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Washington State Supreme Court

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No. 90855-9

SUPREME COURT OF THE STATE OF WASHINGTON

Court of Appeals No. 69615-7-I

MIT D. TILKOV and SUSAN L. TILKOV, in their individual capacities and as a marital
community; TIBOR GAJDICS; KATHRYN LYNNE COTTER; and SANDRA D.
HULME

v.

DAVID L. DUNCAN, in his individual capacity; BLACK PINES, LLC, a Washington
limited liability company

RESPONSE OF TILKOV, ET AL. TO DUNCAN'S PETITION FOR REVIEW

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 ORIGINAL

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A. IDENTITY OF RESPONDENTS

Mit and Susan Tilkov, Tibor Gajdics, Kathryn Lynne Cotter, and Sandra D. Hulme (collectively “Property Owners”) respond to David Duncan’s (“Duncan”) Petition for Review (“Petition”).

B. COURT OF APPEALS’ DECISION

The Petition seeks review of the unpublished decision of the Court of Appeals, Division 1, which was issued on July 28, 2014, and attached as Appendix A to the Petition.

C. ISSUES PRESENTED FOR REVIEW

Property Owners do not raise a cross-petition for review.

D. STATEMENT OF THE CASE

Property Owners maintain that Duncan has misstated or left out critical facts in relationship to the issue of collateral estoppel and therefore provide a counter statement of facts on this issue only.

1. The Bell’s Grove Action.

Duncan’s collateral estoppel argument is based upon a comparison of the prescriptive easement claim raised in this action and a prescriptive easement claim raised in Bell’s Grove Property Owners of Point Roberts v. David L. Duncan, Whatcom County Superior Court Cause No. 05-2-02831-5 (“Bell’s Grove Action”). There, the Bell’s Grove Property

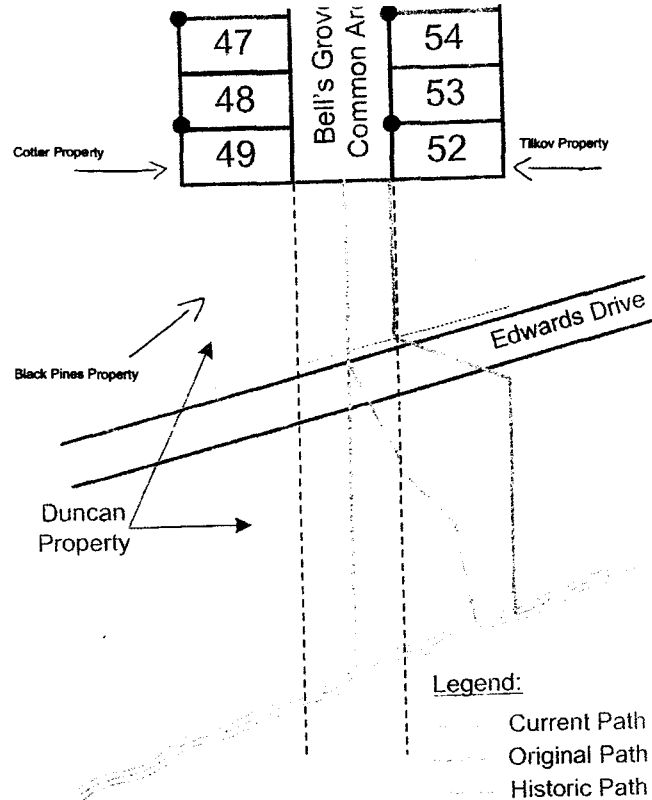
Owners of Point Roberts (“Association”) sought to quiet title to the following alleged easement rights over Duncan’s property: (1) an express easement contained in a 1962 deed from Duncan’s predecessor, David Bell, to the Association; (2) a prescriptive easement over a route used by Association members since 1962 referred to by the Trial Court as the “Historic Path”; and (3) an express or prescriptive easement to use a beach area. After a bench trial, the Trial Court in the Bell’s Grove Action concluded that a prescriptive easement did not exist over the “Historic Path” based upon the following critical findings in its August 6, 2007, Findings of Fact and Conclusions of Law (“Findings”):

5. Prior to the time of the 1962 deed, the path used by residents of Bell’s Grove (who would later become members of the plaintiff upon incorporation) to access the beach went more or less down the middle of the area between the extended lines. Sometime thereafter – in the 1960’s or 1970’s – the members began using a different path over part of the route to the beach. South of Edwards Drive, the members began veering to the southeast along the sides of and/or within a driveway and then south to a boat ramp. Approximately one-third of this ‘historic path’ is outside the extended lines. This historic path was used with the permission of David Bell and, later on, with the permission of his son Stan....

6. At the time of the 1962 deed and up until 2003, plaintiff and its members used the path for foot travel (with room for two or three people to walk abreast), including wheeling handcarts (loaded with gear) and hand-pushed trailers (carrying boats) down to the beach.

The width of the path (as distinguished from the driveway, which was used by permission) was approximately 5-7 feet.

Appendix D to Petition, p. 3, ¶¶ 5-6. The physical distinction between the Historic Path litigated in the Bell's Grove Action and the completely separate "Original Path" that was not litigated in the Bell's Grove Action was depicted on the following map attached hereto as Appendix A (CP 152):



The Trial Court denied the prescriptive easement claim because “Plaintiff’s use of the ‘historic path’ – part of which lies outside the extended lines – was permissive and gave rise to no prescriptive rights or rights by acquiescence.” Findings, p. 6, ¶ 3 (emphasis added). Importantly, the Trial Court also specifically recognized that Mr. Bell had included easement language in the individual deeds to the Association members, but was not ruling on potential easement claims of the individual property owners arising out of these: “Defendant Duncan stipulated that the rights granted under the individual deeds to the lot owners were not the subject of this action.” Id. at p. 2, n. 5.

2. The Prescriptive Easement Claim in This Case.

This action was brought by some of the individual property owners comprising the Association to, inter alia, quiet title in a prescriptive easement across Duncan’s property over the Original Path only. The limitation of the claim to this distinct route is made clear from the incorporated map attached to the First Amended Complaint to Quiet Title in Easement, Breach of Easement, Trespass, and Violation of RCW 7.40.030, which is attached hereto as Appendix B (CP 214):

Property Owners supported this claim based upon use of the Original Path by the individual lot owners and their predecessors prior to

the 1962 deed to the Association. Use prior to 1962 was relied upon because Duncan argued that the 1962 deed to the Association terminated any “hostility” that could have existed from use before that date.

The Trial Court dismissed Property Owners’ prescriptive easement claim on summary judgment. The Order, attached hereto as Appendix C (CP 986-88), does not reference any basis for the decision, but merely grants the motion and dismisses the claim.

On appeal, the Court of Appeals reversed and found that the prescriptive easement over the Original Route had been established as a matter of law. The Court of Appeals initially agreed with Duncan that any prescriptive rights had to arise out of use prior to 1962 because the 1962 deed’s easement to the Association transformed any use by the Property Owners and/or their predecessors to a “permissive” use:

However, this hostile use terminated at the time of the 1962 grant of the BGPOPR easement, under which the class members or their predecessors-in-interest acquired a right to use the original path as members of BGPOPR. Consequently, in order for the class members to satisfy the ‘continuous use’ element of prescription, they must demonstrate continuous and uninterrupted use of the original path during the 10-year period from 1952 (or earlier) to 1962.

Appendix A to Petition, pp. 14-15. The Court of Appeals found such use:

However, Hulme testified that her predecessors-in-interest-her parents-purchased the property in 1951 and used the original path every summer at least through 1962. Additionally, Gabriel Hill, a class member who was deceased at the time of the summary judgment proceedings, testified in the BGPOPR action that he first started spending summers at a cabin in Bell's Grove in the early 1930s. He testified that he accessed the beach from Bell's Grove via the original path. Thus, Hulme and Hill establish that their use of the original path was continuous and uninterrupted for the relevant 10-year period from 1952-1962.

Id. at p. 15.

Equally important, the Court of Appeals found hostility based upon the Property Owners' individual deeds which were expressly not the subject of the Bell's Grove Action:

With respect to the 'hostility' requirement, Duncan and Black Pines argued below that use of the original path could not be hostile because Bell intended the class members and their predecessors-in-interest to use the original path pursuant to the individual deeds. However, we have held that use of land pursuant to a grant, which does not comport with the statute of frauds but was, nevertheless, meant to convey a permanent right of use, will still be considered 'hostile' to the owner. Lee v. Lozier, 88 Wn. App. 176, 183, 945 P.2d 214 (1997); see also Crescent Harbor Water Co. v. Lyseng, 51 Wn. App. 337, 342, 753 P.2d 555 (1988) ('When the owner of a servient estate confers upon another the right to use that property as if it had been legally conveyed, the resultant use is made under a claim of right, rather than by permission') (emphasis added). Here, it is undisputed that Bell intended to convey a 'perpetual privilege' of use of the original path. Thus, at the outset, the use of the

original path by the class members and their predecessors-in-interest was hostile.

Id. at p. 14.

E. ARGUMENT

1. The Court of Appeals' Decision as to the Prescriptive Easement Claim Does Not Legally or Factually Conflict With Any Precedent.

Duncan first argues that Supreme Court review is triggered because the Court of Appeals' ruling on the Property Owners' prescriptive easement claim conflicts with Supreme Court and Court of Appeals precedent prohibiting re-litigation of the same issue in two cases. RAP 13.4(b)(1) and (2). The Court of Appeals' decision does not conflict with any of the elements of collateral estoppel, which are:

(1) the issue decided in the prior adjudication must be identical with the one presented in the second; (2) the prior adjudication must have ended in a final judgment on the merits; (3) the party against whom the plea of collateral estoppel is asserted must have been a party or in privity with a party to the prior litigation; and (4) application of [the] doctrine must not work an injustice.

State v. Bryant, 146 Wn.2d 90, 98-99, 42 P.3d 1278 (2002).

i. An Incorrect Determination as to Whether Issues Are Identical Does Not Create a Conflict With Precedent.

The thrust of Duncan's argument is that the Court of Appeals erroneously concluded that the prescriptive easement claim litigated in the Bell's Grove Action was not identical to the prescriptive easement claim in this case. Even if correct, which it is not, such an erroneous conclusion would not constitute a "conflict" with any precedent. The Court of Appeals correctly cited and referenced the element requiring identical issues, and then made a qualitative determination based upon the record that the two claims were not identical.

Duncan's contention merely challenges the correctness of the Court of Appeals' decision, not ignoring that this fact-specific determination does not create any potential for conflict with rulings in other cases. Whether or not the issues in this case are identical is not a legal proposition that conflicts with any applicable standard or ruling in any other case. Indeed, the opinion here is not even published, and therefore has no chance of conflicting with any precedent, since "[a] party may not cite as an authority an unpublished opinion of the Court of Appeals." GR 14.1(a). There is therefore no "conflict" upon which the Petition can be made.

Duncan appears to recognize this deficiency by suggesting that the Court of Appeals adopted a new rule that issues are not identical if the relief sought between the two claims are different. Petition, p. 10. On the contrary, the Court of Appeals correctly concluded that the two claims involved different routes, based upon different evidence and related to different rights. This conclusion is not based upon a new rule, but instead application of the recognized standards for determining whether competing issues are identical. August v. U.S. Bancorp, 146 Wn.App. 328, 340, 190 P.3d 86 (2008) (determining whether issues are identical based upon “whether the factual findings in the earlier action support the elements to be established” in this action”). Duncan’s challenge to the Court of Appeals’ ruling on the question of whether the two prescriptive easement claims are identical, even if correct, does not present an issue worthy of Supreme Court review.

ii. The Court of Appeals’ Ruling Was Correct.

