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COURT OF APPEALS  
DIVISION II

No. 39273-9-II

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STATE OF WASHINGTON

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COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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SUZANNE VAUGHAN,

Respondent,

v.

STILES and POKI MOORE,

Appellants.

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APPELLANT'S BRIEF

---

Allen T. Miller  
The Law Offices of Allen T. Miller, PLLC  
1801 West bay Dr. NW, Suite 205  
Olympia, WA 98502  
(360) 754-9156  
Attorney for Appellant

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## I. INTRODUCTION

This case involves the use of a 30 feet by 15 feet easement area for maneuvering and parking of motor vehicles between neighbors. The easement was established pursuant to a 1985 Easement Agreement recorded under Thurston County Auditors File No. 8507050010. This easement was established between the predecessors in interest of the parties to allow for access and maneuverability from two garages that no longer exist and to allow for access over a driveway to and from Sunset Beach Drive NW in Thurston County.

In 2008, Respondent, Suzanne Vaughan (Vaughan) filed a Complaint against the Appellants, Stiles and Poki Moore (Moore), claiming that because of the Moores' use of a small portion of the easement area for parking, she had no maneuverability and limited ingress and egress to her property. The Moores have been using this portion of the easement driveway for the parking of trailers, boats, and cars since 1987 and claim the right to continue this use on their own property. Ms. Vaughan, purchased her property in 2000, and remodeled the two garages into living space and thereby decreased the size of the driveway, and reduced her access to the easement.

The issues went to trial in Thurston County Superior Court on February 2, 2009. The Superior Court entered Findings of Fact and Conclusions of Law in favor of Ms. Vaughan and a Permanent Injunction/Judgment for Attorney's Fees & Costs on May 1, 2009. This appeal followed on May 13, 2009.

After the Notice of Appeal was filed, the Respondent brought a Show Cause for Contempt on July 17, 2009. The Superior Court entered an Order on Show Cause re Contempt/Judgment on August 21, 2009. A second appeal followed on September 1, 2009.

## **II. ASSIGNMENTS OF ERROR**

1. The Superior Court erred by entering Finding of Fact 4. (CP 117-118).
2. The Superior Court erred by failing to enter the Defendants' Proposed Findings of Fact and Conclusions of Law. (CP 96-102).
3. The Superior Court erred by entering the Permanent Injunction/Judgment for Attorney's Fees & Costs on May 1, 2009 in favor of the Respondent. (CP 120-122).

4. The Superior Court erred by entering the Order on Show Cause re Contempt/Judgment on August 21, 2009 in favor of the Respondent. (CP 156-158).

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

1. Did Ms. Vaughan who remodeled her garages into living space and reduced her need for the easement for maneuvering and parking of motor vehicles narrow the scope of the easement? (Assignments of Error 1, 2, 3).

2. Did the Moores use of a portion of the easement for over ten years extinguish that portion of the easement under adverse possession? (Assignments of Error 1, 2, 3).

3. Were the Moores in contempt of the May 1, 2009 Permanent Injunction/Judgment when they parked their car on their own property and left Ms. Vaughan with enough maneuvering room to access the easement area from the Vaughan property? (Assignments of Error 4).

### **IV. STATEMENT OF THE CASE**

In the 1940s, Mr. and Mrs. Montgomery, the predecessors of the Respondent, Ms. Vaughan, built their home at 3808 Sunset Beach Drive and

created a turnaround area to facilitate access to their two garages. The Appellant Moore's predecessors, Mr. and Mrs. Walbridge, also built their home during this time at 3806 Sunset Beach Drive on a flag-shaped lot. A land survey found that the Montgomery's turnaround was actually on the Walbridge property, and the neighbors agreed to share the portion of the gravel drive and eventually shared in the cost of having it paved with asphalt. The layout of the adjoining properties is shown on the attached survey. (CP 23). (Appendix 1).

When Mrs. Walbridge decided to sell her home in the mid 1980's, she, along with the Montgomerys, created a written easement agreement for (1) the use and maintenance of the common driveway they were already sharing, (2) the 15' by 30' area for maneuvering and parking vehicles and (3) an easement for the eave overhang of one of the garages of 3808 Sunset Beach. This document was created and recorded in 1985. (CP 26-30). (Appendix 2).

