

**FILED**

No. 349390

JUN 12 2017

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

---

**COURT OF APPEALS, DIVISION III  
STATE OF WASHINGTON**

---

DARLENE JEVNE,

Appellant/Cross-Appellee,

v.

THE PASS, LLC, a Washington limited liability company,  
d/b/a The Pass Life, and BRYCE PHILLIPS and JANE DOE PHILLIPS,  
husband and wife and their marital community

Respondents/Cross-Appellants.

---

**RESPONDENTS'/CROSS-APPELLANTS' OPENING BRIEF**

---

Nancy Bainbridge Rogers, WSBA No. 26662  
E-mail: nrogers@cairncross.com  
Nicole E. De Leon, WSBA No. 48139  
E-mail: ndeleon@cairncross.com  
CAIRNCROSS & HEMPELMANN, P.S.

524 Second Avenue, Suite 500

Seattle, WA 98104-2323

Telephone: (206) 587-0700

Facsimile: (206) 587-2308

Attorneys for The Pass, LLC, a Washington  
limited liability company, d/b/a The Pass Life,  
and Bryce Phillips and Jane Doe Phillips, husband  
and wife and their marital community

## TABLE OF CONTENTS

	<b>Page</b>
I. INTRODUCTION .....	1
II. ASSIGNMENTS OF ERROR ON CROSS APPEAL .....	1
III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR .....	1
IV. COUNTERSTATEMENT OF THE CASE.....	2
A. Factual Background.....	2
B. Procedural Background .....	12
V. SUMMARY OF ARGUMENT .....	13
VI. CROSS-APPEAL OPENING ARGUMENT .....	15
A. The superior court improperly denied The Pass’s motion to dismiss for lack of standing. ....	15
B. The superior court improperly excluded evidence from the record.....	25
VII. RESPONSE ARGUMENT .....	27
A. Standard of Review – Evidentiary Ruling.....	27
B. The superior court properly admitted evidence presented by The Pass. ....	28
C. Standard of Review – Motion for Summary Judgment.....	30
D. The superior court properly dismissed Jevne’s trespass claims. ....	30
E. The superior court properly dismissed Jevne’s nuisance claim. ....	33
F. The superior court properly dismissed Jevne’s overburdening an easement claim. ....	36

G.	The superior court properly dismissed Jevne’s request for injunctive relief.....	41
H.	Ownership of Tract A is irrelevant to The Pass’s rights to drain to Tract A. ....	43
I.	The superior court properly dismissed all of Jevne’s claims as collateral attacks precluded under LUPA.....	45
VIII.	CONCLUSION.....	49

## TABLE OF AUTHORITIES

### Cases

<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 202 (1986).....	16
<i>Asche v. Bloomquist</i> , 132 Wn. App. 784, 133 P.3d 475 (2006) .....	48
<i>Bradley v. American Smelting and Refining Co.</i> , 104 Wn.2d 677, 709 P.2d 782 (1985) .....	30
<i>Brown v. Voss</i> , 105 Wn.2d 366, 715 P.2d 514 (1986).....	41
<i>Collinson v. John L. Scott, Inc.</i> , 55 Wn.App. 481, 778 P.2d 534 (1989) .....	34
<i>Concerned Organized Women and People Opposed to Offensive Proposals, Inc. v. City of Arlington</i> , 69 Wn. App. 209, 847 P.2d 963 (1993) .....	46
<i>Crisp v. Vanlaeken</i> , 130 Wn. App. 320, 122 P.3d 926 (2005) .....	38
<i>Garvey v. Seattle Tennis Club</i> , 60 Wn. App. 930, 808 P.2d 1155 (1991) .....	24
<i>Grundy v. Thurston County</i> , 155 Wn.2d 1, 117 P.3d 1089 (2005).....	48
<i>Habitat Watch v. Skagit Cy.</i> , 155 Wn.2d 397, 120 P.3d 56 (2005) .....	46
<i>Havens v. C&amp;D Plastics, Inc.</i> , 124 Wn.2d 158, 876 P.2d 435 (1994) .....	16
<i>Herron v. Tribune Publishing Co.</i> , 108 Wn.2d 162, 736 P.2d 249 (1987) .....	16
<i>Island Air, Inc. v. LaBar</i> , 18 Wn. App. 129, 566 P.2d 972 (1977).....	16
<i>Logan v. Brodrick</i> , 29 Wn. App. 796, 800, 631 P.2d 429 (1981).....	37
<i>M.K.K.I., Inc. v. Krueger</i> , 135 Wn. App. 647, 145 P.3d 411 (2006) .....	31, 33, 43

<i>MacMeekin v. Low Income Housing Institute, Inc.</i> , 111 Wn. App. 188, 45 P.3d 570 (2002) .....	38
<i>Matthews v. Island Landmarks</i> , noted at 193 Wn. App. 1014 (2016) .....	24
<i>Mayer v. Pierce Cty. Medical Bureau, Inc.</i> , 80 Wn. App. 416, 909 P.2d 1323 (1995) .....	24
<i>McInnes v. Kennell</i> , 47 Wn.2d 29, 286 P.2d 713 (1955).....	34
<i>Michak v. Transnation Title Ins. Co.</i> , 148 Wn.2d 788, 64 P.3d 22 (2003) .....	15
<i>Olson Land Co. v. City of Seattle</i> , 76 Wn. 142, 136 P. 118 (1913)....	26, 28
<i>Pharmacists and Retail Drug Store Emp. Union, Local 330 v. Lake Hills Drug Co.</i> , 255 F. Supp. 910 (1964) .....	24
<i>Schaaf v. Highfield</i> , 127 Wn.2d 17, 896 P.2d 665 (1995).....	16
<i>Schroeder v. Meridian Imp. Club</i> , 36 Wn.2d 925, 221 P.2d 544 (1950) .....	23, 24
<i>State v. Castellanos</i> , 132 Wn.2d 94, 935 P.2d 1353 (1997) .....	25, 29
<i>State v. Ellis</i> , 136 Wn.2d 498, 963 P.2d 843 (1998).....	25
<i>Timberlane Homeowner's Ass'n, Inc. v. Brame</i> , 79 Wn.App. 303, 901 P.2d 1074 (1995) .....	17, 21, 23
<i>Vacova Co. v. Farrell</i> , 62 Wn. App. 386, 814 P.2d 255 (1991).....	16
<i>Westside Bus. Park v. Pierce Cy.</i> , 100 Wn. App. 599, 5 P.3d 713 (2000) .....	31, 35, 43
<i>White Bros. &amp; Crum v. Watson</i> , 64 Wn. 666, 117 P. 497 (1911).....	38
<i>Wimberly v. Caravello</i> , 136 Wn. App. 327, 149 P.3d 402 (2006).....	27
 <b>Statutes</b>	
RCW 36.21 .....	21

RCW 36.70C.010.....	47
RCW 36.70C.030(1)(c).....	47
RCW 36.70C.040(3).....	47
RCW 58.17.110 .....	31, 33, 35, 43
RCW 58.17.165 .....	10, 19, 20, 28
RCW 58.17.180 .....	45, 47
RCW 64.04.010 .....	19, 20
RCW 64.40 .....	47
RCW 7.48 .....	34
RCW 7.48.010 .....	34
RCW 7.48.120 .....	34

**Other Authorities**

CR 56(e).....	15
---------------	----

**Codes**

KCC 15A.07.010 .....	47
KCC 15A.08.010 .....	47
KCC 16.20.050 .....	31

## **I. INTRODUCTION**

Darlene Jevne (“**Jevne**”) dislikes the development project under construction on a neighboring property located in the same planned unit development as her single family home. The Pass, LLC, of which Bryce Phillips is the Manager (collectively referred to herein as, “**The Pass**”), is in the process of developing the neighboring project in compliance with the law, including the legal mandates of the shared 1990 Plat that governs all development within the planned unit development. On standing grounds, or under the Land Use Petition Act, or on the merits, if reached, Jevne’s claims must be dismissed.

## **II. ASSIGNMENTS OF ERROR ON CROSS APPEAL**

1. The superior court erred by denying The Pass’s motion to dismiss because Jevne’s hypothetical, future, contingent interest in the Tract A stormwater pond is insufficient to grant her standing to bring this suit.
2. The superior court erred in excluding evidence presented by The Pass because the evidence is not being introduced to contradict the 1990 Plat.

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

1. Does Jevne have standing to bring this suit when her alleged interest in Tract A is based solely on the possible occurrence of a series of future events? [Assignment of Error No. 1]

2. Is evidence introduced by The Pass and excluded by the superior court admissible to clarify and confirm the intended design and functionality of the stormwater system? [Assignment of Error No. 2]

#### **IV. COUNTERSTATEMENT OF THE CASE**

Jevne's statement of the case is replete with argument, omits key facts, and is devoid of any discussion regarding the procedural background leading up to this appeal. Therefore, The Pass submits the following factual background for this court's consideration.

##### **A. Factual Background**

**1. The Village was designed and approved with the stormwater facilities, including Tract A and a 15-foot express drainage easement, supporting the entirety of The Village, including Tract E.**

##### **a. The 1990 Plat**

All of the properties at issue in this litigation are located in a planned unit development known as The Village at the Summit ("**The Village**"). As shown on that certain final plat recorded under Recording No. 528340 with the Kittitas County Auditor on April 11, 1990 (the "**1990 Plat**"), Snoqualmie Summit Inn, Incorporated ("**Snoqualmie Inc.**"), as the original developer of The Village, designed and Kittitas County approved development of The Village as a planned unit development, 23.4-acre

subdivision. CP 430-33 (1990 Plat)<sup>1</sup>. Included within the boundaries of the 1990 Plat are the three properties at issue in this litigation: (1) Lot 31, developed with a single-family home/cabin, and now owned by Jevne; (2) Tract A, described on the face of the 1990 Plat as a “snow storage area” and for use as “stormwater detention facilities”; and (3) Tract E, described on the face of the 1990 Plat as a “Future Development” tract and now owned by The Pass. CP 430 (1990 Plat); CP 511-14 (Lot 31 Deed); CP 515 (Phillips Decl.), ¶ 3.

The subdivision review and analysis that led to approval of the 1990 Plat addressed how the 1990 Plat would accommodate stormwater drainage and, in the winter, snow storage for all of the land encompassed in the 1990 Plat. CP 391-92 (Kirkpatrick Decl.), ¶¶ 6-8. The Kittitas County-approved stormwater system includes, among other facilities, a 15-foot drainage easement (the “**15-foot Drainage Easement**”)<sup>2</sup> and the Tract A stormwater detention pond (the “**Detention Pond**”). CP 430-33 (1990 Plat); CP 392 (Kirkpatrick Decl.), ¶ 11. The 1990 Plat drainage designs and analysis assured the Detention Pond was properly designated and appropriately designed to accommodate drainage from Tract E and

---

<sup>1</sup> The 1990 Plat, as well as the subsequent 2012 Plat, are difficult to read. An Appendix is included with this Brief showing enlarged excerpts of key portions.