Even if Duncan is correct that a potential conflict with precedent could arise, this is premised on a contention that the Court of Appeals incorrectly concluded that the competing prescriptive easement claims were not identical. However, the Court of Appeals correctly concluded that the two claims were not identical.

Initially, Duncan had the burden of proving that the two issues were identical. Alishio v. Department of Social and Health Services, State of Wash., King Co., 122 Wn.App. 1, 5, 91 P.3d 893 (2004). Collateral estoppel does not apply if the issue is raised in a prior pleading but not actually litigated, or where “an ambiguous or indefinite decision makes it unclear whether the issue was previously determined.” Id. at 6. In this, if the prior decision does not specifically state that the issue was decided, then it may be ambiguous and inappropriate to apply collateral estoppel. Id. at 6. In determining whether the issues are identical, a court must determine “whether the factual findings in the earlier action support the elements to be established in the second action.” August v. U.S. Bancorp, supra, 146 Wn.App. at 340-41.

The Court of Appeals concluded that the Association’s prescriptive easement claim over the Historic Path was not identical to the Property Owners’ claim over the Original Path. Duncan first renews his misstatement of the nature of the Association’s claim in the Bell’s Grove Action that it was one for prescriptive easement over the Original Path. This is not true.

The prescriptive easement sought in the Bell’s Grove Action was across the Historic Path which, as found by the Trial Court, was not used

until the 1960s or 1970s. The Association did not argue or seek a prescriptive easement over the Original Path used by the individual owners prior to 1962. The lack of any such claim is inherent in the findings by the Trial Court in the Bell's Grove Action, which focused exclusively upon claimed rights across the Historic Path post-1962. There is not a single reference to use of the Original Path, other than as a reference point in defining when the alleged adverse use started across the Historic Path.

The lack of any prescriptive easement claim in the Bell's Grove Action is proven by Duncan's explicit stipulation in that case that "the rights granted under the individual deeds to the lot owners were not the subject of" the Bell's Grove Action. There would have been no need for the individual plaintiffs here to seek a prescriptive easement if an express easement existed under the non-litigated deeds. This is precisely why the prescriptive easement claim in this case was pled as arising only to "the extent that Owners lack an express easement...." Appendix B, p. 10, ¶ XXIV (CP 197). Moreover, the Property Owners established the necessary element of hostility to support their prescriptive easement claim through the corresponding determination that an express easement did not arise from the individual deeds.

Thus, the Property Owners' prescriptive easement claim was dependent and contingent to the express easement claim arising from the individual deeds, which was specifically stipulated as not being a subject of the Bell's Grove Action. There is no way that the prescriptive easement claim of the Property Owners could be litigated until the express easement claim was litigated. Again, Duncan stipulated that this express easement claim was not litigated in the Bell's Grove Action.

In addition, the parties in the two actions are not the same. The Property Owners' use prior to 1962 occurred prior to the creation of the Association. Appendix D to Petition, p. 3 ("Prior to the time of the 1962 deed, the path used by residents of Bell's Grove (who would later become members of the plaintiff upon incorporation) to access the beach went more or less down the middle of the area between the extended lines.") (emphasis added). Thus, the Association did not have any basis to seek prescriptive rights based upon the use relied upon in this case.

Duncan also misstates that the Association was awarded a prescriptive easement over a path: "The 2007 trial court agreed that the owners had a prescriptive easement right through the centralized area that once encompassed the original path." Petition, p. 2. This is blatantly incorrect. The Association was granted an express easement over a path

under the 1962 deed, and a prescriptive easement to use the beach at the end of the path.

Duncan also misstates that the Trial Court dismissed the Property Owners' prescriptive easement claim over the Original Path in this case, based upon application of collateral estoppel, citing the Court of Appeals' Opinion, p. 7. Petition, p. 4. Nowhere on page seven, or anywhere else in the Court of Appeals' Opinion, is there a statement that the Trial Court dismissed the prescriptive easement claim based upon collateral estoppel. Nor does the Trial Court's ruling on this summary judgment indicate its basis for granting the motion.

Finally, Duncan maintains that inapplicability of collateral estoppel here, and the Court of Appeals' misapplied standard, will leave him exposed to claims by other Association members for different routes. Petition, p. 10. This ignores the fact that Duncan obtained an Order Granting Motion for Class Certification, which binds all Association members to the ruling in this case. Appendix D (CP 989-94).

2. The Spite Structure Statute.

Duncan also seeks review of the Court of Appeals' ruling that a row of trees could be a "structure" subject to relief under RCW 7.40.030, which provides that:

An injunction may be granted to restrain the malicious erection, by any owner or lessee of land, of any structure intended to spite, injure or annoy an adjoining proprietor. And where any owner or lessee of land has maliciously erected such a structure with such intent, a mandatory injunction will lie to compel its abatement and removal.

Duncan first argues that the Court of Appeals' ruling that "when in artificially arranged configurations, trees can form a 'structure,' as that term is used in RCW 7.40.030," conflicts with Karasek v. Peier, 22 Wn. 419, 61 P. 33 (1900). This proposition is initially unavailing because the decision, as an unpublished opinion, cannot be cited and cannot conflict with any Supreme Court ruling.

Moreover, there is no actual conflict. In Karasek, the court, in finding that a "fence" was a structure, pointed out as follows:

Of course, it is true that a house is a structure, but it is also true that there are many other things which may properly be designated as structures, - such, for instance, as a telegraph line, a wharf, or a bridge. 'In the broadest sense, a structure is any production or piece of work artificially built up or composed of parts joined together in some definite manner; any construction.' Cent. Dict. And we have no doubt that a fence is a structure, within the meaning of the statute.

Karasek v. Peier, *supra*, 22 Wn. at 425. Duncan's perceived conflict is based upon the notion that Karasek limited the term "structure" to an "artificial" edifice, and thus cannot be a vegetative configuration planted

by a party. This interpretation is too limiting in and of itself, as the Karasek referenced definition includes any “production...composed of parts joined together in some definite manner....” A row of 60-foot high trees with a 30-foot reach planted side by side several feet apart is a production composed of parts joined together.

Moreover, the Court of Appeals correctly concluded that a platted vegetation line was not precluded, i.e., in conflict, with the ruling in Karasek:

“And second, we do not read the cited definition as excluding a fence-like structure made of living instead of artificial parts. The current Webster’s Third New International Dictionary is consistent with this view. It defines ‘structure,’ in relevant part, as: ‘2.b: something made up of more or less interdependent elements or parts: something having a definite or fixed pattern of organization.’

Court of Appeals’ Opinion, p. 17 (Appendix A to Petition). The Court of Appeals also correctly noted that this conclusion is supported by, and therefore consistent with, Karasek, based upon the ruling in Lakes at Mercer Island Homeowners Ass’n v. Witrak, 61 Wn.App. 177, 810 P.2d 27, rev. denied, 117 Wn.2d 1013 (1991). There, the court concluded that a row of “trees” was a “fence” under a set of restrictive covenants because to rule otherwise would frustrate the purpose of the prohibition on fences:

Witrak urges the court to reject as a matter of law the notion that fences may be naturally grown because it is not expressly provided for in the covenant. We are not persuaded. Normally, a property owner can plant a row of trees or other foliage to create a barrier between two contiguous pieces of property. Such ‘fencing’ occurs on a regular basis. Prior courts have recognized that planting large bushy trees close together along a property line is indeed a ‘fence.’ Shrubs performing the role of a fence in delineating property lines are expressly subject to ACC control. The difference between a ‘shrub’ and a ‘tree’ seems to be primarily botanical rather than functional. What is the difference for these purposes between a line of 15’ cedar trees and line of 15’ laurel shrubs? Given the covenant's clear concern with height and obstruction of neighbors' light and view, it would be a strange reading indeed that would require prior approval of relatively low shrubbery delineating a lot line but allow a property owner to plant large trees along the same lot line without ACC approval. Clearly the language cannot be interpreted as a matter of law to require such a result.

Id. at 182-83. This logic is equally applicable to RCW 7.40.030.

Finally, Duncan maintains that review should be granted because no prior case has reviewed the particular issue, and there is public interest in having it addressed. Again, this ignores the fact that the opinion is unpublished, and therefore has no precedential value to generate any public interest.

It also ignores the fact that the type of public interest that warrants review by the Supreme Court should apply to legitimate issues and

arguments. Here, Duncan promotes an absurdly narrow interpretation where, if followed, would have prohibited the defendant in Karasek from constructing an eight- or nine-foot high wooden fence, but allowed replacement with a row of 60-foot high trees that would grow together to form a wall. There is no public interest in the Supreme Court's review or consideration of arguments that are absurd, clearly in conflict with the intent of RCW 7.40.030, and not reasonably expected to be made in the first place.

F. CONCLUSION

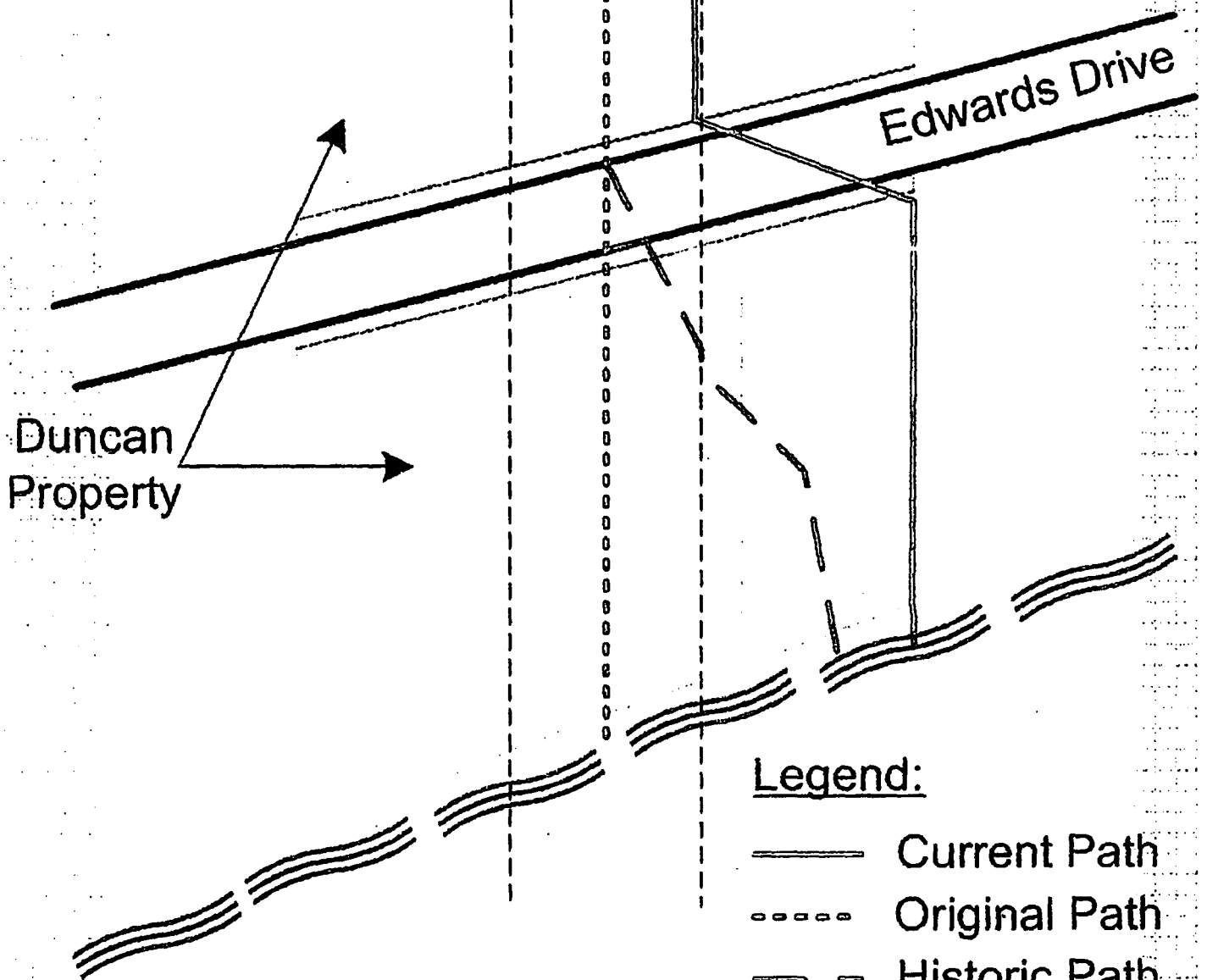
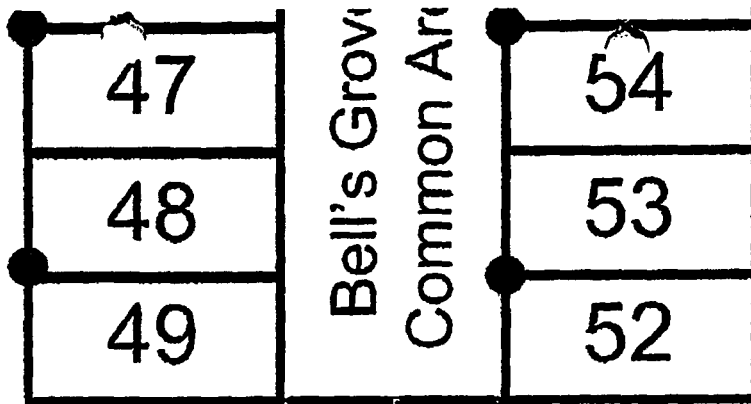
For the foregoing reasons, Duncan does not present any basis to trigger Supreme Court review.