The Moores bought the 3806 Sunset Beach Drive property in July 1987 from the Walbridges by Statutory Warranty Deed. (Ex.14). (CP 25-26). (Appendix 3). The Montgomerys sold 3808 Sunset Beach Drive to Elisabeth Frey in October 1987. (RP 128). Ms. Frey used the easement area to park a camper and store a sail boat in the northwest corner, not using it as a turnaround. (RP 129-130). The property was then sold in 1994 to Mr. and Mrs. Anderson, who used the

turnaround for a short time but discontinued its use and used the Moore's driveway, with the Moore's permission, as a turnaround. (RP 125-126). The Moore's have parked in the northeast corner of the easement area since 1987. (RP 132-134).

When Ms. Vaughan bought the 3808 property in 2000, she converted both of the original two garages into living space, reducing the width of the driveway and turnaround and built a new garage closer to Sunset Beach Drive. (CP 144-145). During the Frey, Anderson, and Vaughan ownerships the Moores have used the extreme northeast portion of the easement for the parking of trailers, boats, and cars. Ex. 11. The Moores have used this corner of the driveway for more than twenty years without interfering with the use of the easement by the various owners of 3808 Sunset Beach Dr. (CP 102, RP 133). (Appendix 4).

Since purchasing the 3808 property, Ms. Vaughan has consistently used the Moore's 3806 driveway as a turnaround from her driveway and also as a direct access to the easement with the Moore's permission. The entire 30-foot side of the easement abuts her driveway and provides her with the same access that all the previous owners enjoyed. The 15-foot side of the easement abuts the Moore's private driveway over which there exists no easement. (CP 102).

Ms. Vaughan's action to build the new garage and convert the old garages into living space has reduced the easement turnaround area. (CP 57) (Appendix 5). The Moores added an additional six feet of pavement to help counteract this, to Ms. Vaughan's benefit. (RP 127).

On April 30, 2008, Suzanne Vaughan filed a Summons and Complaint against Stiles and Poki Moore. On February 2, 2009, a trial in this matter was held in Thurston County Superior Court. On May 1, 2009, the Superior Court entered a Permanent Injunction/Judgment for Attorney's Fees & Costs. On July 17, 2009, the Respondent brought a Show Cause for Contempt. On August 21, 2009, the Superior Court entered an Order on Show Cause re Contempt/Judgment.

## **V. ARGUMENT AND AUTHORITY**

### **A. THE SUPERIOR COURT ERRED BY ENTERING A PERMANENT INJUNCTION/JUDGMENT FOR ATTORNEY'S FEES & COSTS ON MAY 1, 2009 IN FAVOR OF THE RESPONDENT.**

#### **Standard of Review**

The Court reviews findings of fact and conclusions of law to determine whether substantial evidence supports the trial court's findings, and, if so, whether

the findings support the conclusions of law which are reviewed de novo. *Scott v. Trans-System, Inc.*, 148 Wn.2d 701, 707-08, 64 P.3d 1 (2003).

As owners, the Moores have the right to continue the 21 year use of the small portion of the easement for parking since it does not materially interfere with the Respondent's use.

Ms. Vaughan asked that the use of the easement by the Moores be ceased so that she and her guests can have ready access to the easement. The ready access she refers to crosses the Moore's private driveway, which her and her guests have no right to cross outside the exclusive easement, except with the Moore's permission. The Moores have the right to continue their use of the small portion of the easement for parking which is consistent with their use of the property for twenty-one years.

The servient owner of an estate is entitled to use an easement for any purpose that does not interfere with the proper enjoyment of the easement. As the owner of 3806 Sunset Beach, the servient estate, the Moores have the right to use the driveway and turnaround which are on the Moore's property, provided the use does not materially interfere with Vaughan's use. *Thompson v. Smith*, 59 Wn.2d 397, 407-08, 367 P.2d 798 (1962).

The Supreme Court has held that the characterization of an easement as exclusive or nonexclusive is largely irrelevant. The owner of the servient estate has the right to use the driveway easement, provided the use does not materially interfere with the use by the owner of the dominant estate. This right exists whether one characterizes the easement as exclusive or nonexclusive.

The scope of a prescriptive easement is determined by the nature of use during the prescriptive period. Scope of an easement is generally a question of fact. But where the facts are undisputed, it is a question of law. *Mahon v. Haas*, 2 Wn.App. 560, 563, 468 P.2d 713 (1970); *Broadacres, Inc. v. Nelsen*, 21 Wn.App 11, 15, 583 P.2d 651 (1978); *Lingvall*, 97 Wn.App at 250.