<sup>2</sup> From the centerline of the 15-foot Drainage Easement, 7.5 feet of the drainage easement is located on the southwest border of Tract E and the remaining 7.5 feet of the easement traverses over the neighboring lots 1-10.

other lands within the 1990 Plat. CP 392 (Kirkpatrick Decl.), ¶ 10; CP 397 (Hydrology Report).

**b. The 2012 Plat**

Beginning in October 2011, The Pass sought permits and approvals to subdivide the “Future Development” Tract E to develop certain commercial uses and townhomes in a project known as “The Pass Life.” CP 515-16 (Phillips Decl.), ¶ 4. The Pass designed its project to continue draining stormwater from the developed Tract E lands into the Tract A Detention Pond. *Id.* Kittitas County processed and approved these applications. *Id.* Ultimately, the County approved the final plat to further subdivide the lands within Tract E under Kittitas County Auditor No. 201209190036, recorded on September 19, 2012 (the “**2012 Plat**”). CP 519-22 (2012 Plat). Similar to the 1990 Plat, the 2012 Plat depicts future development and the facilities comprising the stormwater system required to provide adequate drainage of Tract E. *Id.* In addition, and because Tract E is part of the 1990 Plat, the 2012 Plat also shows the Tract A Detention Pond and the 15-foot Drainage Easement even though those facilities are partly outside the boundaries of the 2012 Plat. *Id.* Neither the 2012 Plat nor any of the permitting approvals were appealed by Jevne or any other person or entity. CP 515-16 (Phillips Decl.), ¶¶ 4-5.

Mark Kirkpatrick, a civil engineer, Certified Engineer-in-Training, and co-owner of Encompass Engineering and Surveying, was retained by The Pass to provide civil engineering and land surveying services. CP 390-91 (Kirkpatrick Decl.), ¶¶ 3-4. Based on Mr. Kirkpatrick's professional review of previous technical analyses and his physical inspection of the property, "stormwater from Tract E has flowed to Tract A since the development of the 1990 Plat." CP 392 (Kirkpatrick Decl.), ¶ 9. In contrast, Scott Haycock, a homeowner in The Village and real estate broker who asserts experience reading building plans, blue prints, and plat maps, and who reviewed the same technical analyses as Mr. Kirkpatrick, declares that Mr. Kirkpatrick's statement that stormwater has historically flowed to Tract A from Tract E is not true because Mr. Haycock witnessed substantial stormwater from Tract E also flowing onto Highway 906. CP 147-49 (Haycock Decl.). Nowhere in Mr. Haycock's declaration does he state that historically no stormwater flowed from Tract E into the Detention Pond. CP 147-50 (Haycock Decl.).

The technical reports referenced above and reviewed by both Mr. Kirkpatrick and Mr. Haycock consist of a set of Construction Plans revised on July 24, 1989 (the "**Construction Plans**") and a Hydrology Report and Calculations for The Village dated February 13, 1989 ("**Hydrology Report**"), both prepared by Group Four, Inc. CP 414-25

(Construction Plans); CP 396-412 (Hydrology Report). Sheets 1 and 3 of the Construction Plans include Tract E (referred to therein as “Division III”) as well as Tract A. CP 414, 416 (Construction Plans). The Hydrology Report states “[t]he detention system will be designed to handle the developed outflow from Division III.” CP 397 (Hydrology Report).

**2. The Pass tries to restore functionality to the neglected stormwater system.**

Jevne’s claims are primarily based on the fact that The Pass cut three trees and removed vegetation within Tract A, re-graded portions of Tract A, and designed and constructed stormwater improvements to facilitate the continued flow of stormwater from Tract E into the Detention Pond. CP 4-5 (Complaint), ¶¶ 15-16. The Detention Pond was designed to function as an open water pond, not as a landscaped detention facility that includes trees and shrubs. CP 392-93 (Kirkpatrick Decl.), ¶ 13. Over time the Detention Pond had become overgrown due to inadequate maintenance, which resulted in decreased functionality. *Id.*

The duty to maintain the Detention Pond belongs to The Village at the Summit Homeowners Association, Inc., which was incorporated to serve as the homeowners’ association of The Village (the “HOA”). CP 435 (CC&Rs), preamble; CP 461 (Bylaws), §3. Specifically, the Restated

and Amended Declaration of Restrictions, Covenants and Easements for The Village (the “CC&Rs”) state, “In consideration of the rights conferred upon the [HOA] hereby, the [HOA] shall maintain the Common Areas [including Tract A] and the dedicated public roads and vehicular traffic easements in the Plat.” CP 444 (CC&Rs), §10. As detailed above, the HOA failed to satisfy its obligation to maintain the functionality of the Detention Pond. CP 392-94 (Kirkpatrick Decl.), ¶ 13. In this context, the County permit approvals required The Pass to deepen the Detention Pond in order to comply with current regulations governing stormwater detention capacity. CP 392-93 (Kirkpatrick Decl.), ¶ 13. Inherent in this work to deepen the pond was the excavation of dirt which required the removal of three trees located near the pond because they prevented equipment from accessing the area to be excavated. *Id.* This is the action now complained of by Jevne.

Jevne also alleges that The Pass overburdened the 15-foot Drainage Easement that drains into the Detention Pond. CP 6-7 (Complaint), ¶¶ 19-20. The 15-foot Drainage Easement is a component of the approved stormwater system that functions as a conveyance path for stormwater draining from the entirety of The Village, including portions of Tract E, to Tract A. CP 430 (1990 Plat); CP 392 (Kirkpatrick Decl.), ¶¶ 11-12. Similar to the Detention Pond, maintenance of the 15-foot

Drainage Easement was inadequate and hindered functionality of the stormwater system. CP 392 (Kirkpatrick Decl.), ¶ 12. Therefore, in connection with The Pass's development work in Tract E and in order to ensure functionality of the stormwater system, The Pass removed overgrown vegetation and sediment from the 15-foot Drainage Easement. *Id.* This action benefits all portions of The Village draining to the 15-foot Drainage Easement and with continued proper maintenance, the 15-foot Drainage Easement is designed to continue functioning as a stormwater drainage path for The Village, including Tract E, into Tract A. *Id.*

**3. Damage suffered by The Pass as a result of Jevne's actions related to this litigation.**

The Pass's efforts to bring the stormwater system into compliance with current regulations were halted directly as a result of Jevne's continued efforts and threats to stall development of Tract E and prevent The Pass from completing the required work in Tract A. CP 393 (Kirkpatrick Decl.), ¶ 14. As a result of these actions and because the Detention Pond sedimentation removal work was not completed, The Pass constructed a costly temporary detention pond on Tract E. *Id.*; CP 516 (Phillips Decl.), ¶ 7. The temporary detention pond is located in the only feasible location within Tract E, however, this location is slated for construction of housing units on the 2012 Plat approved by Kittitas

County. *Id.* But for Jevne's actions delaying The Pass's work to upgrade the Tract A pond, The Pass would not have expended the time, money, and development space to build the temporary detention pond. *Id.*

**4. The legal owner of Tract A is Snoqualmie Inc., not Jevne, and not the HOA.**

The 1990 Plat, as required by law, was executed by the owners of all of the property encompassed within The Village: Snoqualmie Inc. and Westop, Inc. CP 432 (1990 Plat).

The 1990 Plat contains a "Dedications" section in which the roadways internal to the 1990 Plat were conveyed by the owners to the public. CP 432. The 1990 Plat Dedications do not convey Tract A to anyone. CP 432 (1990 Plat).

The 1990 Plat also includes a table on Sheet 1 that lists "ownership" of Tract A as by "Homeowner's Association." CP 430 (1990 Plat). Relying on that table alone, Jevne argues the HOA owns Tract A. Br. of Appellant, p. 12-16. However, it was not until October 1990, several months after the April 1990 recording date of the 1990 Plat, that the HOA was even incorporated to serve as the homeowners' association of The Village as detailed in the HOA's CC&Rs and Bylaws (the "**Bylaws**") (collectively, the "**HOA Documents**"). CP 332-34 (Certificate of Incorporation); CP 435 (CC&Rs), preamble; CP 461 (Bylaws), §4.

The HOA Documents do not contain any language regarding a conveyance of title of Tract A from Snoqualmie Inc. to the HOA. CP 435-59 (CC&Rs); CP 461-68 (Bylaws). Jevne points to a printout from the Kittitas County Assessor's office originally dated February 25, 2016, which purports to show the HOA owns Tract A pursuant to a sale on February 22, 2016 (the "**Assessor Printout**"). Br. of Appellant, p. 15; CP 41, 152 (Assessor Printout). After counsel for The Pass, Nicole De Leon, received the Assessor Printout, Ms. De Leon called the Kittitas County Assessor's office on March 4, 2016, to inquire about ownership of Tract A and the notation stating Tract A was sold on February 22, 2016. CP 347 (De Leon Decl.), ¶ 4. During this call, Ms. De Leon spoke with Ms. Christy Garcia who informed Ms. De Leon that she is the Kittitas County staff member who made the change at issue. *Id.*, ¶ 5. Ms. Garcia further explained that she made the change as a result of a telephone call from Jevne's counsel, Mr. Matthew Veeder, during which Mr. Veeder instructed her that the HOA owns Tract A pursuant to the 1990 Plat and RCW 58.17.165. *Id.* Ms. Garcia also explained that the notation "unrec-538" on the Assessor Printout has no particular meaning and is used to populate the required field for a recorded conveyance document when she does not in fact have such a document. *Id.*, ¶ 6.

In reality, the original owners of the 1990 Plat never conveyed Tract A to anyone. The Title Report dated January 20, 2016, and prepared by First American Title Insurance Company (“**Title Report**”) confirms Snoqualmie Inc. owns and holds record title to the Detention Pond. CP 500-01 (Title Report), ¶ 3.

**5. Jevne’s alleged interest in Tract A.**

The Statutory Warranty Deed by which Jevne obtained title to Lot 31 (the “**Lot 31 Deed**”) does not reference Tract A, let alone any transfer of ownership interest in Tract A. CP 511-14 (Lot 31 Deed). The principal piece of evidence Jevne relies on to support her argument that she has standing to bring this suit is the following provision from the HOA’s Certificate of Incorporation:

In the event of the dissolution or liquidation of the corporation, the assets of the corporation shall be distributed as provided by Chapter 24.03 of the Revised Code of Washington, and any assets remaining after all the liabilities and obligations of the corporation shall be been paid, satisfied, discharged, or other adequate provision made therefor, shall be distributed, either in cash or in kind, among all of the members of the corporation who are members in good standing on the date a resolution providing for dissolution or liquidation is adopted by the members of the corporation, and in proportion to the votes each member is entitled to cast under the Bylaws.