DATED this 2th day of October, 2014.



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APPENDIX A



Legend:

- Current Path
- Original Path
- - Historic Path

EXHIBIT 0

APPENDIX B

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WHATCOM COUNTY
WASHINGTON

BY _____

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8 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
9 **IN AND FOR THE COUNTY OF WHATCOM**

10 MIT D. TILKOV and SUSAN L. TILKOV,)
11 in their individual capacities and as a)
12 marital community; TIBOR GAJDICS;)
13 KATHRYN LYNNE COTTER; and SANDRA)
14 D. HULME,)

15 Plaintiffs,)

16 vs.)

17 DAVID L. DUNCAN, in his individual)
18 capacity; BLACK PINES, LLC, a Washington)
19 limited liability company,)

20 Defendants.)

NO. 10-2-01038-2

FIRST AMENDED
COMPLAINT TO QUIET
TITLE IN EASEMENT,
BREACH OF EASEMENT,
TRESPASS, AND
VIOLATION OF RCW
7.40.030

HONORABLE CHARLES R.
SNYDER

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25
COME NOW Plaintiffs Mit D. and Susan L. Tilkov ("Tilkovs"), Tibor Gajdics ("Gajdics"), Kathryn Lynne Cotter ("Cotter"), and Sandra D. Hulme ("Hulme") (hereinafter collectively referred to as "Owners") in the above-captioned matter, and by way of Complaint to Quiet Title in Easement, Breach of Easement, Trespass, and Violation of RCW 7.40.030, allege, contend, and pray as follows:

FIRST AMENDED COMPLAINT TO QUIET TITLE
IN EASEMENT, BREACH OF EASEMENT,
TRESPASS, AND VIOLATION OF RCW 7.40.030
Page 1 of 14

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1 PARTIES AND JURISDICTION

2 I.

3 Tilkovs are a married couple and own that real property located in Whatcom
4 County, Washington, legally described in Exhibit A, which is attached hereto and
5 incorporated by reference ("Tilkov Property"). Gajdics owns that real property
6 legally described in Exhibit B, which is attached hereto and incorporated by
7 reference ("Gajdics Property"). Cotter owns that real property legally described in
8 Exhibit C, which is attached hereto and incorporated by reference ("Cotter
9 Property"). Hulme owns that real property legally described in Exhibit M, which is
10 attached hereto and incorporated by reference ("Hulme Property"). Unless
11 specified individually, the Tilkov Property, Gajdics Property, Cotter Property, and
12 Hulme Property shall collectively be referred to as "the Properties."
13

14 II.

15 Defendant David L. Duncan ("Duncan") is, based upon knowledge and belief,
16 a resident of Whatcom County, Washington, and owns that real property located in
17 Whatcom County, Washington legally described in Exhibit D, which is attached
18 hereto and incorporated by reference ("Defendant's Property"). Defendant Black
19 Pines, LLC ("Pines") is a Washington limited liability company and may contend to
20 have an ownership interest in a portion of Defendant's Property.
21

22 III.

23 This matter stems from a dispute arising out of, inter alia, an easement
24 across Defendant's Property, and the actions of Defendants in using the

1 Defendant's Property. This Court has jurisdiction over this matter, and venue is
2 appropriate as the properties are located in Whatcom County. RCW 4.12.010.

3 **RELEVANT FACTS**

4 **IV.**

5 Owners restate and incorporate by reference the allegations and facts set out
6 in paragraphs I-III herein.

7 **V.**

8
9 The Properties and Defendant's Property were at one time part of a larger
10 piece of property owned by David Garfield Bell ("Bell"). On or about November 26,
11 1954, Bell conveyed the Tilkov Property to Arthur Gordon Tennant pursuant to a
12 Statutory Warranty Deed. Included as part of the conveyance was a reservation of
13 an easement for the benefit of the Tilkov Property that provides as follows:

14 The purchaser is to have the perpetual privilege of foot gravel [sic] to
15 and from the said property to the tide flats on the Beach, for
16 recreational use; this easement to apply to foot paths over the
reserve on the Grantor's said plat, and extends to the second party,
Grantees, heirs, executors and administrators and assigns.

17 ("the Tilkov Easement"). A true and correct copy of the Statutory Warranty Deed
18 creating the Tilkov Easement is attached hereto and incorporated by reference as
19 Exhibit E.

20 **VI.**

21
22 On or about February 11, 1957, Bell conveyed the Gajdics Property to Percy
23 Nunn and Irene Annie Ferguson pursuant to a Warranty Deed. Included as part of
24

1 the conveyance was a reservation of an easement for the benefit of the Gajdics

2 Property that provides as follows:

3 THE PURCHASER is to have the perpetual privilege of foot travel to
4 and from the said property to the tide flats on the beach, for
5 recreational use; this easement to apply to foot paths over the
6 reserve on the said plat; and extends to the second party, Grantees,
7 heirs, executors and administrators and assigns.

8 ("the Gajdics Easement"). A true and correct copy of the Warranty Deed creating
9 the Gajdics Easement is attached hereto and incorporated by reference as Exhibit F.

10 VII.

11 On or about December 1, 1964, Bell conveyed the Cotter Property to Ronald
12 and Amy Jacobson pursuant to a Statutory Warranty Deed. Included as part of the
13 conveyance was a reservation of an easement for the benefit of the Cotter Property
14 that provides as follows:

15 The purchasers are to have the perpetual privilege of foot travel to
16 and from the said property to the tide flats on the beach, for
17 recreational use; this easement to apply to foot path or foot paths
18 over the reserve on the said plat of the Party of the First Part, and
19 extends to the Second Party, grantees, heirs, executors,
20 administrators and assigns.

21 ("the Cotter Easement"). A true and correct copy of the Statutory Warranty Deed
22 creating the Cotter Easement is attached hereto and incorporated by reference as
23 Exhibit G.

24 VIII.

25 Based upon knowledge and belief, Bell conveyed the Hulme Property to
William and Edna McGregor ("McGregor") in 1951. The recorded documents state,
however, that Bell conveyed the Hulme Property to McGregor through a warranty

1 deed executed on February 26, 1953, and recorded on May 5, 1953, under
2 Whatcom County Auditor's File No. Vol. 389, page 27. Included as part of the
3 conveyance was a reservation of an easement for the benefit of the Hulme Property
4 that provides as follows:

5 The purchaser is to have the perpetual privilege of foot travel to and
6 from the said property to the tide flats on the Beach, for recreational
7 use; this easement to apply to foot path or foot paths over the
8 reserve on the said plat of the Party of the First part, and extends to
the Second Party, grantees, heirs, executors, administrators and
assigns.

9 ("the Hulme Easement"). A true and correct copy of the Statutory Warranty Deed
10 creating the Hulme Easement is attached hereto and incorporated by reference as
11 Exhibit N.

12 IX.

13 Tilkovs were conveyed the Tilkov Property on or about August 3, 1995,
14 pursuant to a Statutory Warranty Deed, a true and correct copy of which is attached
15 hereto and incorporated by reference as Exhibit H. Tilkovs are assignees,
16 successors in interest, and beneficiaries of all rights granted under the Statutory
17 Warranty Deed from Bell to Tennant, including, but not limited to, all rights in the
18 Tilkov Easement. The property burdened by the Tilkov Easement includes
19 Defendant's Property. Defendant is an assignee, successor in interest, and obligor
20 of the burdens associated with the Tilkov Easement.

21 X.

22 Gajdics was conveyed the Gajdics Property on or about July 10, 2003,
23 pursuant to a Statutory Warranty Deed, a true and correct copy of which is attached
24 hereto and incorporated by reference as Exhibit I.

25 Gajdics is an assignee,

1 successor in interest, and beneficiary of all rights granted under the Warranty Deed
2 from Bell to Ferguson, including, but not limited to, all rights in the Gajdics
3 Easement. The property burdened by the Gajdics Easement includes Defendant's
4 Property. Defendant is an assignee, successor in interest, and obligor of the
5 burdens associated with the Gajdics Easement.

6 XI.

7 Cotter was conveyed the Cotter Property on or about October 8, 1992, from
8 her mother, Christina Semak, pursuant to a Quit Claim Deed, a true and correct
9 copy of which is attached hereto and incorporated by reference as Exhibit J. Cotter
10 is an assignee, successor in interest, and beneficiary of all rights granted under the
11 Statutory Warranty Deed from Bell to Jacobson, including, but not limited to, all
12 rights in the Cotter Easement. The property burdened by the Cotter Easement
13 includes Defendant's Property. Defendant is an assignee, successor in interest,
14 and obligor of the burdens associated with the Cotter Easement.

15 XII.

16 Hulme was conveyed the Hulme Property on or about April 21, 2004, from
17 her parents, William and Edna McGregor, pursuant to a Quit Claim Deed, a true and
18 correct copy of which is attached hereto and incorporated by reference as Exhibit O.
19 Hulme is an assignee, successor in interest, and beneficiary of all rights granted
20 under the Statutory Warranty Deed from Bell to McGregor, including, but not limited
21 to, all rights in the Hulme Easement. The property burdened by the Hulme
22 Easement includes Defendant's Property. Duncan is an assignee, successor in
23 interest, and obligor of the burdens associated with the Hulme Easement.
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XIII.