An easement will be construed to accommodate the reasonable use of the dominant estate, not the servient estate. However, the servient owner retains the use of an easement so long as that use does not materially interfere with the dominant estate. *Logan v. Brodrick*, 29 Wn.App. 796, 800, 631 P.2d 429 (1981); *Veach v. Culp*, 92 Wn.2d 570, 575, 599 P.2d 526 (1979).

The primary dispute between Ms. Vaughan and the Moores over the driveway easement centers on whether and to what extent the Moores, as the

owner of the servient estate, may use a small portion of that easement for parking a car.

The court should conclude that the Moores, as owners of the servient estate, have the right to use the portion of the driveway easement, provided the use does not materially interfere with the use by Ms. Vaughan, the dominant estate. The Moores' right exists whether one characterizes the easement as exclusive or nonexclusive. However, the servient owner retains the use of an easement so long as that use does not materially interfere with the dominant estate. *Harris v. Ski Park Farms*, Wn.App. 727, 739, 844 P.2d 1006 (1993).

Here, the evidence showed that from 1987 to the present, the Moores have used the small area of the easement turnaround for parking. A review of the authorities indicates that where an *exclusive* easement grants the dominant estate *exclusive use for all purposes*, the easement more closely resembles a fee interest and is generally disfavored by the courts. 7 Thompson on *Real Property* § 60.04 (b)(2) (David A. Thompson ed., 2d ed., 2006)(emphasis added). However, even if the conveyance is an easement, the servient owner retains the right to use the land in ways not inconsistent with the uses granted in the easement. *Walton v. Capital Land*, 252 Va. 324, 326-27, 477 S.E. 2d 499 (1996).

There is no authority that the owner of the servient estate is stripped of the right to use the easement for purposes not inconsistent with the dominant estate's use. The servient estate owns the property and has a right to use the easement for any purpose, as long as it does not materially interfere with the dominant estate's use. *Brown v. Voss*, 105 Wn.2d 366, 715 P.2d 514 (1986). The easement should not be construed so as to extinguish the right of the Moores to use it, provided the use does not materially interfere with the use by Vaughan. It is Ms. Vaughan's actions to remodel her old garages into living space that materially interfered with the width of her driveway and her access to the maneuvering aspects of the turnaround.

**B. THE MOORES HAVE ADVERSELY POSSESSED THE SMALL PORTION OF THE EASEMENT AREA FOR PARKING AFTER TWENTY-ONE YEARS OF USE.**

The Moores consistent use of the portion of the easement area for parking has extinguished the easement on that portion. One may extinguish an easement by adverse possession if one's use is exclusive, open and notorious, actual and uninterrupted, and hostile and adverse to the owner for at least 10 years. *Chaplin v. Sanders*, 100 Wn.2d 853, 857, 676 P.2d 431 (1984).

Adverse possession is a mixed question of law and fact: whether the essential facts exist is a question of fact, but whether those facts constitute adverse possession is a question of law. *Chaplin v. Sanders*, 100 Wn.2d 853, 676 P.2d 431 (1984).

A party seeking to establish adverse possession must prove that for a period of at least ten years their possession of the property was (1) open and notorious; (2) actual and uninterrupted; (3) hostile; and (4) exclusive. *ITT Rayonier, Inc. v. Bell*, 112 Wn.2d 754, 757, 774 P.2d 6 (1989).

The open and notorious element may be shown by proof (1) that the title owner had actual notice of the adverse use throughout the statutory period; or (2) that the claimant used the property such that any reasonable person would have thought he owned it. *Chaplin*, 100 Wn.2d at 863; *Anderson v. Hudak*, 80 Wn.App. 398, 404-05, 907 P.2d 305 (1995).

To establish actual and uninterrupted use throughout the statutory period, a claimant need only demonstrate use of the same character that a true owner might make of the property considering its nature and location.

To prove hostility, there must be evidence that the party claiming adverse possession treated the property as would a true owner throughout the statutory

period. *ITT Rayonier*, 112 Wn.2d at 761. The party's subjective beliefs are not relevant but permission, express or implied, from the true owner will negate this element. *ITT Rayonier*, 112 Wn.2d at 761. *Heriot v. Smith*, 35 Wn.App. 496, 504, 668 P.2d 589 (1983).