CP 338 (Certificate of Incorporation), §8.4.

## **B. Procedural Background**

Jevne filed a Complaint for trespass, water drainage trespass, timber trespass (the “**Trespass Claims**”), nuisance, overburdening existing easement, injunctive relief, and damages on November 19, 2015 (the “**Complaint**”). CP 1-8 (Complaint). On February 12, 2016, The Pass filed a motion to dismiss for lack of standing (the “**Motion to Dismiss**”) and requested the superior court consider materials outside the Complaint and convert the Motion to Dismiss into one for summary judgment. CP 231-38 (Motion to Dismiss). The superior court treated the Motion to Dismiss as summary judgment and ultimately denied the Motion to Dismiss based on a discrete dissolution provision in the HOA’s Certificate of Incorporation. VRP at 3:4-5:1 (Verbatim Transcript of Ruling).

The Pass filed a motion to reconsider the denial of the Motion to Dismiss on March 23, 2016 (“**Motion to Reconsider Standing**”). CP 350-56 (Motion for Reconsideration). The superior court denied the Motion to Reconsider Standing. CP 357-58 (Order).

The Pass filed a motion for summary judgment on September 9, 2016, requesting the superior court dismiss all of Jevne’s claims (“**Motion for Summary Judgment**”). On November 4, 2016, at the conclusion of the hearing on the Motion for Summary Judgment, the superior court granted the Motion for Summary Judgment in its entirety. VRP at 6:13-

9:22 (Verbatim Transcript of Ruling). The superior court also entered a written order clarifying that “the court did not consider Exhibit B to Bryce Phillips’ Declaration and Exhibits D, E, F to Nancy Rogers’ Declaration and David Babbott’s letter.” CP 176-77 (Order), ¶ 6.5. Exhibit B to Bryce Phillips’ Declaration is an email from Snoqualmie Inc. to The Pass granting The Pass permission to construct the improvements at issue. Exhibits D, E, and F to Nancy Rogers’ Declaration are correspondence with the Kittitas County Public Works Department.

Jevne filed a motion for reconsideration of the summary judgment dismissal on November 14, 2016 (the “**Motion to Reconsider Dismissal**”). CP 179-91 (Motion to Reconsider Dismissal). The superior court denied the Motion to Reconsider Dismissal on December 9, 2016. CP 225 (Order). Jevne filed this appeal on December 19, 2016. CP 226-30 (Jevne Notice of Appeal). The Pass filed a cross-appeal on January 4, 2017. CP 538-50 (The Pass Notice of Appeal).

## V. SUMMARY OF ARGUMENT

As required by the law governing subdivisions, Snoqualmie Inc. was required to assure that appropriate provisions for drainage of all of the lands within The Village, including Tract E, were provided and shown on the 1990 Plat. The stormwater system shown on the 1990 Plat includes the 15-foot Drainage Easement and the Tract A Detention Pond. All

development of lands and tracts in The Village is obligated and entitled to use the stormwater system as designed. This includes the use of the Tract A Detention Pond for drainage from Tract E's development for The Pass Life.

Based on The Pass's actions to utilize the stormwater system as allowed by law, Jevne initiated this litigation alleging the Trespass Claims, nuisance, overburdening an existing easement, injunctive relief, and damages. Jevne, as an owner of Lot 31, does not have standing to bring these claims for alleged harm to the Detention Pond because Snoqualmie Inc. is the record title owner of Tract A, which includes the Detention Pond. Jevne argues she has standing through her membership in the HOA. The HOA, however, does not own the Detention Pond, and even if it did, Jevne's standing argument is based on a contingent, future interest that is insufficient to support standing to maintain this action.

Should the court reach the merits of the case, Jevne's Trespass Claims fail as a matter of law because Jevne does not have a right to exclusive possession of the Tract A Detention Pond as against The Pass, which has a privilege, right, and obligation to drain stormwater to the Detention Pond. Jevne's nuisance claim fails as a matter of law because The Pass's lawful use and maintenance of the Detention Pond and the 15-foot Drainage Easement do not interfere with Jevne's use and enjoyment

of the facilities or her property. Jevne's claim that The Pass is overburdening an easement fails as a matter of law because the stormwater system, including the Detention Pond and the 15-foot Drainage Easement, were designed and intended to accommodate the development of Tract E.

Lastly, all of Jevne's claims attack The Pass's actions performed pursuant to previous land use decisions and approvals. Jevne failed to raise her claims within the applicable appeal deadlines and her claims are thereby precluded as collateral attacks on County-approved land use decisions. Therefore, all of Jevne's claims were properly dismissed as a matter of law by the superior court on these grounds.

## **VI. CROSS-APPEAL OPENING ARGUMENT**

### **A. The superior court improperly denied The Pass's motion to dismiss for lack of standing.**

#### **1. Standard of Review**

The superior court properly treated the Motion to Dismiss as one for summary judgment. VRP at 3:6-10 (Verbatim Transcript Ruling). Therefore, this court reviews the superior court's summary judgment decision de novo, engaging in the same analysis as the trial court. *Michak v. Transnation Title Ins. Co.*, 148 Wn.2d 788, 794-95, 64 P.3d 22 (2003). Summary judgment is appropriate where no genuine issues of material fact exist. CR 56(e). "The purpose of a motion for summary judgment is to examine the sufficiency of evidence supporting plaintiff's formal

allegations so that an unnecessary trial may be avoided where no genuine issue of material fact exists.” *Island Air, Inc. v. LaBar*, 18 Wn. App. 129, 136, 566 P.2d 972 (1977) (citations omitted). Material facts are those facts upon which the outcome of the litigation depends. *Vacova Co. v. Farrell*, 62 Wn. App. 386, 395, 814 P.2d 255 (1991). A court may determine a question of fact as a matter of law “when reasonable minds could reach but one conclusion.” *Havens v. C&D Plastics, Inc.*, 124 Wn.2d 158, 177, 876 P.2d 435 (1994). Moreover, an issue is not genuine unless the non-moving party presents sufficient evidence for a jury to find in its favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 202 (1986).

Once the moving party establishes that no genuine issues of material fact exist and that it is entitled to judgment as a matter of law, the burden shifts to the non-moving party to establish specific facts giving rise to a genuine issue of material fact. *Schaaf v. Highfield*, 127 Wn.2d 17, 21, 896 P.2d 665 (1995). Conclusory statements and unsupported assertions cannot defeat a motion for summary judgment. *Herron v. Tribune Publishing Co.*, 108 Wn.2d 162, 170, 736 P.2d 249 (1987).

**2. The superior court improperly dismissed The Pass's Motion to Dismiss for lack of standing.**

The superior court improperly dismissed The Pass's Motion to Dismiss for lack of standing based on the possibility Jevne may have what amounts to a plainly contingent interest in Tract A. In reaching this conclusion, the superior court relied on a dissolution provision in the HOA's Articles of Incorporation and created a hypothetical series of events that may culminate in Jevne receiving proceeds from a sale of Tract A. VRP at 3:4-5:1 (Verbatim Transcript of Ruling). This holding that Jevne may have standing to pursue her claims based on such a convoluted future, contingent interest in Tract A is contrary to well-settled law.

"The doctrine of standing generally prohibits a party from asserting another person's legal right." *Timberlane Homeowner's Ass'n, Inc. v. Brame*, 79 Wn. App. 303, 307, 901 P.2d 1074 (1995). Furthermore, "[a] party has standing to raise an issue if it 'has a distinct and personal interest in the outcome of the case' [or] [s]tated another way, a party has standing if it demonstrates 'a real interest in the subject matter of the lawsuit, that is, a present, substantial interest, as distinguished from a mere expectancy, or future, contingent interest, and the party must show that a benefit will accrue it by the relief granted.'" *Id.*, at 307-08 (internal citations omitted).

Jevne's claims for trespass, water drainage trespass, nuisance, overburdening existing easement, injunctive relief, and damages are all claims for which the real party in interest is the owner of Tract A. CP 4-7, ¶¶ 15-20. The Pass does not contest that Jevne purchased and is the title owner of Lot 31 within The Village. However, the acquisition of her single lot did not also grant her a property ownership interest in Tract A. The real party in interest who has standing to bring Jevne's claims is the owner of Tract A, who is Snoqualmie Inc. In the alternative, if the court concludes the HOA owns Tract A, then the HOA is the real party in interest to which these claims belong. Either way, Jevne does not have standing to bring this action in her capacity as an owner of Lot 31.

**a. Snoqualmie Inc. is the proper party-in-interest with standing to bring Jevne's claims.**

Snoqualmie Inc. is the owner of Tract A. The 1990 Plat, as required by law, was executed by the owners of all of the property encompassed within The Village, who were: Snoqualmie Inc. and Westop, Inc. CP 432 (1990 Plat). The 1990 Plat includes a "Dedications" section in which all dedications of land are listed; Snoqualmie Inc. and Westop, Inc. did not dedicate Tract A to the HOA. CP 432 (1990 Plat). The Title Report prepared by First American Title Insurance Company, a reputable third-party institution, confirms Snoqualmie Inc. ultimately acquired

complete title to Tract A and remains the owner of Tract A. CP 500-01 (Title Report), ¶ 3. The County-approved 2012 Plat also correctly identifies Tract A, Parcel 302436, as being owned by Snoqualmie Inc. CP 519-21 (2012 Plat) (sheet 1 identifies Tract A as Parcel 302436 and sheet 3 identifies Snoqualmie Inc. as the owner of said Parcel).

Jevne relies on the “Tract Designation” table on the 1990 Plat that notes the ownership of Tract A as “Homeowner’s Association.” Br. of Appellant, p. 15; CP 430 (1990 Plat). This Tract Designation table does not include any words or terms of conveyance, such as grant, deed, convey, dedicate, etc., nor is the table accompanied by the notarized signatures of the property owners. *Id.* Although this reference table notes the HOA as the owner of Tract A, it is not legally sufficient to effect a conveyance of title because it is not a dedication of Tract A that satisfies the requirements of RCW 58.17.165 and it is not a deed that satisfies the requirements of RCW 64.04.010. RCW 64.04.010 governs the requirements for conveyance of real property and requires that “[e]very conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate, shall be by deed.” RCW 58.17.165 likewise requires a clear donation, dedication or grant to be stated, above the notarized signature of the owners:

Every final plat ... must contain a certificate giving a full and correct description of the lands divided as they appear on the plat or short plat, including a statement that the subdivision... has been made with the free consent in accordance with the desires of the owner or owners.