Unless specified independently, the Tilkov Easement, Gajdics Easement, Cotter Easement, and Hulme Easement shall be referred to collectively as "the Easement."

XIV.

Owners and their predecessors in interest fixed the location of the Easement through use, maintenance, and general possession of a path located on Defendant's Property. The location of the Easement, as established through this use, is shown on that map attached hereto and incorporated by reference as Exhibit K. Owners and their predecessors in interest used the Easement to access the shoreline and tidelands located on Defendant's Property. Such uses included, but were not limited to, pedestrian traffic, transportation of boats and trailers, and other uses normally associated with the use and enjoyment of beach property. Such uses by Owners and their predecessors in interest have been consistent and unabandoned.

XV.

On or about October 12, 2009, Duncan executed and on October 14, 2009, recorded a Quit Claim Deed to Pines. The property purportedly conveyed, which is not conceded, is a portion of Defendant's Property. A true and correct copy of the Quit Claim Deed is attached hereto and incorporated by reference as Exhibit L. Defendants have interfered and interrupted Owners' use and enjoyment of the Easement by, including, but not limited to, rerouting the Easement on numerous

1 occasions and otherwise blocking Owners' use of the Easement, all without
2 permission of Owners or other authority.

3 XVI.

4 Duncan and/or Defendants have planted trees on Defendant's Property and
5 water ward from the Tilkov Property, Gajdics Property, Cotter Property, Hulme
6 Property. Prior to that time, each of these properties had a fairly unobstructed view
7 of the shoreline and Puget Sound. The trees planted by Duncan and/or Defendants
8 block all views from the Tilkov Property, Gajdics Property, Cotter Property, Hulme
9 Property of the shoreline and Puget Sound. These trees serve no legitimate
10 purpose for Defendants or Defendant's Property and were planted for spite.

12 XVII.

13 At all material times hereto, Owners have complied with all terms and
14 conditions of the Easement, and maintained and used the Easement.

15 FIRST CAUSE OF ACTION – QUIET TITLE IN EXPRESS EASEMENT

16 XVIII.

17 Owners restate and incorporate by reference the allegations and facts set out
18 in paragraphs I-XVII herein.

19 XIX.

20 The Easement is a valid and enforceable express property right benefiting
21 Owners and the Properties. The location and route of the Easement was fixed upon
22 its construction and use by Owners and their predecessors at that general location
23 shown on Exhibit K. Establishment and recognition of this route has fixed the
24

1 location of the Easement, and it is not subject to relocation or movement by
2 Defendants, without approval of Owners. The scope of allowable uses associated
3 with the Easement includes, but is not limited to, pedestrian traffic, transportation of
4 boats and trailers, and such other uses that have occurred over time.

5
6 XX.

7 Defendants have unreasonably interfered, and continue to unreasonably
8 interfere, with the Easement and Owners' rights associated with the Easement.
9 Such unreasonable interference arises from, inter alia, Defendants' relocation of the
10 Easement from its established location.

11 XXI.

12 In addition to all other remedies allowed by law, Owners are entitled to an
13 injunction and such other equitable remedies requiring Defendants to return the
14 Easement to its former location and condition, and to otherwise prohibit Defendants
15 from interfering with Owners' use of the Easement.

16 **SECOND CAUSE OF ACTION – QUIET TITLE IN PRESCRIPTIVE EASEMENT**

17 XXII.

18 Owners restate and incorporate by reference the allegations and facts set out
19 in paragraphs I-XXI herein.

20 XXIII.

21 Owners and their predecessors in interest used the path at that location
22 shown on Exhibit K as a route from their cabins to the beach. Such use was
23 adverse to any claim of title held by Defendants, open, notorious, continuous, and
24

1 uninterrupted for at least ten consecutive years. Such use was known, or should
2 have been known, by Defendants and their predecessor(s) in interest. Such use by
3 Owners and their predecessors was of such a nature as that of an owner would
4 exercise, entirely disregarding the claims of Defendant and his predecessor(s),
5 without any permission, under a claim of right.

6 XXIV.

7
8 To the extent that Owners lack an express easement, which is hereby
9 denied, they have acquired a prescriptive easement over and across Defendant's
10 Property at that location shown in Exhibit K. Defendants have unreasonably
11 interfered, and continues to unreasonably interfere, with the Easement and Owners'
12 rights associated with the Easement. Such unreasonable interference arises from,
13 inter alia, Defendants' relocation of the Easement from its established location. In
14 addition to all other remedies allowed by law, Owners are entitled to an injunction
15 and such other equitable remedies requiring Defendants to return the Easement to
16 its former location and condition, and to otherwise prohibit Defendants from
17 interfering with Owners' use of the Easement.

18 THIRD CAUSE OF ACTION – BREACH OF EASEMENT

19 XXV.

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21 Owners restate and incorporate by reference the allegations and facts set out
22 in paragraphs I-XXIV herein.

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XXVI.

Defendants' actions, including, but not limited to, rerouting of the Easement, constitutes a breach of the Easement, which has caused Owners to suffer damages in an amount to be determined by the trier of fact herein.

FOURTH CAUSE OF ACTION – TRESPASS

XXVII.

Owners restate and incorporate by reference the allegations and facts set out in paragraphs I-XXVI herein.

XXVIII.

Defendants have unreasonably interfered with the Easement, and in doing so, have encroached in the Easement beyond any rights that Defendants may have in Defendant's Property. Defendants' unreasonable interference with the Easement occurred without express or implied permission from Owners, and without any other rights. Such interference constitutes a trespass of Owners' property rights associated with the Easement, and has caused Owners to suffer damages in an amount to be determined by the trier of fact herein.

FIFTH CAUSE OF ACTION – VIOLATION OF RCW 7.40.030

XXIX.

Owners restate and incorporate by reference the allegations and facts set out in paragraphs I-XXVIII herein.

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XXX.

Duncan and/or Defendants have erected fences and planted trees on Defendant's Property, all water ward and in front of the Tilkov Property, Gajdics Property, Cotter Property, and Hulme Property. Such trees block what was an otherwise panoramic view from the Tilkov Property, Gajdics Property, Cotter Property, and Hulme Property of the shoreline and Puget Sound.

XXXI.

The trees planted or placed by Duncan and/or Defendants have damaged Owners and their properties, and damaged Owners and their properties in an amount to be determined by the trier of fact herein. Such damage is significant. The trees were planted or placed by Duncan and/or Defendants as a result of malice or spitefulness, and primarily or solely to injure and annoy Owners and their properties, and/or in violation of local ordinances and regulations. The trees planted or placed by Duncan and/or Defendants do not serve any useful or reasonable purpose to Duncan and/or Defendants or Defendant's Property. Defendant's actions have caused Owners to suffer damages in an amount to be determined by the trier of fact herein.

XXXII.

The trees on Defendant's Property are a structure intended to spite, injure, or annoy Owners and their properties, and were maliciously placed on Defendant's Property with such intent. Duncan and/or Defendants are therefore in violation of RCW 7.40.030. Owners are entitled to an injunction compelling Duncan and/or

1 Defendants to abate and remove such trees and other vegetation from Defendant's
2 Property, and such other damages as determined by the trier of fact herein and as
3 otherwise allowed by law.

4 WHEREFORE having stated claims against Defendants, Owners pray as
5 follows:

6 1. that this Court quiet title by finding that Owners have an enforceable
7 express or prescriptive Easement upon Defendant's Property, that the Easement is
8 located as shown on Exhibit K, and that such rights authorize Owners to use the
9 Easement in a manner and for the purposes as historically used, including, but not
10 Easement in a manner and for the purposes as historically used, including, but not
11 limited to, pedestrian travel and transportation of boats and trailers;

12 2. that this Court issue a permanent and, where applied for, temporary
13 injunction prohibiting Defendants from interfering with Owners' Easement, including,
14 but not limited to, requiring Defendants to move the Easement location back to its
15 proper location;

16 3. that this Court find that the planting and placement of trees on
17 Defendant's Property in front of the Owners' properties occurred in spite and
18 otherwise in violation of RCW 7.40.030, and thereby issue a permanent and, where
19 applied for, temporary injunction restraining Duncan and/or Defendants from the
20 malicious erection, and require Duncan and/or Defendants to abate the erection by
21 removing all trees and other vegetation, or pay such damages caused by such
22 actions in an amount to be determined by the trier of fact herein;
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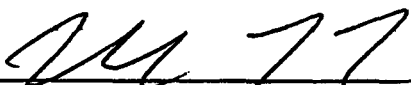
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4. that this Court award Owners all damages in an amount proven at trial;

5. that this Court award Owners their attorney's fees and costs as allowed by law, contract, and equity; and

6. that this Court award Owners such other and further relief as it deems just and appropriate.

DATED this 21st day of October, 2011.



Mark J. Lee, WSBA #19339
of Brownlie Evans Wolf & Lee, LLP
Attorneys for Plaintiffs

EXHIBIT A

TILKOV'S LEGAL DESCRIPTION

A TRACT OF LAND IN GOVERNMENT LOT 1, SECTION 11, TOWNSHIP 40 NORTH, RANGE 3 WEST, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT 431 FEET EAST OF THE NORTHWEST CORNER OF SAID LOT 1, SECTION 11, TOWNSHIP 40 NORTH, RANGE 3 WEST, THENCE RUNNING EAST 289.44 FEET; THENCE SOUTH 1420 FEET, PARALLEL WITH THE WEST LINE OF SAID GOVERNMENT LOT 1 TO A POINT, THE BEGINNING OF THIS DESCRIPTION; RUNNING THENCE WEST 100 FEET; THENCE SOUTH 50 FEET; THENCE EAST 100 FEET, THENCE NORTH 50 FEET TO THE PLACE OF BEGINNING OF THIS DESCRIPTION, TOGETHER WITH ACCESS RIGHTS AS CONVEYED UNDER AUDITOR'S FILE NO. 936144.

SITUATE IN THE COUNTY OF WHATCOM, STATE OF WASHINGTON.

SUBJECT TO: RESERVATIONS AND/OR EXCEPTIONS CONTAINED IN WARRANTY DEED RECORDED NOV. 26, 1954 UNDER WHATCOM COUNTY AUDITOR'S FILE NO. 785271, AS FOLLOWS:

THE PURCHASER AGREES THAT THIS PROPERTY IS NOT TO BE USED FOR BUSINESS PURPOSES; THE PURCHASER IS TO HAVE THE PERPETUAL PRIVILEGE OF FOOT GRAVEL [SIC] TO AND FROM THE SAID PROPERTY TO THE TIDE FLATS ON THE BEACH, FOR RECREATIONAL USE; THIS EASEMENT TO APPLY TO FOOT PATHS OVER THE RESERVE ON THE GRANTOR'S SAID PLAT, AND EXTENDS TO THE SECOND PARTY, GRANTEEES, HEIRS, EXECUTORS AND ADMINISTRATORS AND ASSIGNS.

EXHIBIT B

GAJDIOS' LEGAL DESCRIPTION

LOT FIFTY-SIX (56) in the subdivision within Government Lot One (1) Section Eleven (11) Township Forty North (40N) Range Three West (3W) not on file. BEGINNING at a point Four hundred and thirty-one feet (431') East of the North west corner of said Lot One (1) Section Eleven (11) Township Forty North (40N) Range Three West (3W), thence running East Two hundred and eighty-nine decimal forty-three feet (289.43') thence South Twelve hundred and twenty feet (1220') parallel with the West line of said Government Lot One (1) to a point the beginning of this description; running thence West One hundred feet (100'); thence South Fifty feet (50'); thence East One hundred feet (100'); thence North Fifty feet (50') to the place of beginning of this description.