Finally, proof of exclusive possession does not require absolute exclusivity of all others if the claimant's use is similar to that of a true owner. *ITT Rayonier*, 112 Wn.2d at 759; *Bryant*, 86 WnApp. At 216-17. The Moores use of the small portion of the easement for twenty-one years has extinguished the Plaintiff's rights to use all of it as a turnaround.

**C. THE SUPERIOR COURT ERRED BY ORDER ON SHOW CAUSE RE CONTEMPT/JUDGMENT ON AUGUST 21, 2009 IN FAVOR OF THE RESPONDENT.**

After the trial court's decision in this matter on February 2, 2009, the Moores did not block Respondent's vehicles or intentionally prevent her from maneuvering and parking her vehicles or accessing the 30 foot by 15 foot portion of the Moores' paved driveway and the property that is subject to the easement agreement, and the Moores did not violate the Permanent Injunction entered by

the Court on May 1, 2009. The Moores parked their car on the sloping part of their driveway beside the well house. (CP 153- 156). (Appendix 6).

The Appellants were not in contempt of the Court's Permanent Injunction.

RCW 7.21.010 defines contempt to mean intentional:

- (a) Disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to impair its authority, or to interrupt the due course of a trial or other judicial proceedings;
- (b) Disobedience of any lawful judgment, decree, order, or process of the court;
- (c) Refusal as a witness to appear, be sworn, or, without lawful authority, to answer a question; and
- (d) Refusal, without lawful authority, to produce a record, document, or other object.

None of the parts of this statute apply in this case. The Moores were parking their car on their property, on the narrow slope beside the well house which is in compliance with the court's order. They left Ms. Vaughan more than adequate maneuverability to access the easement area.

A judge may impose a sanction for contempt of court under RCW 7.21.020. Sanctions for civil contempt are remedial under RCW 7.21.030, i.e., intended to coerce a party's compliance with a judgment or order while at the same time permitting the party to avoid the sanctions by doing something to purge

the contempt. RCW 7.21.030; See *In RE Guardianship of Wells*, 150 Wn.App 491, 208 P.3d 1126 (2008). Where a remedial sanction has been imposed, the contemnor effectively carries the keys of his prison in his own pocket. *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 828, 114 S.Ct. 2552, 129 L.Ed.2d 642 (1994) (quoting *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 442, 31 S.Ct. 492, 55 L.Ed. 797 (1911)).

The court needed to provide the Moores with an opportunity to purge the contempt; otherwise imposing a sanction is punitive in nature. See *State v. Heiner*, 29 Wash.App. 193, 197, 627 P.2d 983 (1981); see also RCW 7.21.010(2) (defining “punitive sanction” as “a sanction imposed to punish a past contempt of court for the purpose of upholding the authority of the court”). Nor did the court follow the procedures specified for punitive contempt sanctions in RCW 7.21.040. Because the Moores had no opportunity to purge the contempt, the imposition of fees must be deemed a punitive sanction for contempt of court. *In re Dependency of A.K.*, 162 Wn.2d 632, 645-46, 174 P.3d 11 (2007); *In re Residence of Mowery*, 141 Wn.App. 263, 275, 169 P.3d 835 (2007).

The imposition of \$2,000.00 in attorney’s fees was an unreasonable sanction. The Moores purged any contempt and no sanction was warranted.

## VI. CONCLUSION

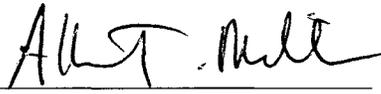
The Moores have the right to continue to park in the area of the easement they have been using for twenty-two years because (1) the use does not materially interfere with the easement or (2) the Moores use since 1987 has extinguished that portion of the Vaughan easement by adverse possession. The Moores have granted Ms. Vaughan permission to maintain the side of her garage subject to the garage eave easement.

The Appellants purged the contempt, and therefore the court should have denied the Respondent's Motion for Attorney's Fees Contempt/Judgment.

The Court of Appeals should reverse the Permanent Injunction/Judgment for Attorney's Fees & Costs entered in Thurston County Superior Court on May 1, 2009.

The Court of Appeals should reverse the Order on Show Cause re Contempt/Judgment entered in Thurston County Superior Court on August 21, 2009.

DATED this 12<sup>th</sup> day of February, 2010.