If the plat or short plat is subject to dedication, the certificate or a separate written instrument shall contain the dedication of all streets and other areas to the public, and individual or individuals, religious society or societies or to any corporation, public or private as shown on the plat... Said certificate or instrument of dedication shall be signed and acknowledged before a notary public by all parties having any ownership interest in the lands subdivided and recorded as part of the final plat.

...

Any dedication, donation or grant as shown on the face of the plat shall be considered to all intents and purposes, as a quitclaim deed to the said donee..."

RCW 58.17.165.

If Snoqualmie Inc. had intended to dedicate Tract A to the HOA, it was required to do so in the express "Dedication" certificate or separate deed. RCW 58.17.165; RCW 64.04.010. The superior court rejected Jevne's argument that the notation in the table constitutes a dedication and instead finding all dedications are as stated in the dedication section. VRP at 4:10-14 (Verbatim Transcript of Oral Ruling).

Jevne also relies on the Assessor Printout. CP 41 (Assessor Printout). The Assessor Printout is the product of counsel for Jevne, Mr. Veeder, calling the Kittitas County Assessor's Office and convincing a

staff member to change an ownership designation. CP 347, ¶ 5. Moreover, while The Pass appreciates the critical role the Kittitas County Assessor's Office has in governance and assessing property taxes, the Assessor's Office is not charged by law with determining matters of real property ownership. See ch. 36.21 RCW. Neither the Assessor Printout nor the notation of the 1990 Plat constitute a conveyance of Tract A from Snoqualmie Inc. to the HOA and Jevne has presented no other evidence to refute the overwhelming credible evidence establishing Snoqualmie Inc.'s continued ownership of Tract A. Only Snoqualmie Inc., as the owner of Tract A, is the proper party in interest to bring the claims alleged by Jevne. Jevne's efforts to usurp the claims of Snoqualmie Inc. should be dismissed for lack of standing. *Timberlane*, 79 Wn. App. at 307.

**b. Even if the HOA is the owner of Tract A, Jevne still lacks standing.**

In the event the court concludes the HOA is or may be the owner of Tract A, Jevne still does not have standing to pursue her claims because such claims would belong to the HOA alone. Jevne's prevailing argument before the superior court and the sole argument she now relies on to establish standing is based on the potential occurrence of multiple future events all stemming from the following dissolution provision in the HOA's Articles of Incorporation:

In the event of the dissolution or liquidation of the corporation, the assets of the corporation shall be distributed as provided by Chapter 24.03 of the Revised Code of Washington, and any assets remaining after all the liabilities and obligations of the corporation shall be paid, satisfied, discharged, or other adequate provision made therefor, shall be distributed, either in cash or in kind, among all of the members of the corporation who are members in good standing on the date a resolution providing for dissolution or liquidation is adopted by the members of the corporation, and in proportion to the votes each member is entitled to cast under the Bylaws.

CP 338 (Articles of Incorporation), §8.4 (emphasis added); VRP at 3:11-5:1 (Verbatim Transcript of Oral Ruling); Br. of Appellant, pp. 16-18.

In order for this provision to result in any sort of interest for Jevne, and assuming for the sake of argument the HOA owns Tract A, the following would have to occur: the HOA for the well-established subdivision The Village would need to dissolve; the HOA would need to still own and then sell Tract A; the HOA would need to pay off all of its debts and have proceeds remaining for distribution to its members; and Jevne would still need to own Lot 31 and be a member in good standing. Only after each of these events occurs would Jevne receive some form of payment or interest stemming from Tract A.

The possibility that Jevne may one day receive proceeds stemming from the sale of the HOA's property assets if the HOA ever dissolves is not a "real interest in the subject matter of the lawsuit, that is, a present,

substantial interest, as distinguished from a mere expectancy, or future, contingent interest.” *Timberlane*, 79 Wn. App. at 307-08. Instead, this sequence of hypothetical events is the definition of a future, contingent interest that is insufficient to create a present interest in the subject matter of this lawsuit and confer standing to Jevne.

Jevne’s reliance on the case *Schroeder v. Meridian Imp. Club* is misguided. Br. of Appellant, pp. 16-18.<sup>3</sup> In *Schroeder*, the Washington State Supreme Court ruled that because none of the plaintiffs had been members of the non-stock corporation at the time it decided to dissolve and sell association-owned property, the plaintiffs had no interest and no standing to maintain their action to set aside the sale of the property. *Schroeder v. Meridian Imp. Club*, 36 Wn.2d 925, 934, 221 P.2d 544 (1950). In *Schroeder* the association had in fact dissolved and sold property, thereby triggering distribution requirements under its governing documents. *Id.* Ignoring these facts which distinguish *Schroeder* from the instant case, Jevne hangs her hat on dicta stating a present interest arises from the right to proceeds in the event of dissolution. *Id.* at 930; Br. of Appellant, pp. 16-18. Next, although Jevne characterizes *Schroeder* as “landmark” authority, it appears *Schroeder* has been cited by a total of four Washington cases and none of these cases cite to *Schroeder* for the

---

<sup>3</sup> Jevne briefed The Pass’s cross-appeal issue of standing at Section E(3) of Jevne’s opening brief.

proposition set forth by Jevne. *See Mayer v. Pierce Cty. Medical Bureau, Inc.*, 80 Wn. App. 416, 909 P.2d 1323 (1995); *see also Garvey v. Seattle Tennis Club*, 60 Wn. App. 930, 808 P.2d 1155 (1991); *see also Pharmacists and Retail Drug Store Emp. Union, Local 330 v. Lake Hills Drug Co.*, 255 F. Supp. 910 (1964); *see also Matthews v. Island Landmarks*, noted at 193 Wn. App. 1014 (2016) (all of which cite to *Schroeder* with respect to the actual issue of the case, status of membership as dispositive of standing).

Here, it is undisputed that the HOA is an active incorporated association with no current plans to dissolve. In contrast, the homeowners association in *Schroeder* had actually dissolved, sold association property, and triggered distribution obligations to its members in good standing. *Schroeder*, 36 Wn.2d at 934. The *Schroeder* court was confronted with these very different facts when it stated a present interest can arise from a member's right to proceeds in the event of a dissolution. *Id.* at 930. *Schroeder* is inapposite here, where the HOA has not dissolved and Jevne is still without a present substantial interest in Tract A to support her standing for maintaining this action. The court should reverse the superior court's ruling and dismiss Jevne's claims for lack of standing.

**B. The superior court improperly excluded evidence from the record.**

**1. Standard of Review**

The standard of review for a superior court's evidentiary ruling is an abuse of discretion. *State v. Ellis*, 136 Wn.2d 498, 504, 963 P.2d 843 (1998). A superior court's evidentiary ruling requires reversal when "no reasonable person would take the view adopted by the trial court." *State v. Castellanos*, 132 Wn.2d 94, 97, 935 P.2d 1353 (1997).

**2. Evidence introduced by The Pass and excluded by the superior court is admissible.**

The superior court excluded two pieces of evidence submitted by The Pass: correspondence with Public Works discussing the design and capacity of the Detention Pond (the "**Public Works Correspondence**") and an email from Snoqualmie Inc. to The Pass giving The Pass permission to improve the Detention Pond (the "**Snoqualmie Inc. Email**"). It is unclear whether the court reached these rulings on the grounds the evidence was deemed to be extrinsic evidence unnecessary because the 1990 Plat is unambiguous regarding ownership of Tract A as argued by Jevne, as hearsay, or otherwise. CP 115-22, 123-24 (Jevne Response to MSJ).<sup>4</sup> Because Jevne focuses her argument regarding this evidence and other admitted records on the assertion the evidence is

---

<sup>4</sup> Jevne also made a brief allegation regarding hearsay.

extrinsic, The Pass does as well. The Public Works Correspondence and Snoqualmie Inc. Email are not being used to “contradict” the 1990 Plat or address the issue of who owns Tract A. Instead the Public Works Correspondence is offered as additional proof that the Detention Pond was adequately designed to provide stormwater support for the entirety of The Village, including Tract E. Similarly the Snoqualmie Inc. Email is not offered as support for the dispute regarding who owns Tract A and is instead offered as evidence of permission further defeating Jevne’s Trespass Claims.

The Washington State Supreme Court articulated the “well settled” rule regarding review of extrinsic evidence with respect to a plat as:

An official survey, map, or plat, or one which is duly filed or recorded in the proper office, is not subject to be contradicted, impeached, or invalidated by parol or other extrinsic evidence. But evidence aliunde is admissible in all cases where there is doubt as to the true location of the survey, or a question as to the application of a grant to its proper subject-matter, or where the survey was not made according to law.

*Olson Land Co. v. City of Seattle*, 76 Wn. 142, 144-45, 136 P. 118 (1913).

Therefore, while it is true extrinsic evidence may not be offered to contradict an unambiguous plat, the well settled law, selectively quoted by Jevne, also instructs that outside (or “aliunde”) evidence is admissible to clarify the plat. *Id.* Similarly, evidence that “illuminates” the intention of

the parties is admissible. *Wimberly v. Caravello*, 136 Wn. App. 327, 336-37, 149 P.3d 402 (2006).

The Public Works Correspondence confirms the engineering design and operations of the Detention Pond within Tract A and the fact that the 1990 Plat design specifically planned for drainage from Tract E's future development to flow to Tract A. The Snoqualmie Inc. Email was submitted to confirm permission to The Pass to use the Detention Pond.

Again, the evidence excluded by the superior court and the further evidence objected to by Jevne is not offered to contradict the face of the 1990 Plat. This court should reverse the superior court's exclusion of this evidence and admit and consider it for purposes of analyzing whether The Pass's actions are within the scope of the Detention Pond's intended use, design, and functionality, and whether The Pass was given permission to act as it did.

## **VII. RESPONSE ARGUMENT**

### **A. Standard of Review – Evidentiary Ruling.**

In the interest of avoiding duplicative briefing for the court, The Pass respectfully requests the court reference Section VI(A)(2) of this brief for a summary of the discretionary standard of review for an evidentiary ruling.

**B. The superior court properly admitted evidence presented by The Pass.**

The superior court properly admitted the Title Report and the Declaration of Mark Kirkpatrick (“**Kirkpatrick Decl.**”) because they are not contradictory to the 1990 Plat. CP 176-77 (Order noting the exclusion of other evidence, but not the Title Report or Kirkpatrick Decl.).