THE PURCHASER is to have the perpetual privilege of foot travel to and from the said property to the tide flats on the beach, for recreational use; this easement to apply to foot paths over the reserve on the said plat; and extends to the second party, Grantees, heirs, executors and administrators and assigns.

THE PURCHASER agrees that this property is not to be used for business purposes.

EXHIBIT C

COTTER'S LEGAL DESCRIPTION

LOT Forty-nine (49) in the Grantor's subdivision within Government Lot One (1), Section Eleven (11), Township Forty North (40N) Range Three West (3W) not on file. BEGINNING at a point Four hundred and thirty-one feet (431') East of the Northwest corner of Lot One (1) Section Eleven (11) Township Forty North (40N) Range Three West (3W), thence running East One hundred feet (100'), thence South Fourteen hundred and twenty feet (1420') parallel to the West line of said Lot One (1) to a point the beginning of this description, running thence West One hundred feet (100'); thence South Fifty feet (50'), thence East One hundred feet (100') thence North Fifty feet (50') to a point the beginning of this description.

The purchasers are to have the perpetual privilege of foot travel to and from the said property to the tide flats on the beach, for recreational use; this easement to apply to foot path or foot paths over the reserve on the said plat of the Party of the First Part, and extends to the Second Party, grantees, heirs, executors, administrators and assigns.

The purchaser agrees that this property is not to be used for business purposes.

Duncan's legal Description
Parcel No. 405311 056371 0000

THE EAST 13 ACRES OF THE WEST 33 ACRES OF GOVERNMENT LOT 1, IN SECTION 11,
TOWNSHIP 40 NORTH, RANGE 3 WEST OF W.M. TOGETHER WITH THE FOLLOWING
DESCRIBED PROPERTY:

ALL SECOND CLASS TIDELANDS IN FRONT OF A PORTION OF SAID LOT 1, WHICH PORTION IS
MORE PARTICULARLY DESCRIBED AS COMMENCING AT A CONCRETE MONUMENT ON THE
MEANDER LINE OF SAID LOT 1, WHERE SAID MEANDER LINE IS INTERSECTED BY THE EAST
LINE OF THE WEST 20 ACRES OF SAID LOT 1 (SAID WEST 20 ACRES BEING THE TRACT OWNED
BY J.A. LARGAUD); THENCE EAST ALONG SAID MEANDER LINE, A DISTANCE OF 300.00 FEET
TO A CONCRETE MONUMENT, WHICH LATTER MONUMENT MARKS THE SOUTHEAST CORNER
OF A TRACT OF LAND OWNED BY SAID D.G. BELL. EXCEPT THE FOLLOWING DESCRIBED
PROPERTY:

BEGINNING AT A POINT 431.00 FEET EAST OF THE NORTHWEST CORNER OF SAID LOT 1;
THENCE RUNNING EAST 189.44 FEET; THENCE SOUTH 20.00 FEET, PARALLEL WITH THE WEST
LINE OF SAID GOVERNMENT LOT 1, TO THE TRUE POINT OF BEGINNING; THENCE SOUTH
1450.00 FEET, PARALLEL WITH THE WEST LINE OF SAID GOVERNMENT LOT 1; THENCE WEST
89.44 FEET, PARALLEL WITH THE NORTH LINE OF SAID GOVERNMENT LOT 1; THENCE NORTH
1450 FEET, PARALLEL WITH THE WEST LINE OF SAID GOVERNMENT LOT 1; THENCE EAST
89.44 FEET TO THE TRUE POINT OF BEGINNING. ALSO, EXCEPT THE FOLLOWING DESCRIBED
PROPERTY AND ALL PARCELS LYING NORTH OF SAID PROPERTY:

A TRACT OF LAND IN SAID GOVERNMENT LOT 1, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 431.00 FEET EAST OF THE NORTHWEST CORNER OF SAID LOT 1;
THENCE RUNNING EAST 289.44 FEET; THENCE SOUTH 1420.00 FEET, PARALLEL WITH THE
WEST LINE OF SAID GOVERNMENT LOT 1 TO A POINT, THE BEGINNING OF THIS
DESCRIPTION; RUNNING THENCE WEST 100.00 FEET; THENCE SOUTH 50.00 FEET; THENCE
EAST 100.00 FEET; THENCE NORTH 50.00 FEET TO THE PLACE OF BEGINNING OF THIS
DESCRIPTION. ALSO, EXCEPT THE FOLLOWING DESCRIBED PROPERTY AND ALL PARCELS
LYING NORTH OF SAID PROPERTY:

LOT 49 IN SUBDIVISION WITHIN SAID GOVERNMENT LOT 1 NOT ON FILE. BEGINNING AT A
POINT 431.00 FEET EAST OF THE NORTHWEST CORNER OF SAID LOT 1; THENCE RUNNING
EAST 100.00 FEET; THENCE SOUTH 1420.00 FEET, PARALLEL TO THE WEST LINE OF SAID LOT 1
TO A POINT, THE BEGINNING OF THIS DESCRIPTION; THENCE WEST 100.00 FEET; THENCE
SOUTH 50.00 FEET; THENCE EAST 100.00 FEET; THENCE NORTH 50.00 FEET TO A POINT, THE
BEGINNING OF THIS DESCRIPTION. ALSO, EXCEPT THAT RIGHT-OF-WAY COMMONLY
REFERRED TO AS EDWARDS DRIVE.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

EXHIBIT D.

EXHIBIT D

**DUNCAN'S LEGAL DESCRIPTIONS FOR
SOUTHVIEW SHORT PLAT**

PARCEL NO. 405311 050375 0000

**LOT 1 SOUTHVIEW SHORT PLAT AS RECORDED UNDER AUDITOR'S FILE NO.
2010604598.**

PARCEL NO. 405311 061378 0000

**LOT 2 SOUTHVIEW SHORT PLAT AS RECORDED UNDER AUDITOR'S FILE NO.
2010604598.**

PARCEL NO. 405311 069380 0000

**LOT 3 SOUTHVIEW SHORT PLAT AS RECORDED UNDER AUDITOR'S FILE NO.
2010604598.**

785271

Form 407-1-Rev.

Statutory Warranty Deed

VOL 402 PAGE 469

THE GRANTOR DAVID GARFIELD BELL, Carpenter, of P.O. Box 447 Ladner, Province of British Columbia.

for and in consideration of EIGHT HUNDRED AND FIFTY (\$850.00) DOLLARS

In hand paid, conveys and warrants to ARTHUR GORDON TENNANT, Nurseryman, of 657 East 58th Avenue, City of Vancouver, Province aforesaid.

the following described real estate, situated in the County of Whatcom Washington: More particularly known and described as:- Lot Fifty-two (52) in the Grantor's subdivision within Government Lot One (1), Section Eleven (11), Township Forty (40) North, Range Three (3) West, not on file, BEGINNING at a point Four hundred and thirty-one (431) feet East of the North West corner of said Lot One (1), Section Eleven (11), Township Forty (40) North, Range Three (3) West, thence running East Two hundred and eighty-nine (289) decimal forty-four (289.44) feet; thence South Fourteen hundred and twenty (1420) feet, parallel with the West line of said Government Lot One (1) to a point, the beginning of this description; running thence West One hundred (100) feet; thence South Fifty (50) feet; thence East One hundred (100) feet, thence North Fifty (50) feet to the place of beginning of this description.

The purchaser agrees that this property is not to be used for business purposes;

The purchaser is to have the perpetual privilege of foot gravel to and from the said property to the tide flats on the Beach, for recreational use; this easement to apply to foot paths over the reserve on the Grantor's said plat, and extends to the second party, Grantees, heirs, executors and administrators and assigns

BEULAH JOHNSON

TREASURER OF WHATCOM COUNTY, WASHINGTON

8225 NOV 26 1954



REAL ESTATE EXCISE TAX PAID AMT. \$ 850 Dated this 30th day of October, 1954

David G Bell (SEAL)

PROVINCE OF BRITISH COLUMBIA Notary Public for the Province of British Columbia, County of WESTMINSTER



On this day personally appeared before me David Garfield Bell

to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 30th day of October, 1954

received for records at 11:55 a.m. NOV 26 1954 at request of F.R. Reed Co. W.D. Pratt, Auditor Whatcom Co. Wash

Notary Public in and for the Province of British Columbia, residing at NEW WESTMINSTER, B.C.

EXHIBIT E

924349

Correction Deed for Deed dated February 11, 1957 --Auditors File # 831850

WARRANTY DEED

DAVID GARFIELD BELL, Retired, of P.O. Box 447 Ladner, Province of British Columbia, for and in consideration of SIX HUNDRED (\$600.00)

DOLLARS, in hand paid, conveys and warrants to FEROY MURN FERGUSON, his driver, and IRENE ANNIE FERGUSON, wife of Feroy Murn Ferguson,

JOHN TERANTO, both of 7675 Newcombe Street, Burnaby, Province aforesaid,

the following described real estate, situate in the County of Whatcom, State of Washington, more particularly known and described as:-

LOT FIFTY-SIX (56) in the subdivision within Government Lot One (1) Section Eleven (11) Township Forty North (40N) Range Three West (3W) not on file. BEGINNING at a point Four hundred and thirty-one feet (431') East of the North west corner of said Lot One (1) Section Eleven (11) Township Forty North (40N) Range Three West (3W), thence running East Two hundred and eighty-nine decimal forty-three feet (289.43') thence South Twelve hundred and twenty feet (1220') parallel with the West line of said Government Lot One (1) to a point the beginning of this description; running thence West Two hundred feet (200'); thence South Fifty feet (50'); thence East One Hundred feet (100'); thence North Fifty feet (50') to the place of beginning of this description.

THE PURCHASER is to have the perpetual privilege of foot travel to and from the said property to the tide flats on the beach, for recreational use; this covenant to apply to foot paths over the reserve on the said plat; and extends to the second party, Grantees, heirs, executors and administrators and assigns.

THE PURCHASER agrees that this property is not to be used for business purposes.

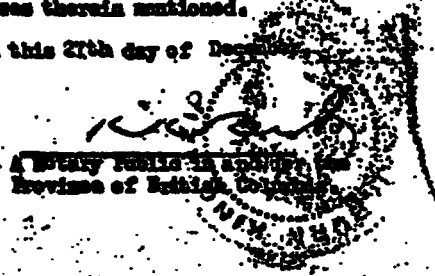
Witness my hand and official seal this 27th day of December, 1961.

David G Bell

Province of British Columbia
County of Westminster

On this day personally appeared before me David Garfield Bell to me known to be the individual in and who executed the within and foregoing instrument, and acknowledged that he assigned the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 27th day of December, A.D. 1961.



924349

EXHIBIT F

Gen
Jan 29, 1962

978662

STATUTE MORTGAGE DEED

THE GRANTEE, DAVID GARFIELD BELL, Retired, of the Town of Ladner,
 in the Province of British Columbia, for and in consideration of ONE THOUSAND
(\$1,000.00) DOLLARS in hand paid, conveys and warrants to ROBERT WILFRED
ALEXANDER JACOBSON Fire Fighter, and AMY EVELYN JACOBSON, wife of Donald
 Wilfred Alexander Jacobson, both of 358 Reginal Street, Steveston, Province of
 British Columbia, JOHN THOMAS, the following described real estate, situated
 in the County of Kitson, State of Washington, 107 Forty-nine (49) in the Grantor's
 subdivision within Government Lot One (1), Section Eleven (11), Township
 Forty North (40N) Range Three West (3W) 2nd on R12. BEGINNING at a point
 four hundred and thirty-one feet (431') East of the Northwest corner of Lot
 One (1) Section Eleven (11) Township Forty North (40N) Range Three West (3W),
 thence running East One hundred feet (100'), thence South Fourteen hundred
 and twenty feet (1420') parallel to the West line of said Lot One (1) to a
 point the beginning of this description, running thence West One hundred
 feet (100'); thence South Fifty feet (50'), thence East One hundred feet (100')
 thence North Fifty feet (50') to a point the beginning of this description.

