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COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON

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DEPUTY

No. 43033-9-II

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION TWO

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Earl Iddings, et al,

Appellant

v.

Mr. Michael & Mrs. Sue Griffith, et al,

Respondents

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RESPONSE BRIEF OF RESPONDENTS GRIFFITH

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Earl Morriss, WSBA #34969  
Land Law Washington, PLLC  
2920 Colby Ave. Suite 214  
Everett, WA 98201  
(206) 915-7372

P/m 10/12/12

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*Hebish v. Pacific County*, 168 Wash. 91, 92, 10 P.2d 999 (1932)

*Weyerhaeuser v. Tacoma-Pierce County Health Dep't*, 123 Wn. App. 59, 65, 96 P.3d 460 (2004)

*Matter of Estate of Lint*, 135 Wn.2d 518, 533, 957 P.2d 755 (1998).

*Yakima County v. Conrad*, 26 Wash. 155, 159-160, 66 P. 411 (1901)

*City of Olympia v. Lemon*, 93 Wash. 508, 511, 161 P.363 (1916)

*In re West Marginal Way in Seattle of Seattle*, 109 Wash. 116, 120, 186 P. 644 (1919).

*Sweeten v. Kauzlarich*, 38 Wn. App. 163, 166, 684 P.2d 789 (1984)

*Peebles v. Port of Bellingham*, 93 Wn.2d 776, 771, 613 P.2d 1128 (1980)

## I. INTRODUCTION

The Griffiths purchased a piece of property upon which to build a retirement home – waterfront view and a secluded location in what could easily be referred to as the middle of nowhere. One of the Griffiths neighbors are the Iddings family. RP (Vol. II) 54. The Iddings do not want the Griffiths to build a driveway to access their property and filed suit – and appealed permits – to stop them. This case is a part of the Iddings effort to prevent the construction of a driveway from Dewatto Beach Drive onto the Griffith property.

## II. STATEMENT OF CASE

Michael Griffith purchased a small piece of high-bluff waterfront property on Dewatto Beach Drive in 2006. RP (Vol. IV) 4, 16. The general lay of the property is that there is a rock sea wall along the water, then a paved, gravel and dirt road- Dewatto Beach Drive, and then a bluff which is nearly vertical in some places and approximately fifty feet high. RP (Vol. IV) 4. Generally, almost all of the Griffith property is either a part of the bluff or the area above the bluff. RP (Vol. IV) 4

The only way to access the property – without crossing any other property owned by the adjoining – is to go up the bluff. RP (Vol. IV) 5. To gain vehicular access from the road, the Griffiths decided to build a driveway – and in preparation for that task they had the property surveyed, hired an engineer to design the driveway and started the application process with Mason County. RP (Vol. IV) 5-7. The design process caused

the Griffith land surveyor – Sidney Bechtoldt, PLS – to attempt to calculate the right-of-way for the road. RP (Vol III) 57-59.

In the course of the survey research it was found that there was a “waiver”- a form of right-of-way deed – which called for a 40 foot wide right-of-way. RP (Vol. I) 10-11, 19; RP (Vol. III) 60-66, 73; Ex. 32. There was also a second waiver which was associated with the road – or at least kept in the same county file – the “Beebe Waiver” indicated a 60 foot wide right-of-way. RP (Vol. I) 17-18. The trial court found that the plaintiffs “failed to show that the Beebe Waiver was a dedication applicable to Dewatto Beach Drive at the location at issue.”CP 653 (Finding of Fact No. 15). The trial court found the right-of-way to be 20 feet on both sides of the road centerline, but also accepted testimony as to the historic use of the existing road.

The Griffiths surveyor showed that the maximum historical use of the road right-of-way was 22.55 feet. RP (Vol. III) 57-59. The trial court heard testimony concerning the use of the road and found that evidence disputing the 22.55 foot distance was “vague”, inexact”, or not based upon personal knowledge. CP 654 (Findings of fact 20, 21, 25, 28, 29). The court found that surveyor Bechtoldt was a credible witness. CP 655 (Finding of fact No. 32). Based on the Bechtoldt survey, admitted as Exhibit 12, and all evidence admitted at trial” the court found the right-of-way to be 22.55 from the centerline of the road. CP 654 (Finding of fact 22); CP 655 (Findings of Fact No. 31, 32, 33, 34).