Jevne argues at Section E(8)(i)(a) of her brief that the Title Report should not be admitted because the Title Report “is inadmissible extrinsic evidence contrary to the 1990 Plat’s granted ownership to the homeowner’s association.” As discussed above, the Washington State Supreme Court articulated the “well settled” rule that extrinsic evidence pertaining to plats as extrinsic evidence may not be considered to contradict or invalidate the plat where the plat is unambiguous. *Olson*, 76 Wn. at 144-45. The Title Report is not introduced to “contradict” the 1990 Plat and is instead offered to confirm the fact that the 1990 Plat shows original ownership of Tract A was held by Snoqualmie Inc. and Westop Inc., and that the 1990 Plat Dedication section did not convey Tract A such that title to Tract A remains in Snoqualmie Inc. Moreover, a Title Report is the customary tool used to establish ownership of real property. *See e.g.*, RCW 58.17.165 (requiring “every plat and short plat containing a dedication filed for record must be accompanied by a title

report confirming that the title of the lands as described and shown on said plat is in the name of the owners signing the certificate or instrument of dedication”). The superior court’s inclusion of the Title Report was proper and Jevne has not met her burden of proving “no reasonable person would take the view adopted by the [superior] court.” *Castellanos*, 132 Wn.2d at 97 (1997).

With respect to the Kirkpatrick Decl., Jevne again disregards the fact that this declaration, the Hydrology Report, and the Construction Plans are introduced to aid the court in understanding the engineering details as to how the Detention Pond was originally sized and designed to serve all of The Village, including Tract E. *See* Br. of Appellant, Section E(8)(i)(b). Neither party disputes that the 1990 Plat depicts Tract A and describes its use for stormwater detention facilities. The Kirkpatrick Decl., Hydrology Report, and Construction Plans are introduced to confirm, not contradict, that Tract A was indeed designed to be used for stormwater detention for all lands within the 1990 Plat, including Tract E. The Pass also notes that Jevne relies on the Declaration of Scott Haycock who similarly based his conclusions on the Hydrology Report and Construction Plans. The superior court’s refusal to exclude this evidence was reasonable and Jevne has not met her burden to overcome the court’s discretionary authority.

**C. Standard of Review – Motion for Summary Judgment.<sup>5</sup>**

To avoid duplicative briefing for the court, The Pass respectfully requests the court reference Section VI(A)(1) of this brief for a summary of the de novo standard of review for a motion for summary judgment.

**D. The superior court properly dismissed Jevne’s trespass claims.**

The superior court properly dismissed Jevne’s Trespass Claims<sup>6</sup> because the 1990 Plat affords The Pass the legal privilege, right, and obligation to use Tract A, thereby defeating Jevne’s Trespass Claims as a matter of law. CP 430-33 (1990 Plat). Jevne’s claims are premised on The Pass allegedly interfering with her purported exclusive property interest and use of Tract A as against The Pass, but no such exclusivity exists.<sup>7</sup> A trespass is “an actionable invasion of a possessor’s interest in the exclusive possession of land.” *Bradley v. American Smelting and Refining Co.*, 104 Wn.2d 677, 681-82, 687-88, 709 P.2d 782 (1985) (citing Restatement (Second) of Torts §§ 158, 188 (1965), which states in comment (e), “[c]onduct which would otherwise constitute a trespass is

---

<sup>5</sup> To aid the court’s review, The Pass organized its response primarily by claim and Jevne’s arguments are addressed therein. Br. of Appellant, pp. 12-15, 18-20, 23-25.

<sup>6</sup> Jevne included a claim for timber trespass in the title of her Complaint, but did not in fact allege timber trespass in the body of the Complaint, nor did she argue a timber trespass claim at any stage of briefings or hearing. The superior court noted as much and properly dismissed the timber trespass claim. CP 176-78 (Order); VRP 9:12-19 (Verbatim Transcript of Oral Ruling).

<sup>7</sup> Jevne’s arguments at Brief of Appellant, Section E(2) regarding ownership, and (E)(5) regarding connection of a drainage pipe to the Detention Pond, pertain to the exclusivity element of Jevne’s Trespass Claims.

not a trespass if it is privileged.”). Thus, a claim for trespass is defeated as a matter of law if the alleged offending party had the legal right or privilege, or even further in this instance, the legal obligation, to conduct the action at issue.

That The Pass must use Tract A to accommodate the drainage from Tract E is required by operation of Washington law governing subdivisions. In order to approve the original development of The Village pursuant to the 1990 Plat, Kittitas County was required by RCW 58.17.110 to assure that “appropriate provisions are made for the public health, safety, and general welfare and for ... drainage ways...” *See also* KITTITAS COUNTY CODE 16.20.050 (detailing the same requirement). The courts have confirmed that the requirement to assure “appropriate provisions are made for [inter alia] drainage ways[,]” is a “mandatory prerequisite” to subdivision approval. *Westside Bus. Park v. Pierce Cy.*, 100 Wn. App. 599, 607, 5 P.3d 713 (2000). These “appropriate provisions” are reflected on the 1990 Plat and serve as continuing requirements and obligations on subsequent owners/developers of the property pursuant to the approved plat. *M.K.K.I., Inc. v. Krueger*, 135 Wn. App. 647, 658, 145 P.3d 411 (2006) (citing *Van Buren v. Trumbell*, 92 Wn. 691, 694, 155 P. 891 (1916) (holding that “once the property had

been platted, the owners, or their successors, could not defeat the rights of a person who purchased property by reference to the recorded plat.”)).

As to stormwater issues, and as a matter of law, the County’s approval of the 1990 Plat for The Village was based on the design of the subdivision with appropriate provisions for drainage of the entire 1990 Plat, including Tract E. The face of the 1990 Plat shows that these drainage provisions include the 15-foot Drainage Easement and the Detention Pond. CP 391 (Kirkpatrick Decl.), ¶ 6; CP 430 (1990 Plat). The external boundaries of the 1990 Plat encompass many home lots – including Jevne’s Lot 31 – roadways, other Tracts, and Tract E for “Future Development.” CP 430 (1990 Plat). The only land within the boundaries of the 1990 Plat designated for use as stormwater detention for all of those lands is Tract A. *Id.* Tract E, therefore, has the legal right, privilege, and obligation to assure its stormwater drains to Tract A.

Confirming what is shown on the 1990 Plat, the Construction Plans, which refer to what is now known as “Tract E” as “Division III”, show Tract E as incorporated into the development plans for The Village alongside Tract A. CP 414-25 (Construction Plans). Similarly, the Hydrology Report states that the stormwater “detention system will be

designed to handle the developed outflow from Division III.” CP 397 (Hydrology Report).<sup>8</sup>

The determinative law is that providing for drainage is a mandatory prerequisite to plat approval, which approval obligates a developer to use the drainage system as mandated on the approved plat. RCW 58.17.110; *M.K.K.I.*, 135 Wn. App. at 658. This obligation and legal right of The Pass to use the Detention Pond defeats Jevne’s Trespass Claims as a matter of law because she does not have a right to exclusive possession of Tract A as against The Pass. Jevne also has not introduced any material facts that alter this outcome. The court should affirm the dismissals of Jevne’s Trespass Claims.

**E. The superior court properly dismissed Jevne’s nuisance claim.**

The superior court properly dismissed Jevne’s nuisance claim<sup>9</sup> because The Pass’s use of and improvements to the Detention Pond are lawful actions that were mandated by the 1990 Plat and do not interfere with Jevne’s use and enjoyment of the Detention Pond. CP 430 (1990 Plat); *see also* CP 392-93 (Kirkpatrick Decl.), ¶¶ 13-14.

---

<sup>8</sup> As additional evidence and should the court rule the Public Works Correspondence is admissible, the April 18, 2014 email from Public Works demonstrates the department’s identical conclusion that the stormwater system was designed to accommodate the entire area within The Village and was sized appropriately to handle runoff from Tract E. CP 477 (Excluded Public Works Apr. 18, 2014 Email).

<sup>9</sup> Jevne’s arguments in Sections E(4) regarding water flow and E(5) regarding connection of a drainage pipe to the Detention Pond pertain to her nuisance claim. Br. of Appellant, pp. 18-20.

Washington's law of nuisance is codified in chapter 7.48 RCW, which defines actionable nuisance as "whatever is injurious to health or indecent or offensive to the senses, or an obstruction to the free use of property, so as to essentially interfere with the comfortable enjoyment of the life and property[.]" RCW 7.48.010. RCW 7.48.120 further articulates the elements of a nuisance action as "unlawfully doing an act, or omitting to perform a duty, which act or omission either annoys, injures or endangers the comfort, repose, health or safety of others ... or in any way renders other persons insecure in life, or in the use of property." *Collinson v. John L. Scott, Inc.*, 55 Wn. App. 481, 483-84, 778 P.2d 534 (1989). In reviewing the "harsh remedy" of an injunction with respect to nuisance claims, the courts have articulated the guiding principle that:

... courts of equity will not resort to it unless the right thereto is clear. Rights of adjoining landowners in the use and enjoyment of their property are relative, but they are also equal. Equity cannot restrict one landowner to confer a benefit on the other. It is only when an unreasonable or unlawful use of land by one property owner infringes upon some right of another in the reasonable use and enjoyment of his land that equity will intervene.

*McInnes v. Kennell*, 47 Wn.2d 29, 38, 286 P.2d 713 (1955) (quoted in part in *Collinson v. John L. Scott, Inc.*, 55 Wn. App. 481, 488, 778 P.2d 534 (1989), to support the proposition that a nuisance claim was not supported on the basis of view obstruction due to neighboring development).

As discussed above, The Pass has a legal mandate pursuant to the 1990 Plat to use the Detention Pond. RCW 58.17.110; *Westside Bus. Park*, 100 Wn. App. at 607. Inherent in the right and obligation to drain stormwater to the Detention Pond located in Tract A is the right to perform the necessary work to ensure the facility is functional. The Pass's County-approved permits required The Pass to deepen the Detention Pond in order to correct its inadequate functionality and to comply with current regulations governing stormwater detention capacity. CP 392-93 (Kirkpatrick Decl.), ¶ 13. Inherent in this work to deepen the pond was the excavation of dirt. *Id.* Performing this excavation work required The Pass to first remove three trees near the Detention Pond that prevented equipment from accessing the area requiring excavation. *Id.* The Pass's clearing of trees and sediment from the stormwater pond was therefore necessary to ensure the Detention Pond functioned as intended for the benefit of the entire subdivision encompassed in the 1990 Plat, including Tract E. CP 430 (1990 Plat); (Kirkpatrick Decl.), ¶ 13.<sup>10</sup>

The HOA had a maintenance obligation for the Detention Pond and failed in meeting its obligation. *Id.*; CP 444 (CC&Rs), p. 10, Art. E, Sec. 10; CP 392 (Kirkpatrick Decl.), ¶ 13. When The Pass exercised its

---

<sup>10</sup> Although not necessary to substantiate the argument, should the court rule the Public Works Correspondence is admissible, the April 18, 2014 email from Public Works aptly summarizes the appropriate use, function and maintenance needs of the Detention Pond. CP 477 (Excluded Public Works Apr. 18, 2014 Email).

right to develop Tract E and fulfill its obligation to utilize the Detention Pond, it was further entitled and obligated to perform standard maintenance to ensure the Detention Pond functioned adequately. CP 392-93 (Kirkpatrick Decl.), ¶ 13. The Detention Pond was designed as a detention facility to adequately support every inch of The Village – including Tract E – and not as a landscaped oasis for Jevne’s aesthetic enjoyment. *Id.* As noted by the superior court, The Pass not only endeavored to comply with the 1990 Plat and County requirements to complete its own project, but it also improved the Detention Pond to the benefit of the HOA members, such as Jevne. VRP at 8:11-12 (Verbatim Transcript of Oral Ruling). The Pass’s lawful actions to properly use the Detention Pond have not interfered with Jevne’s use and enjoyment of the Detention Pond or her property, and Jevne has failed to present any material fact to the contrary. Therefore the court should affirm the dismissal of Jevne’s nuisance claim.