The purchasee are to have the perpetual privilege of foot travel to and
 from the said property to the tide flats on the beach, for recreational use; this
 covenant to apply to foot path or foot paths over the reserve on the said plat
 of the City of the First Ward, and extends to the Second Party, grantee, heirs,
 executors, administrators and assigns.

The purchasee agree that this property is not to be used for
 business purposes;

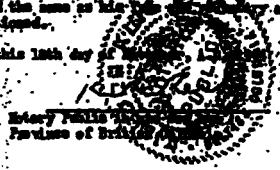
Dated this eighteenth day of November, A.D. 1964.

David G. Bell

PROVINCE OF BRITISH COLUMBIA
 COUNTY OF WASHINGTON

On this day personally appeared before me David Garfield Bell of the County of
 to be the individual described in and who executed the within and foregoing
 instrument, and acknowledged that he signed the same as his free and voluntary act
 and deed for the uses and purposes therein mentioned.

Given under my hand and official seal this 18th day of



SEP-164 9473 103012

Recorded on record at 9:10 on DEC 1 1964
 at request of *K.K. Reid*
 WELLS HOUSE, CO. REC'DR Whistler Co. Wash.

VOL 21 PAGE 964

EXHIBIT G

THIS SPACE RESERVED FOR RECORDER'S USE

REVENUE STAMPS

Filed for Record At Request of

Mit and Susan Tilkov
1929 Campbell Avenue
Port Coquitlam, B.C.
Canada V3C 4T1

WHATCOM COUNTY
BELLINGHAM, WA
08/03/95 4:01 PM
REQUEST OF: MIT TILKO
Shirley Forslof, AUDITOR
BY: LK, DEPUTY
\$7.00 DEED
Vol: 454 Page: 1604
File No: 950803114

Statutory Warranty Deed

The Grantor

DWIGHT WEBB and ELLEN WEBB, his wife,

and in consideration of

TEN DOLLARS & OTHER GOOD & VALUABLE CONSIDERATION

hand paid, conveys and warrants to MIT D. TILKOV and SUSAN L. TILKOV, his wife,

the following described real estate, situated in the County of WHATCOM, State of Washington:

A TRACT OF LAND IN GOVERNMENT LOT 1, SECTION 11, TOWNSHIP 40 NORTH, RANGE 3 WEST, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT 431 FEET EAST OF THE NORTHWEST CORNER OF SAID LOT 1, SECTION 11, TOWNSHIP 40 NORTH, RANGE 3 WEST, THENCE RUNNING EAST 289.44 FEET; THENCE SOUTH 1420 FEET, PARALLEL WITH THE WEST LINE OF SAID GOVERNMENT LOT 1 TO A POINT, THE BEGINNING OF THIS DESCRIPTION; RUNNING THENCE WEST 100 FEET; THENCE SOUTH 50 FEET; THENCE EAST 100 FEET, THENCE NORTH 50 FEET TO THE PLACE OF BEGINNING OF THIS DESCRIPTION, TOGETHER WITH ACCESS RIGHTS AS CONVEYED UNDER AUDITOR'S FILE NO. 936144.

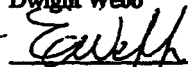
SITUATE IN THE COUNTY OF WHATCOM, STATE OF WASHINGTON.

SUBJECT TO: RESERVATIONS AND/OR EXCEPTIONS CONTAINED IN WARRANTY DEED RECORDED NOV. 26, 1954 UNDER WHATCOM COUNTY AUDITOR'S FILE NO. 785271, AS FOLLOWS:

THE PURCHASER AGREES THAT THIS PROPERTY IS NOT TO BE USED FOR BUSINESS PURPOSES; THE PURCHASER IS TO HAVE THE PERPETUAL PRIVILEGE OF FOOT GRAVEL TO AND FROM THE SAID PROPERTY TO THE TIDE FLATS ON THE BEACH, FOR RECREATIONAL USE; THIS EASEMENT TO APPLY TO FOOT PATHS OVER THE RESERVE ON THE GRANTOR'S SAID PLAT, AND EXTENDS TO THE SECOND PARTY, GRANTEE, HEIRS, EXECUTORS AND ADMINISTRATORS AND ASSIGNS.

and this 18 day of July 1995


Dwight Webb


Ellen Webb

County of British Columbia, } ss.
City of Vancouver }

EXHIBIT H

2030701877
Page: 1 of 2
7/10/2003 11:12 AM
DEED \$89.00
Request of: WHATCOM LAND TITLE

AFTER RECORDING MAIL TO:
TIBOR GAJDIOS
SUITE 404 - 815 HORNBY STREET
VANCOUVER, B.C. CANADA V6Z 2E6

Filed for Record at Request of
WHATCOM LAND TITLE COMPANY, INC.
Escrow Number: W-67952 (2) KH

Statutory Warranty Deed

Grantor(s): LANCELOT V. EDE and MARIAN E. EDE
Grantee(s): TIBOR GAJDIOS
Abbreviated Legal:
A PIN OF THE NW1/4, NW1/4, S11, T48N, R3W

Additional legal(s) on page: 2
Assessor's Tax Parcel Number(s): 485311 868441 0000

THE GRANTOR LANCELOT V. EDE and MARIAN E. EDE, as joint tenants with right of survivorship for and in consideration of TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION in hand paid, conveys and warrants to TIBOR GAJDIOS, a single person the following described real estate, situated in the County of WHATCOM, State of Washington

SEE ATTACHED EXHIBIT "A" HERETO FOR LEGAL DESCRIPTION AND EXCEPTIONS

Dated July 7, 2003

Lancelot V. Ede
LANCELOT V. EDE

Marian E. Ede by Lancelot V. Ede
MARIAN E. EDE BY: LANCELOT V. EDE, HER
ATTORNEY IN FACT
her attorney in fact

STATE OF Washington
COUNTY OF WHATCOM

On this 9 day of JULY, 2003
I, the undersigned, personally appeared LANCELOT V. EDE who executed the foregoing instrument for HIM and acknowledged that HE signed and sealed the same as HIS free and voluntary act and deed for HIM self and also as HIS free and voluntary act and deed as Attorney in Fact for said principal for the uses and purposes therein mentioned, and on oath stated that the Power of Attorney authorizing the execution of this instrument has not been revoked and that the said principal is now living, and is not incompetent.



Given under my hand and official seal the day and year last above written.
(Seal)

Joanne Pulver
Joanne Pulver
Notary Public in and for the State of Washington
Residing at BELLINGHAM
My appointment expires: 1/12/2008 2/20/03

LFB-10

EXHIBIT I

EXHIBIT A

LOT 56, IN THE SUBDIVISION WITHIN GOVERNMENT LOT 1, SECTION 11,
TOWNSHIP 40 NORTH, RANGE 3 WEST, NOT ON FILE. BEGINNING AT A POINT
431.00 FEET EAST OF THE NORTHWEST CORNER OF SAID LOT 1; THENCE
RUNNING EAST 289.43 FEET; THENCE SOUTH 1220.00 FEET PARALLEL WITH
THE WEST LINE OF SAID GOVERNMENT LOT 1 TO A POINT AT THE
BEGINNING OF THIS DESCRIPTION; RUNNING THENCE WEST 100.00 FEET;
THENCE SOUTH 50.00 FEET; THENCE EAST 100.00 FEET; THENCE NORTH 50.00
FEET TO THE PLACE OF BEGINNING OF THIS DESCRIPTION.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

SUBJECT TO:

Covenants, conditions and restrictions contained in instrument;

Recorded: January 29, 1962

Recording No.: 924349

Executed by: DAVID BELL

Unfiled Document

2030701877

Page: 2 of 2
7/18/2008 11:12 AM
DEED \$20.00
Whatcom County, WA

Request of: MORTGAGE LEND TITLE



First American Title Insurance Company

Filed for Record at Request of

Name Christina Semak

Address _____

City and State _____

THIS SPACE PROVIDED FOR RECORDER'S USE

WHATCOM COUNTY
BELLINGHAM, WA
10/08/92 12:56 PM
REQUEST OF: F ATWOOD
Shirley Forslof, AUDITOR
BY: LK, DEPUTY
\$7.00 DEED

Vol: 278 Page: 1353
File No: 921008122

Quit Claim Deed

THE GRANTOR CHRISTINA SEMAK, a widow,

for and in consideration of love and affection

conveys and quit claims to her daughter, KATHRYN LYNNE COTTER, as her separate property,

the following described real estate, situated in the County of Whatcom State of Washington, together with all after acquired title of the grantor(s) therein:

Lot 49, in subdivision within Government Lot 1, Section 11, Township 40 North, Range 3 West, not on file. Beginning at a point 431 feet East of the Northwest corner of Lot 1, Section 11, Township 40 North, Range 3 West, thence running East 100 feet, thence South 1420 feet parallel to the West line of said Lot 1 to a point the beginning of this description, running thence West 100 feet; thence South 50 feet, thence East 100 feet, thence North 50 feet to a point the beginning of this description.

Dated October 8th 1992

Christina Semak
(Individual)

By _____
CHRISTINA SEMAK (Individual) (President)

By _____
(Secretary)

STATE OF WASHINGTON
COUNTY OF Whatcom) ss.

On this day personally appeared before me
Christina Semak

to me known to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledged that SBS signed the same as DEED free and voluntary act and deed.

for the uses and purposes therein contained.

Given under my hand and official seal this _____ day of October 1992.

[Signature]
Notary Public in and for the State of Washington, residing at Bellingham

STATE OF WASHINGTON
COUNTY OF _____) ss.

On this _____ day of _____ 19____ before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____

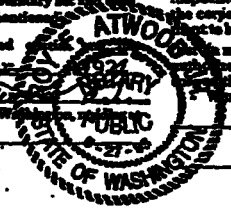
and _____ to me known to be the _____ President and _____ Secretary, respectively, of _____

the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on each stated that _____

intended to execute the said instrument and that the seal affixed in the corporate seal of said corporation.

