  
STATE OF WASHINGTON

X. CERTIFICATE OF MAILING

The undersigned does hereby declare that on February 25, 2009,  
the undersigned deposited a copy of BRIEF OF APPELLANT filed in the  
above-entitled case into the United States mail, first-class postage  
addressed to the following persons:

Richard L. Shaneyfelt  
1101 Cherry St.  
Port Townsend, WA 98368-4057

Dated: February 25, 2009



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