**F. The superior court properly dismissed Jevne’s overburdening an easement claim.**

The superior court properly dismissed Jevne’s overburdening an easement claim<sup>11</sup> because the entire stormwater system, including the 15-

---

<sup>11</sup> Jevne’s arguments in Sections E(4) regarding water flow, (E)(5) regarding connection of a drainage pipe to the Detention Pond, and E(7) regarding the alleged change in easement pertain to Jevne’s overburdening an easement claim. Br. of Appellant, pp. 18-20, 23-25.

foot Drainage Easement, was designed to support drainage from Tract E's future development. CP 430 (1990 Plat); CP 391-92 (Kirkpatrick Decl.), ¶ 6-12; CP 397 (Hydrology Report).

Under Washington law, the scope of an easement includes the natural expansion of an anticipated development of the dominant estate. *Logan v. Brodrick*, 29 Wn. App. 796, 800, 631 P.2d 429 (1981). Specifically:

[i]n determining the permissible scope of an easement, [the court] look[s] to the intention of the parties connected with the original creation of the easement, the nature and situation of the properties subject to the easement, and the manner in which the easement has been used and occupied. It can be assumed the parties had in mind the natural development of the dominant estate. Accordingly, the degree of use may be affected by development of the dominant estate. Normal changes in the manner of use and resulting needs will not, without adequate showing, constitute an unreasonable deviation from the original grant of the easement.

*Id.* (holding the easement at issue was not over-burdened where plaintiff purchased the servient estate with notice that a resort would be built on neighboring dominant property with accompanying increased access traffic) (internal citations omitted).

The face of the 1990 Plat alone demonstrates and the Construction Plans further confirm that the 15-foot Drainage Easement is another component of the stormwater system that was intended to benefit Tract E.

CP 430 (1990 Plat); CP 392 (Kirkpatrick Decl.), ¶ 11; CP 416-25 (Construction Plans). The 1990 Plat shows that Tract E was intended for “Future Development” such that Jevne was on notice that the stormwater system, including the 15-foot Drainage Easement, would be used to support additional development. CP 430 (1990 Plat).

Contrary to Jevne’s assertions, The Pass’s improvements to the Detention Pond to facilitate the direct drainage from Tract E into the Detention Pond, including installing a drainage pipe, do not constitute a relocation, expansion, or deviation of the 15-foot Drainage Easement. Br. of Appellant, pp. 19-20, 23-25. The Pass’s actions constitute the exercise of a separate obligation and right to drain directly to the Tract A Detention Pond. Jevne’s reliance on a line of case law addressing relocations of easements is therefore inapplicable because The Pass’s efforts to directly drain stormwater to Tract A are not a relocation or expansion of its 15-foot Drainage Easement rights or a claim for new easement rights. Br. of Appellant, pp. 23-24 (citing *White Bros. & Crum v. Watson*, 64 Wn. 666, 117 P. 497 (1911), *MacMeekin v. Low Income Housing Institute, Inc.*, 111 Wn. App. 188, 45 P.3d 570 (2002), and *Crisp v. Vanlaeken*, 130 Wn. App. 320, 122 P.3d 926 (2005) (all of which pertain to clear relocations of easements)).

The Pass has drainage rights through the 15-foot Drainage Easement. CP 430-33 (1990 Plat). The Pass also has an obligation and right to drain directly to the Detention Pond, which abuts the eastern half of Tract E's southern property line. *Id.* Jevne confuses and/or conflates these rights and obligations. Br. of Appellant, pp. 19-20, 23-25. The Pass constructed improvements facilitating drainage directly from Tract E to the Detention Pond pursuant to The Pass's obligation and right to drain to the Detention Pond. This right is distinct and separate from The Pass's right to drain through the 15-foot Drainage Easement. CP 430. The Pass does not claim an easement to drain directly into the Detention Pond because one is not needed.

Jevne also makes much ado about The Pass's alleged assertion that "all" of Tract E's stormwater historically flowed to Tract A. Br. of Appellant, pp. 18-19. The evidence described above overwhelmingly demonstrates The Pass is not overburdening the 15-foot Drainage Easement, regardless of historic flow patterns and levels. This fabricated dispute is immaterial to the dismissal of this claim.

Tellingly, in asserting The Pass claimed "all" of Tract E's stormwater flowed to Tract E, Jevne does not offer a single cite to a statement from The Pass making this claim. *Id.* Instead, Jevne summarily argues that "Mr. Haycock's testimony specifically refuted the Pass, LLC's

claim that all of Tract E's water eventually flowed to the pond. CP 147-49. In refuting the Pass, LLC's claim, Mr. Haycock created a genuine issue of material fact as to whether all of the Pass, LLC's development's water flowed to the pond." *Id.*, p. 18. Mr. Haycock's declaration appears to be a response to Mr. Kirkpatrick's statement that "stormwater from Tract E has flowed to Tract A since the development of the 1990 Plat. Specifically, stormwater flows from the undeveloped Tract E to Tract A and it has continued to flow in this manner as The Pass develops Tract E." CP 392 (Kirkpatrick Decl.), ¶ 9. Nowhere in this statement does Mr. Kirkpatrick state "all" of the stormwater from Tract E historically flowed to Tract A. Furthermore, The Pass does not need to make this claim to substantiate its obvious rights under the 1990 Plat to drain to Tract A.

Lastly, Mr. Haycock's personal detailed account of flow patterns from Tract E to locations other than Tract A does not actually contradict Mr. Kirkpatrick's statement that some water has flowed from Tract E to Tract A. Jevne's attempt to fabricate a genuine issue of fact should be disregarded by the court.

As thoroughly argued above, The Pass is not overburdening, expanding, relocating, or otherwise improperly using the 15-foot Drainage Easement, regardless of historic flow patterns and levels, and the court should affirm the dismissal of Jevne's overburdening an easement claim.

**G. The superior court properly dismissed Jevne's request for injunctive relief.**

Jevne's request for injunctive relief was properly dismissed because Jevne has not suffered actual or substantial injury, and equity heavily favors The Pass. "One of the essential criteria for injunctive relief is actual and substantial injury sustained by the person seeking the injunction." *Brown v. Voss*, 105 Wn.2d 366, 372-73, 715 P.2d 514 (1986) (holding an injunction was not merited where the dominant estate acted reasonably in the development of their property, there was not an increased burden on the servient estate, and the dominant estate would suffer considerable hardship whereas the servient estate would not experience appreciable hardship). Here, The Pass has reasonably exercised its right and obligation to use the Detention Pond in a manner that does not hinder the functionality of the overall stormwater system or burden other properties in The Village. CP 430 (1990 Plat); CP 392-93 (Kirkpatrick Decl.), ¶¶ 12-14. To date, Jevne has not articulated an actual injury resulting from The Pass's actions.

Furthermore, an injunction would result in severe hardship to The Pass's development of Tract E and this action has already had Jevne's intended effect of tempering development progress. CP 393 (Kirkpatrick Decl.), ¶ 14; CP 516 (Phillips Decl.), ¶ 7. The Pass's efforts to bring the

stormwater pond into compliance with current regulations were halted as a result of objections from Jevne's counsel over the cutting of three trees, which were cut before Jevne purchased her home. *Id.*; CP 293 (Phillips Decl.), ¶ 6 (stating the trees were cut during the summer of 2013); CP 511-14 (Lot 31 Deed, recorded Sept. 4, 2014). But for Jevne's actions delaying The Pass's work to upgrade the Tract A Detention Pond, The Pass would not have built the temporary detention pond on Tract E, which itself is temporarily precluding construction of additional housing that will eventually be built in the location of the temporary pond. *Id.* Given the state of disrepair of the Detention Pond, and current stormwater regulations applicable in Kittitas County, The Pass's completed and uncompleted work is necessary to ensure functionality of the stormwater system for the entire 1990 Plat, including the future fully developed Tract E, but this work is currently at a standstill because of this litigation. *Id.* Granting Jevne's requested injunction would only further this injustice and there is no appreciable harm experienced by Jevne that could be remedied by an injunction. The court should affirm the denial of Jevne's request for injunctive relief.

**H. Ownership of Tract A is irrelevant to The Pass's rights to drain to Tract A.**

Ownership of Tract A is irrelevant and has no impact on the legal analysis.<sup>12</sup> As thoroughly argued above, the 1990 Plat mandates, obligates, and gives The Pass the right to drain stormwater from Tract E to Tract A and this right persists regardless of who holds title to either property. CP 430-33 (1990 Plat); *M.K.K.I.*, 135 Wn. App. at 658 (citing *Van Buren*, 92 Wn. at 694; holding that “once the property had been platted, the owners, or their successors, could not defeat the rights of a person who purchased property by reference to the recorded plat.”). This basic principle of the law governing subdivisions reflects the essential cohesive nature and functionality of a planned unit development subdivision. Tract A could be owned by the County (a common occurrence for stormwater facilities in many locales), by a homeowners association, or by an individual owner, like Snoqualmie Inc. Regardless of who owns it, the subdivision approval mandates that all lands within the boundary of The Village have the right and obligation to drain to the pond on Tract A. RCW 58.17.110; *Westside Bus. Park*, 100 Wn. App. at 607. Therefore, and contrary to Jevne’s assertion, The Pass was not required to

---

<sup>12</sup> The Pass’s argument that ownership is irrelevant responds to Jevne’s arguments in Sections E(2) regarding the ownership of Tract A and (E)(5) regarding authorization to connect a drainage pipe to the Detention Pond. Br. of Appellant, p. 12-15, 20.

obtain permission from the owner of Tract A to exercise its rights and fulfill its obligations to drain into the Detention Pond on Tract A.