### III. ARGUMENT

Iddings has failed to bear the burden of proof with regard to the extent of a prescriptive easement – he must show proof which is a preponderance of the evidence. *Hebish v. Pacific County*, 168 Wash. 91, 92, 10 P.2d 999 (1932). Further, on review, the evidence is viewed in the light most favorable to the party who prevailed at trial, and deference is given to the trial court’s determinations of witness credibility and the resolution of conflicting testimony. *Weyerhaeuser v. Tacoma-Pierce County Health Dep’t*, 123 Wn. App. 59, 65, 96 P.3d 460 (2004). Where an appellant questions the trial court’s findings and there is conflicting evidence presented at trial the reviewing court need only consider the evidence that is most favorable to the respondent in support of the challenged finding. *Matter of Estate of Lint*, 135 Wn.2d 518, 533, 957 P.2d 755 (1998).

Iddings assignment of error numbers one through three are without merit because they do not correctly identify or reflect any finding of fact or conclusion of law actually rendered by the trial court. And Iddings fourth assignment of error is not supported by the law or the evidence. Iddings apparently depends on RCW 36.86.010 to claim that the road must have a sixty foot right-of-way. But, the language of the RCW clearly does not require that a road have such a right-of-way or that a road created prior to the acceptance of the RCW be expand to meet the suggested standard.

The Iddings claim related to the Mason County Code is also without any legal merit. The stated sections – when they are not incorrect as to the number- relate to new roads and allow for exceptions based on the terrain. Mason County Code Sec. 14.17.150 provides an exception based on “topography, waterways, nonnegotiable grades....” – in other words, the situation at the end of Dewatto beach Road.

The heart of the Iddings argument revolve around the fact that as a matter of law the width of a prescriptive easement can extend to a larger area, but the actual width is a question of fact to be determined by consideration of the facts and circumstances peculiar to each case. *Yakima County v. Conrad*, 26 Wash. 155, 159-160, 66 P. 411 (1901); *City of Olympia v. Lemon*, 93 Wash. 508, 511, 161 P.363 (1916); *In re West Marginal Way in Seattle of Seattle*, 109 Wash. 116, 120, 186 P. 644 (1919). The facts in this case show a usage of 22.55 feet from the centerline is a right-of-way within that which is reasonably necessary for public travel as determined by the trial court's "consideration of the facts and circumstances peculiar to the case." *In re West Marginal Way* at 120, quoting *Yakima County v. Conrad* at 159, and citing *Olympia v. Lemon* at 510.

"Where, as here, a mixed question of law and fact exists, it is within the province of the trier of fact to determine from conflicting evidence the existence of facts necessary to constitute dedication, and such factual findings will not be disturbed on appeal when that are amply sustained by the record. " *Sweeten v. Kauzlarich*, 38 Wn. App. 163, 166,684 P.2d 789 (1984), quoting *Peebles v. Port of Bellingham*, 93 Wn.2d 776, 771, 613 P.2d 1128 (1980).

IV. CONCLUSION

The findings of the trial court are supported by substantial evidence. Based upon those findings, the Court's decision is correct as a matter of law and should be affirmed.

Respectfully submitted this 10<sup>th</sup> day of October, 2012.

LAND LAW WASHINGTON, PLLC

A handwritten signature in black ink, appearing to read 'Earl Morriss', written over a horizontal line.

Earl Morriss. WSBA # 34969  
Attorney for the Respondents Griffith

CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that this date I caused to be delivered, via first class mail, to:

Clerk  
WA State Court of Appeals, Div. II  
950 Broadway, Suite 300  
Tacoma, WA 98402

Jose F. Vera  
VERA & ASSOCIATES, PLLC  
2110 N. Pacific St., Suite 100  
Seattle, WA 98103

Tim Higgs  
Deputy Prosecuting Attorney  
MASON COUNTY PROSECUTING ATTORNEY OFFICE  
P.O. Box 639  
Shelton, WA 98584

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A true and correct copy of the RESPONSE BRIEF OF RESPONDENTS GRIFFITH

SIGNED and DATED at Everett, WA on October 10, 2012



Earl Morriss WSBA # 34969