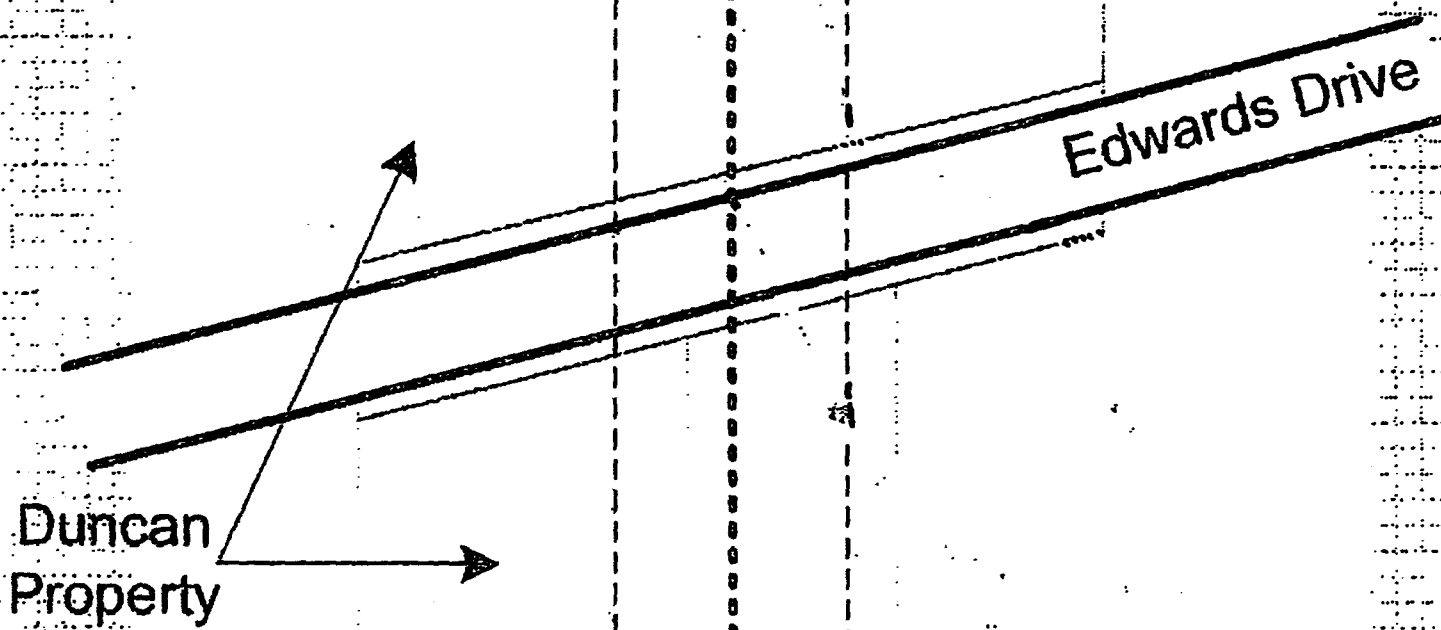
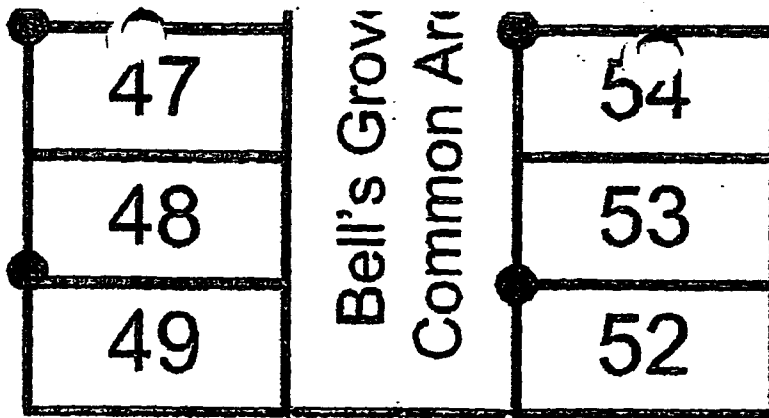
Witness my hand and official seal hereto affixed the day and year first above written.

[Signature]
Notary Public in and for the State of Washington, residing at _____



2 BAISEN EX 10/08/92 PAID 28.00

EXHIBIT J



Legend:

----- Original Path

EXHIBIT K



2091001487

Page: 1 of 3

10/14/2009 2:54 PM

DEED \$84.00

Whatcom County, WA

Request of: BELCHER SWANSON

WHEN RECORDED RETURN TO:

SCOT S. SWANSON
BELCHER SWANSON LAW FIRM
900 DUPONT STREET
BELLINGHAM, WA 98225

Document Title:	Quit Claim Deed;
Grantor/borrower:	David Duncan;
Grantee/assignee/beneficiary:	Black Pines, LLC, a Washington limited liability company;
Legal Description:	A PTN OF GOVT. LOT 1, S11, T40N, R3W; and
Assessor's Tax Parcel ID#:	405311 056371 0000.

QUIT CLAIM DEED

THE GRANTOR, David Duncan, a married man as his separate property, for and in consideration of IRC Section 721, contribution of capital, conveys and quit claims to Black Pines, LLC, a Washington limited liability company, the following described real estate, situated in the County of Whatcom, State of Washington, including any interest therein which Grantor may hereafter acquire:

See attached Exhibit "A".

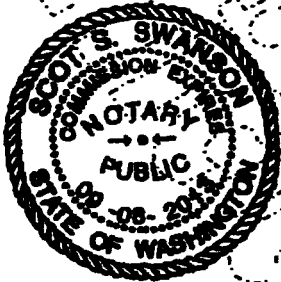
DATED this 12th day of October, 2009.


DAVID DUNCAN

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that DAVID DUNCAN is the person who appeared before me, and said person acknowledged that he/she signed this instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

SUBSCRIBED to before me this 12th day of October, 2009.




Notary Public in and for the State of Washington
Print Name Scott S. Swanson
Residing at Bellevue, WA
My Commission Expires: 08/08/2013

UNRECORDED

EXHIBIT

A

LEGAL DESCRIPTION FOR BLACK PINES, LLC

**THE EAST 13 ACRES OF THE WEST 33 ACRES OF GOVERNMENT LOT 1,
SECTION 11; TOWNSHIP 40 NORTH, RANGE 3 WEST OF W.M.**

EXCEPTING THEREFROM THE NORTH 1470.00 FEET THEREOF.

**ALSO EXCEPT THAT PORTION THEREOF LYING SOUTH OF EDWARDS
DRIVE.**

ALSO EXCEPT THE RIGHT-OF-WAY FOR EDWARDS DRIVE.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

EXHIBIT M

HULME'S LEGAL DESCRIPTION

Lot Thirty-four (34) in the Grantor's subdivision within Government Lot One (1), Section Eleven (11), Township Forty (40) North, Range Three (3) West, not on file, being more particularly known and described as - BEGINNING at a point Four hundred and thirty-one (431) feet East of the Northwest corner of Lot One (1), Section Eleven (11), Township Forty (40) North, Range Three (3) West, running thence East Two hundred and eighty-nine decimal forty-four (289.44) feet; thence South Three hundred and twenty (320) feet, parallel with the West line of said Government Lot One (1) to a point the beginning of this description; running thence West One hundred (100) feet; thence South Fifty (50) feet; thence East One hundred (100) feet; thence North Fifty (50) feet to place of beginning of this description.

The purchaser agrees that this property is not to be used for business purposes.

The purchaser is to have the perpetual privilege of foot travel to and from the said property to the tide flats on the Beach, for recreational use; this easement to apply to foot path or foot paths over the reserve on the said plat of the Party of the First Part, and extends to the Second Party, grantees, heirs, executors, administrators and assigns.

1. The purchase price of the property is \$10,000.00.

2. The purchase price is to be paid in cash.

3. The purchaser agrees that this property is not to be used for business purposes.

The purchaser agrees that this property is not to be used for business purposes.

The purchaser is to have the perpetual right of use and enjoyment of the property to the life of the purchaser.

Donald William Walmsley, Retired

75433

To

Alma Archer, Neff, Purton, and Viola
1000 North Street, Washington, D.C.

1000 North Street, Washington, D.C.

4. The purchase price is to be paid in cash.

5. The purchaser agrees that this property is not to be used for business purposes.

The purchaser agrees that this property is not to be used for business purposes.

The purchaser is to have the perpetual right of use and enjoyment of the property to the life of the purchaser.

The purchase price of the property is \$10,000.00.

EXHIBIT N



2040404219
 Page: 1 of 1
 4/22/2004 1:44 PM
 DEED \$18.00
 Whatcom County, WA
 Request of: WILLIOTT MCGREGOR

WHEN RECORDED RETURN TO:

Name: SANDRA DOREEN HULME
 Address: 628 FALLS GROVE
 City State Zip: PUNT ROBERTS WASH. 98281-8412

QUIT CLAIM DEED

The GRANTORS William Somerville McGregor and Edna May McGregor
 For and in consideration of Love and Affection
 convey and quit claims to SANDRA DOREEN HULME, their daughter

the following described real estate, situated in the County of Whatcom, State of Washington:

Lot Thirty-four (34) in the Grantor's subdivision within Government Lot One (1), Section Eleven (11), Township Forty (40) North, Range Three (3) West, not on file, being more particularly known and described as- BEGINNING at a point four hundred and thirty-one (431) feet East of the Northwest corner of Lot One (1), Section Eleven (11), Township Forty (40) North, Range Three (3) West, running thence East two hundred and eighty-nine decimal forty-four (289.44) feet; thence South Three hundred and twenty (320) feet, parallel with the West line of said Government Lot One (1) to a point the beginning of this description; running thence West One hundred (100) feet; thence South Fifty (50) feet; thence East One hundred (100) feet; thence North Fifty (50) feet to place of beginning of this description.

The purchaser agrees that this property is not to be used for business purposes:

The purchaser is to have the perpetual privilege of foot travel to and from the said property to the tide flats on the beach, for recreational use; this easement to apply to foot path or foot path over the reserve on the said flat of the Party of the First part extends to the Second Party, grantee, heirs, executors, administrators and assigns.

Tax Account Number: 4853110685300000 DATED April 21st 2004
W. S. W. KARGOT
William Somerville McGregor By N/A (President)
Edna May McGregor By N/A (Secretary)
 (Individual)

STATE OF WASHINGTON)
) ss.
 COUNTY OF WHATCOM)
 On this day personally appeared before me William Somerville McGregor to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he is the individual named therein and that he executed the same for the purposes therein mentioned.
 Notary Public in and for the State of Washington
BARRIER & SCHMIDT
 20570 - 56th Avenue
 Langley, B.C. V3A 3Z1
 TEL: (604) 530-2191
 Residing at LANGLEY, B.C.

STATE OF WASHINGTON)
) ss.
 COUNTY OF WHATCOM)
 On this day personally appeared before me Edna May McGregor to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that she is the individual named therein and that she executed the same for the purposes therein mentioned.
 Notary Public in and for the State of Washington
BARRIER & SCHMIDT
 20570 - 56th Avenue
 Langley, B.C. V3A 3Z1
 TEL: (604) 530-2191
 Residing at LANGLEY, B.C.

EXHIBIT 0

APPENDIX C

SCANNED
3

FILED IN OPEN COURT
10-4 2012
WHATCOM COUNTY CLERK

By _____ Deputy

Hearing Date: July 27, 2012
Hearing Time: 1:30 p.m.
Honorable Charles R. Snyder

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHATCOM**

MIT D. TILKOV, et al,
Plaintiffs,

vs.

DAVID L. DUNCAN, et al,
Defendants.