Moreover, even if ownership of Tract A did matter, The Pass obtained permission to utilize and perform maintenance work in Tract A from the title owner of Tract A, Snoqualmie Inc. As detailed above in The Pass's standing argument, although a table on the 1990 Plat states that Tract A ownership would be the HOA, no such land conveyance occurred. *Supra*, Section VI(A)(2)(a). Snoqualmie Inc. currently owns Tract A and it gave The Pass "permission to complete its improvements to the Pond" as stated in the email correspondence dated September 11, 2013, from Mark Zenger, President of Snoqualmie Inc., to Bryce Phillips, Manager of The Pass. CP 524 (Excluded Snoqualmie Inc. Email). The Pass, as holder of an express right and bound by its obligation to use Tract A for stormwater detention purposes as mandated by the 1990 Plat, was not required to obtain Snoqualmie Inc.'s permission to improve the pond, but did so in an abundance of caution.

Although not binding on the court, the superior court aptly summarized the proper examination and conclusion regarding the relevance of ownership:

I agree with Defense that ownership of Tract A, for all intents and purposes, does not matter to resolve the issues that were before the Court today. Whether this Court says,

No question it's Snoqualmie, no question it's the homeowners' association, the outcome of this Court's ruling remains the same.

And, I mean, I literally looked at all of these issues and said, what if Snoqualmie were the owner? What if homeowners' association were the owner? Does it matter in this Court's ultimate decision as to whether trespassing[,] nuisance and ultimately injunctive relief are necessary? And when it all came down to it, I found it didn't.

CP 227-29 (Order); VRP 6:21-7:7 (Verbatim Transcript of Oral Ruling).

The Pass was not required to obtain permission from the owner of Tract A, whomever that may be, because it has the obligation and legal right to drain stormwater from Tract E to Tract A. Ownership is therefore an irrelevant, immaterial issue such that it has no impact on the outcome of Jevne's claims and Jevne has failed to meet her burden to fend off summary judgment as a matter of law.<sup>13</sup>

**I. The superior court properly dismissed all of Jevne's claims as collateral attacks precluded under LUPA.**

The superior court properly dismissed Jevne's claims on the additional grounds that they are precluded under LUPA as collateral attacks on land use decisions for which the appeal periods have long since passed. As provided under current law, RCW 58.17.180 requires that "[a]ny challenge approving or disapproving any plat shall be reviewable

---

<sup>13</sup> Jevne even concedes that "If ownership was not relevant, then Jevne would have no basis for her claims against the Pass, LLC." Br. of Appellant, p. 12.

under 36.70C RCW,” also commonly known as the Land Use Petition Act (“LUPA”). LUPA was adopted in 1995; prior to 1995, appeals of plats were brought by writ to superior courts. *Concerned Organized Women and People Opposed to Offensive Proposals, Inc. v. City of Arlington*, 69 Wn. App. 209, 847 P.2d 963 (1993) (articulating the pre-1995 thirty-day appeal period and holding plaintiff’s writ of certiorari to review land use decisions at issue, including preliminary plat approval, was not timely). Failure to timely appeal a land use decision precludes challenge of that decision; even a timely challenge of a new permit decision related to the same project cannot be used to collaterally attack previous permit decisions. *Habitat Watch v. Skagit Cy.*, 155 Wn.2d 397, 120 P.3d 56 (2005).

Snoqualmie Inc. obtained approval from Kittitas County of the 1990 Plat as designed with the stormwater system supporting The Village, including Tract E, over twenty-five years ago. CP 430 (1990 Plat). The approval of the 1990 Plat was subject to a thirty-day appeal period under the pre-1995/LUPA writ appellate process. *Concerned Organized Women*, 69 Wn. App. 209. Jevne now seeks to challenge the 1990 Plat and its design of the stormwater system because the result of The Pass exercising its rights contemplated therein is aesthetically displeasing to Jevne. However, the appeal period for the 1990 Plat has long since

passed. Jevne's efforts via this lawsuit are plainly collateral attacks on this settled land use decision, the approval of the 1990 Plat.

Similarly, over four years ago, The Pass obtained County approval of the 2012 Plat, including confirmation of use of the 1990 Plat stormwater system benefitting Tract E. CP 519-522 (2012 Plat). A challenge to any component of the 2012 Plat was subject to LUPA's twenty-one day appeal period limitation. RCW 58.17.180; RCW 36.70C.040(3). The Pass also obtained permit approvals from the County authorizing all of the work on Tract E and Tract A. CP 514-15 (Phillips Decl.), ¶¶ 4-5. These approvals were subject to the ten-day administrative appeal deadline pursuant to KCC 15A.07.010 and an additional LUPA appeal deadline of twenty-one days pursuant to KCC 15A.08.010 and RCW 36.70C.010 et seq. None of the approvals related to the 2012 Plat or subsequent permitting decisions were appealed and the appeal deadlines have also passed. CP 514-15 (Phillips Decl.), ¶¶ 4-5.

In an effort to skirt the clear appeal period limitations set by LUPA, Jevne argues her claims are exempt from LUPA pursuant to RCW 36.70C.030(1)(c); Br. of Appellant, pp. 21-23. Jevne misunderstands that statute. RCW 36.70C.030(1)(c) addresses the situation where a party files a damage action, such as a land use damages action under RCW 64.40, along with a Land Use Petition. In that circumstance, RCW

36.70C.030(1)(c) excludes the damage action from LUPA time limitations and procedures. Jevne has not filed a land use petition with a damages claim. Jevne has filed tort claims that directly attack the County decisions that were made when the County approved the 1990 and 2012 Plats. *See also* VRP 6:13-18 (Verbatim Transcript of Oral Ruling). Jevne's current tort claims are a prohibited collateral attack on the 1990 Plat (and all subsequent un-appealed land use decisions and permits) because her tort claims would stop The Pass from meeting the mandatory drainage design of the 1990 Plat.

Moreover, Jevne relies on *Grundy v. Thurston County* as "clear" confirmation that her nuisance claim for damages is exempt from LUPA. Br. of Appellant, p. 22; *Grundy v. Thurston County*, 155 Wn.2d 1, 117 P.3d 1089 (2005). *Grundy*, confirms that LUPA does not bar all nuisance claims. However, nuisance claims which are directly related to previously approved land use decisions are barred as impermissible collateral attacks. *Asche v. Bloomquist*, 132 Wn. App. 784, 800-802, 133 P.3d 475 (2006) (holding LUPA precluded a nuisance claim for damages because it depended entirely upon a finding that the challenged permit was invalid)). Jevne's tort claims require the court to assess the validity of County-approved 1990 Plat and subsequent land use decisions, and Jevne's tort claims are precluded by LUPA.

This court should affirm the superior court's summary judgment ruling because Jevne's claims are precluded as collateral attacks under LUPA as a matter of law and Jevne has failed to meet her burden to introduce any genuine issue of material fact that alters this ruling.

### **VIII. CONCLUSION**

The Pass has a privilege, right, and obligation to use the Detention Pond and the rest of the stormwater system pursuant to the County-approved mandates in the 1990 Plat, the 2012 Plat, and various permitting decisions. Jevne is displeased with The Pass's development as a whole and is litigating this case over The Pass's actions to use the stormwater system to hinder development of The Pass's project. The superior court properly dismissed Jevne's claims because they failed as a matter of law and because they are precluded as collateral attacks under LUPA. The superior court improperly ruled Jevne may have standing based on her future and highly contingent interest in Tract A through her membership in the HOA. The court should reverse the superior court's ruling that Jevne has standing and dismiss this case, or affirm the superior court's dismissal on summary judgment of all of Jevne's claims.

DATED this 9<sup>th</sup> day of June, 2017.

CAIRNCROSS & HEMPELMANN, P.S.

A handwritten signature in black ink, reading "Nancy Bainbridge Rogers". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Nancy Bainbridge Rogers, WSBA No. 26662

E-mail: [nrogers@cairncross.com](mailto:nrogers@cairncross.com)

Nicole E. De Leon, WSBA No. 48139

E-mail: [ndeleon@cairncross.com](mailto:ndeleon@cairncross.com)

524 Second Avenue, Suite 500

Seattle, WA 98104-2323

Telephone: (206) 587-0700

Facsimile: (206) 587-2308

Attorneys for The Pass, LLC, a Washington  
limited liability company, d/b/a The Pass Life,  
and Bryce Phillips and Jane Doe Phillips, husband  
and wife and their marital community

**Certificate of Service**

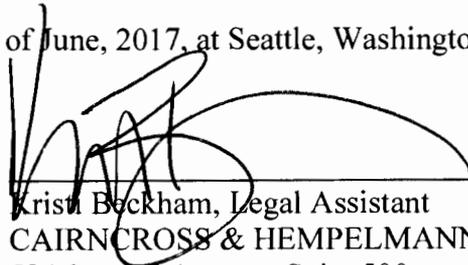
I, Kristi Beckham, certify under penalty of perjury of the laws of the State of Washington that on June 9, 2017, I caused a copy of the document to which this is attached to be served on the following individual(s) via the methods indicated below:

**Attorneys for Appellant/Cross-Appellee:**

**Via Email and First Class U.S. Mail**

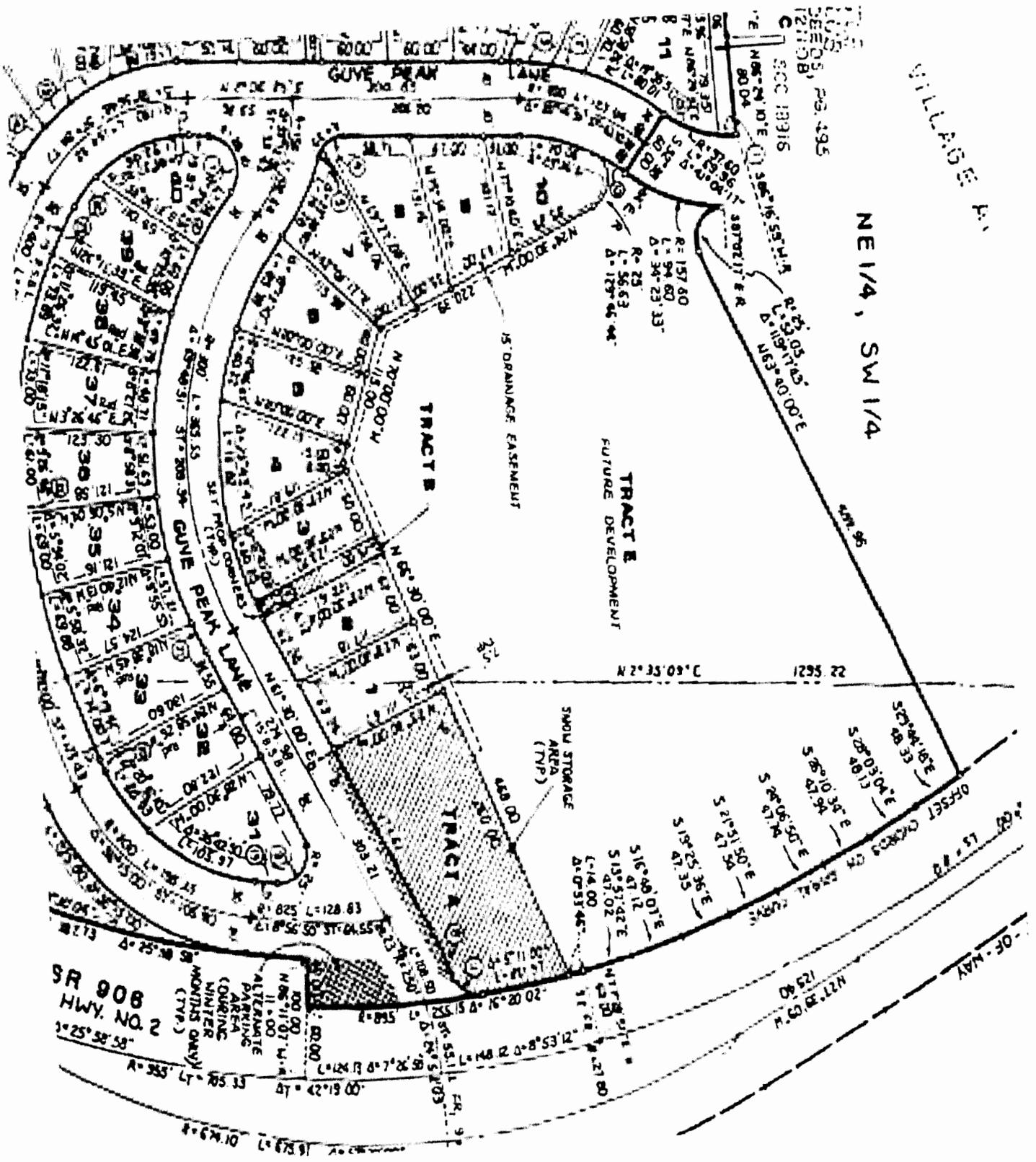
Matthew P. Veeder  
16109 Evanston Ave. N  
Shoreline, WA 98133-5648  
Email: [matthewveeder@hotmail.com](mailto:matthewveeder@hotmail.com)

DATED this 9<sup>th</sup> day of June, 2017, at Seattle, Washington.

  
\_\_\_\_\_  
Kristi Beckham, Legal Assistant  
CAIRNCROSS & HEMPELMANN, P.S.  
524 Second Avenue, Suite 500  
Seattle, WA 98104-2323  
Telephone: (206) 254-4494  
Facsimile: (206) 587-2308  
E-mail: [kbeckham@cairncross.com](mailto:kbeckham@cairncross.com)

## APPENDIX

EXCERPTS FROM CP 430



TRACT DESIGNATION		
NO.	USE	OWNERSHIP
TRACT A	STORMWATER DETENTION FACILITIES	HOMEOWNER'S ASSOCIATION
TRACT B	PEDESTRIAN ACCESS & UTILITIES	HOMEOWNER'S ASSOCIATION
TRACT C	PEDESTRIAN ACCESS & UTILITIES	HOMEOWNER'S ASSOCIATION
TRACT D	PEDESTRIAN ACCESS & UTILITIES	HOMEOWNER'S ASSOCIATION
TRACT E	FUTURE DEVELOPMENT	PRIVATE OWNERSHIP

EXCERPT FROM CP 431

RECORDING CERTIFICATE

"Filed for record at the request of the Kittitas County Board of Commissioners, this 11<sup>TH</sup> day of APRIL, A.D., 1990, at 31 minutes past 11:00 o'clock A M., and recorded in Volume 8 of Plats, on page 28, Records of Kittitas County, Washington.

By D. W. Wain 29/30  
Deputy County Auditor"

Beverly M. Allmough  
Kittitas County Auditor

Receiving No. 528340

"KNOW ALL MEN BY THESE PRESENTS That this plat of Village At The Summit Div. 1 Kittitas County, Washington is subject to additional restrictions entitled COVENANTS 'BASE' which are filed with the Kittitas County Auditor and which are hereby made a part of this plat.

D. W. Wain  
Deputy Auditor

"This is to certify that the above mentioned restrictions have been filed this 11<sup>TH</sup> day of APRIL, A.D., 1990, at 31 minutes past 11:00 o'clock A M., in Volume 304 of Deeds, on page 625, Records of Kittitas County, Washington.

Beverly M. Allmough  
Kittitas County Auditor"

EXCERPT FROM CP 432

DEDICATION

"Know all men by these presents that SNOQUALMIE SUMMIT INN, INC.  
AND WESTOP, INC. FORMERLY KNOWN AS NEW SNOQUALMIE SUMMIT INN, INC.

do hereby declare this plat and dedicate to the public forever all roads and ways shown hereon with the right to make all necessary slopes for cuts and fills, and the right to continue to drain said roads and ways over and across any lot or lots, where water might take a natural course, in the original reasonable grading of the roads and ways shown hereon.

Following original reasonable grading of roads and ways hereon no drainage water on any lot or lots shall be diverted or blocked from their natural course so as to discharge upon any public road rights-of-way, or to hamper proper road drainage. Any enclosing of drainage waters in culverts or drains or rerouting thereof across any lot as may be undertaken by or for the owner of any lot, shall be done by and at the expense of such owner."

"The costs of construction, maintaining and snow removal of all roads, streets, and alleys within this plat and all access roads to this plat shall be the obligation of a non-profit corporation composed of all the owners of the lots of the plat and of any additional plats that may be served by these roads, streets and alleys.

In the event that the owners of any of the lots of this plat or any additional plats shall petition the County Commissioners to include the roads in the county road system, it is understood that the roads shall first be built up to minimum county standards by said non-profit corporation."

IN WITNESS WHEREOF, We have hereunto set our hands and seal this 6<sup>TH</sup>  
day of MARCH, A.D., 1990."

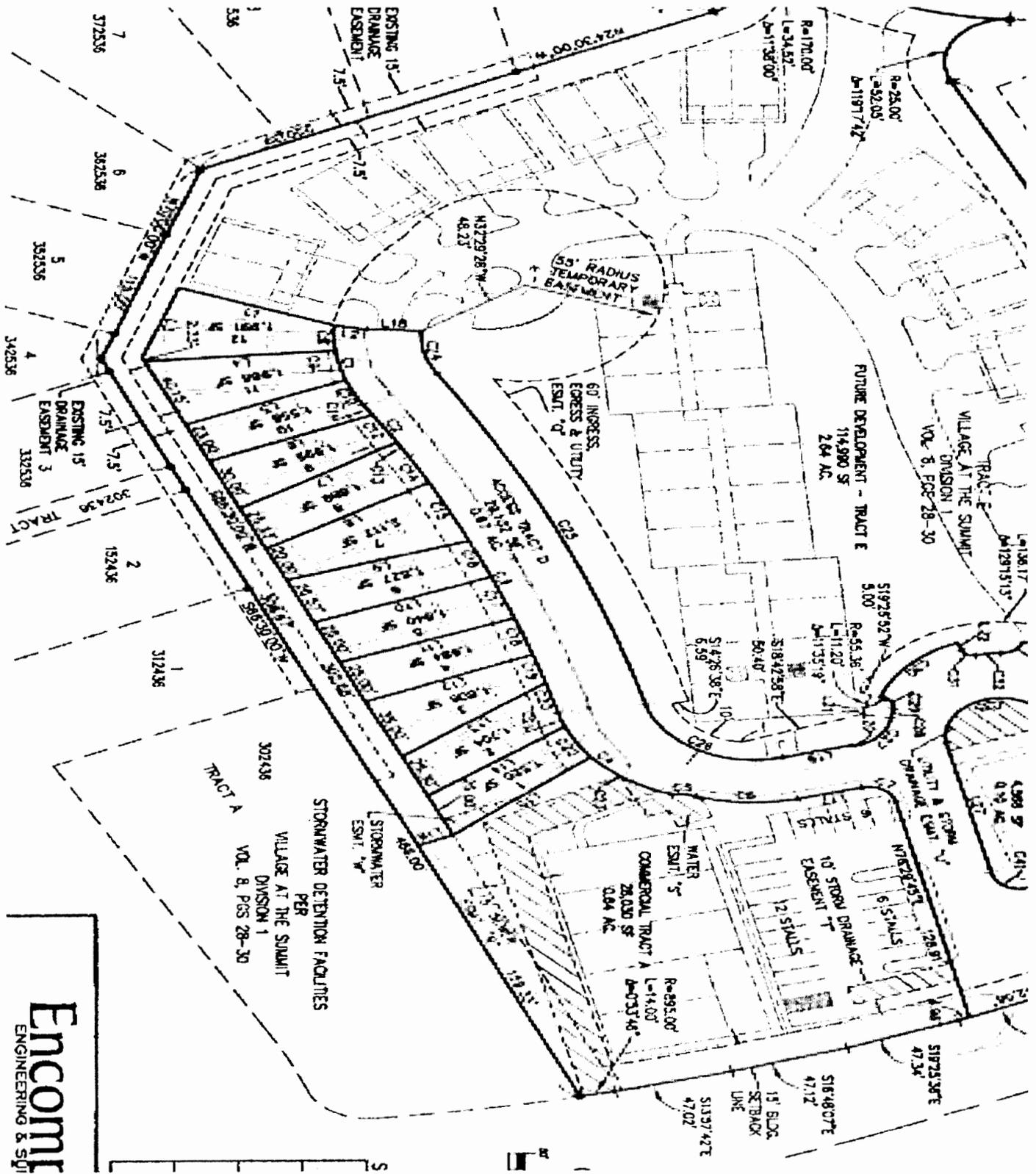
SNOQUALMIE SUMMIT INN, INC.

BY:  TITLE: PRESIDENT  
BY:  TITLE: SECRETARY  
GEORGE E. BARBER  
MARK O. ZENGER

WESTOP, INC. formerly known as  
NEW SNOQUALMIE SUMMIT INN, INC.

BY:  TITLE: PRESIDENT  
JERI L. KRONMAL

EXCERPT FROM CP 519



**Encom**  
ENGINEERING & SURVEYING