No. 10-2-01038-2

~~[PROPOSED]~~ ORDER GRANTING
DEFENDANTS' MOTION FOR
PARTIAL SUMMARY JUDGMENT ON
EASEMENT CLAIMS

HONORABLE CHARLES R. SNYDER

THIS MATTER having come on for hearing before the above-captioned Court, and the Court having reviewed the following:

1. Defendants' Motion for Partial Summary Judgment Brought on Easement Claims and all declarations and exhibits attached thereto;
2. Declaration of Jeffrey Taraday in Support of Defendants' Motion for Partial Summary Judgment on Easement Claims and attached Exhibits;
3. Declaration of Michael V. Gilbertson and attached Exhibits;
4. Revised Declaration of J. Thomas Brewster, P.L.S.;
5. Plaintiffs' Response to Defendants' Motion for Partial Summary Judgment on Easement Claims and attached Exhibits;

~~[PROPOSED]~~ ORDER GRANTING DEFENDANTS'
MOTION FOR PARTIAL SUMMARY JUDGMENT RE
EASEMENT CLAIMS AND CLASS CERTIFICATION

- 1

Lighthouse Law Group, PLLC

1100 Dexter Avenue N., Suite 100, Seattle, WA 98109
jll@lighthousegroup.com
Tel. 206-273-7440 • Fax 206-273-7401

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- 6. Affidavit of Mark J. Lee in Support of Plaintiff's Response to Defendants' Motion for Partial Summary Judgment on Easement Claims;
- 7. Declaration of Sandra D. Hulme with GR 17 Transfer Affidavit;
- 8. Declaration of Dennis M. DeMeyer with Exhibit A and GR Transfer Affidavit;
- 9. Defendants' Reply on Motion for Partial Summary Judgment on Easement Claims;

Based on the argument of counsel, IT IS ORDERED, ADJUDGED AND DECREED

that:

- 1. Defendants' Motion for Partial Summary Judgment on Easement Claims is Granted;
- 2. All of Plaintiffs' Easement Claims are Dismissed with Prejudice;


DATED this 4 day of Oct, 2012.



 HONORABLE CHARLES R. SNYDER

Respectfully submitted:

LIGHTHOUSE LAW GROUP, PLLC

By 
 Jeffrey Taraday, WSBA # 28182
 Attorney for Defendants
 David L. Duncan and
 Black Pines, LLC

[PROPOSED] ORDER GRANTING DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT RE EASEMENT CLAIMS AND CLASS CERTIFICATION

Lighthouse Law Group, PLLC

1100 Dexter Avenue N., Suite 100, Seattle, WA 98109
 jtl@lighthouselawgroup.com
 Tel. 206-273-7440 • Fax 206-273-7401

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Agreed as to form; notice of presentation waived:

BROWNLIE EVANS WOLFE & LEE

By 

**Mark J. Lee, WSBA #
Attorney for Plaintiffs**

APPENDIX D

SCANNED

FILED IN OPEN COURT

10-4 2012
WHATCOM COUNTY CLERK

By Deputy

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

MIT D. TILKOV and SUSAN L. TILKOV,
and their individual capacities and as a marital
community; TIBOR GAJDICS; and
KATHRYN LYNNE COTTER,

Plaintiffs,

vs.

DAVID L. DUNCAN, in his individual
capacity; BLACK PINES, LLC, a
Washington limited liability company,

Defendants.

No. 10-2-01038-2

ORDER GRANTING DEFENDANTS'
MOTION FOR CLASS
CERTIFICATION

HONORABLE CHARLES R. SNYDER

THIS MATTER came before the Court on Defendants' David Duncan and Black Pines, LLC's motion for an order certifying the action as a class action under CR 23 to certify the class of:

All owners of the 58 "lots" within Bell's Grove and members of the association of Bell's Grove Property Owners of Point Roberts (BGPOPR).

The Court considered the following pleadings filed in this action and the following evidence:

1. The Declaration of Defendant David Duncan;
2. The Declaration of Defendants' Counsel, Jeff Taraday;

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ORDER GRANTING DEFENDANTS'
MOTION FOR CLASS CERTIFICATION - 1

Lighthouse Law Group, PLLC

1100 Dexter Avenue N., Suite 100, Seattle, WA 98109
jtl@lighthouselawgroup.com
Tel. 206-273-7440 • Fax 206-273-7401

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3. Defendants' Motion for Class Certification; and

4. Plaintiffs' Response.

Based on the argument of counsel and the evidence presented, THE COURT FINDS:

1. A class action is maintainable under CR 23(a) because:

- (a) The class is so numerous that joinder of all members is impracticable;
- (b) There are questions of law or fact common to the class;
- (c) The claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (d) The representative parties will fairly and adequately protect the interests of the class.

2. Final declaratory relief is appropriate under CR 23(b)(2) because questions of class members' alleged express easement rights are generally applicable to the entire class, thereby making appropriate final declaratory relief with respect to the class as a whole.

3. Class certification is appropriate under CR 23(b)(3) because questions of law and/or fact common to the members of the class predominate over any questions affecting only individual members, and because a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

Based on the findings of fact and conclusions of law, IT IS HEREBY ORDERED that:

- 1. Defendants' Motion for Class Certification is GRANTED.
- 2. The class shall be certified as the class of:
All owners of the 58 "lots" within Bell's Grove and members of the association of Bell's Grove Property Owners of Point Roberts (BGPOPR).

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3. The action is properly maintainable, and shall be maintained, as a class action under CR 23(b)(2) and 23(b)(3).

4. All owners of the 58 "lots" within Bell's Grove and members of the association of Bell's Grove Property Owners of Point Roberts (BGPOPR) shall be notified of class certification by the following means, which is the best notice practicable under the circumstances:

- a) Plaintiff Mit Tilkov, as the current President of BGPOPR, will read the statement attached hereto as Exhibit A during the BGPOPR annual meeting held on July 7, 2012, notifying attendees of the meeting of the pendency of the class action and of the deadline to request exclusion; alternatively Mr. Tilkov will distribute the notice form set forth as Exhibit B to each member of BGPOPR; and
- b) No later than Friday, June 29, 2012, Defendant Duncan shall post a laminated paper notice in the form attached hereto as Exhibit B, which notice shall be attached in at least four places to the fence posts along BGPOPR's path to the beach in front of Duncan's property.

5. The notice shall advise each member that (A) the court will exclude him from the class if he so requests by July 18, 2012; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if he desires, enter an appearance through his counsel.

DATED this 4 day of Oct, 2012.


HONORABLE CHARLES R. SNYDER

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Respectfully submitted:

LIGHTHOUSE LAW GROUP, PLLC

By 

Jeffrey Taraday, WSBA # 28182
Attorney for Defendants
David L. Duncan and
Black Pines, LLC

Approved as to form; notice of presentation waived:

BROWNLIE EVANS WOLF & LEE, LLP

By 
Mark J. Lee, WSBA #19339
Attorney for Plaintiffs

per email and telephonic authority
given by Mark Lee on June 21, 2012

4846-7286-9385, v. 1

THIS NOTICE TO BE READ BY MIT TILKOV DURING THE BGPOPR ANNUAL MEETING ON JULY 7, 2012

I have been ordered to read this legal notice during our annual meeting to inform you that the deed to your Bell's Grove property will be interpreted by a court.

I AM READING YOU THIS NOTICE FOR THE FOLLOWING REASONS:

David Duncan and Black Pines LLC own the property over which lies your path to the beach. They have been sued by Plaintiffs Mit Tilkov, Susan Tilkov, Tibor Gajdics, Kathryn Lynne Cotter, and Sandra Hulme in Whatcom County Superior Court, cause no. 10-2-01038-2.

The Plaintiffs claim that they have beach access rights over a *different route* than the one that presently exists. The Plaintiffs base their claims, in part, upon language in the deeds to their individual Bell's Grove properties. Your deeds contain similar language. The Defendants asked the court to form a class to resolve in this lawsuit all alleged easement rights that could be asserted by the owners of Bell's Grove parcels individually. The court granted that request. This is your notice that you are included in the class.

THE FOLLOWING PEOPLE ARE AFFECTED BY THIS NOTICE:

All owners of the approximately 58 parcels within the unrecorded subdivision commonly known as Bell's Grove and all members of the association of Bell's Grove Property Owners of Point Roberts (BGPOPR) are included in the class.

WHAT DEED LANGUAGE IS AT ISSUE?

These deeds contain similar language that reads more or less as follows (if your deed does not contain substantially similar language, your rights would not be affected by this lawsuit):

"The purchasers are to have the perpetual privilege of foot travel to and from the said property to the tide flats on the beach, for recreational use; this easement to apply to foot path or foot paths over the reserve on the said plat"

WILL THIS CASE AFFECT BGPOPR'S EASEMENT RIGHTS?

No. The BGPOPR easement, which was granted to BGPOPR by David Garfield Bell in 1962, was the subject of a previous lawsuit that ended in 2007 (Whatcom County Superior Court, cause no. 05-2-02831-5). The beach path that you use today is the path that resulted from that lawsuit. The BGPOPR easement and path will not be affected by this lawsuit.

WHAT ARE THE POSSIBLE OUTCOMES OF THIS LAWSUIT?

If Plaintiffs win on this claim, the path could be re-routed. If Plaintiffs lose, any re-routing of the path would remain at the option of Defendants, subject to limitations imposed by the court in 2007. Either way, you will continue to have access over Defendants' property to walk to the beach.

WHAT ARE YOUR OPTIONS?

If you do not want to be legally bound by the ruling in this matter, you must send a letter requesting exclusion from the class to Mr. Duncan's lawyer: Jeff Taraday, Lighthouse Law Group PLLC, 1100 Dexter Avenue N. #100, Seattle, WA 98109. Your letter must be postmarked no later than July 18, 2012.

Exhibit A to Order Granting Defendants' Motion for Class Certification

LEGAL NOTICE

**The deed to your Bell's Grove
property
will be interpreted by a court.**

WHY IS THIS NOTICE POSTED?

David Duncan and Black Pines LLC own the property over which lies your path to the beach. They have been sued by Plaintiffs Mit Tilkov, Susan Tilkov, Tibor Gajdics, Kathryn Lynne Cotter, and Sandra Hulme in Whatcom County Superior Court, cause no. 10-2-01038-2.

The Plaintiffs claim that they have beach access rights over a *different* route than the one that presently exists. The Plaintiffs base their claims, in part, upon language in the deeds to their individual Bell's Grove properties. Your deeds contain similar language. The Defendants asked the court to form a class to resolve in this lawsuit all alleged easement rights that could be asserted by the owners of Bell's Grove parcels individually. The court granted that request. This is your notice that you are included in the class.

WHO IS AFFECTED?

All owners of the approximately 58 parcels within the unrecorded subdivision commonly known as Bell's Grove and all members of the association of Bell's Grove Property Owners of Point Roberts (BGPOPR) are included in the class.

WHAT DEED LANGUAGE IS AT ISSUE?

These deeds contain similar language that reads more or less as follows (if your deed does not contain substantially similar language, your rights would not be affected by this lawsuit):

"The purchasers are to have the perpetual privilege of foot travel to and from the said property to the tide flats on the beach, for recreational use; this easement to apply to foot path or foot paths over the reserve on the said plat ..."

WILL THIS CASE AFFECT BGPOPR'S EASEMENT RIGHTS?

No. The BGPOPR easement, which was granted to BGPOPR by David Garfield Bell in 1962, was the subject of a previous lawsuit that ended in 2007 (Whatcom County Superior Court, cause no. 05-2-02891-5). The beach path that you use today is the path that resulted from that lawsuit. The BGPOPR easement and path will not be affected by this lawsuit.

WHAT ARE THE POSSIBLE OUTCOMES?

If Plaintiffs win on this claim, the path could be re-routed. If Plaintiffs lose, any re-routing of the path would remain at the option of Defendants, subject to limitations imposed by the court in 2007. Either way, you will continue to have access over Defendants' property to walk to the beach.

WHAT ARE YOUR OPTIONS?

If you do not want to be legally bound by the ruling in this matter, you must send a letter requesting excision from the class to Mr. Duncan's lawyer: Jeff Trudney, Lighthouse Law Group PLLC, 1100 Dexter Avenue N. #100, Seattle, WA 98109. Your letter must be postmarked no later than July 1, 2012.

Exhibit B to Order Granting Defendants' Motion for