  
Allen T. Miller, WSBA # 12936

**APPENDIX**

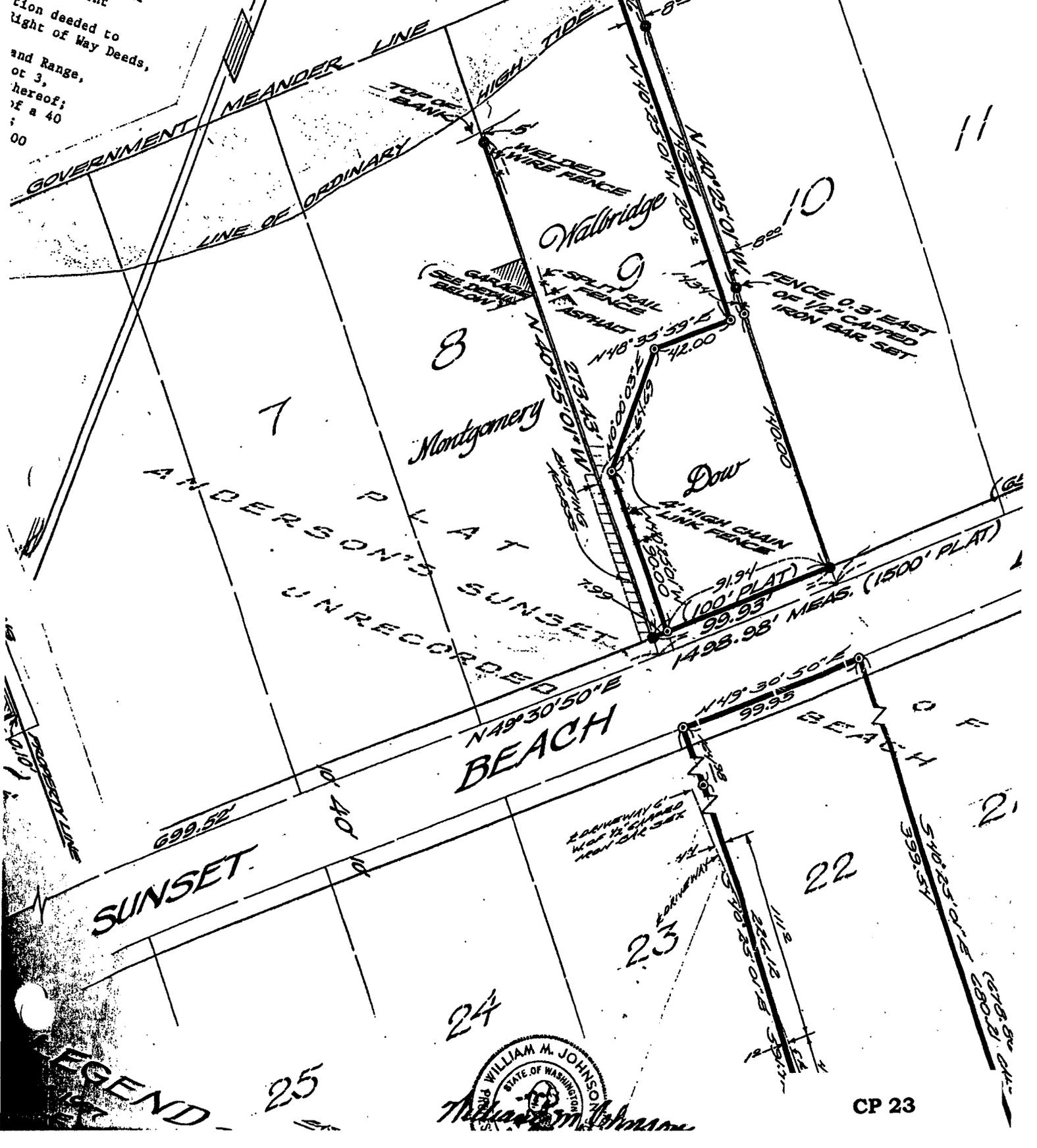
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**APPENDIX.....1**

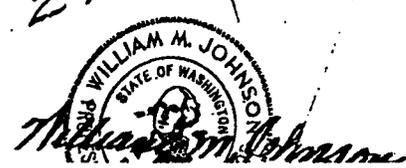
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**APPENDIX.....2**

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*Justice Taylor*

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EASEMENT AGREEMENT

THIS AGREEMENT, made and executed to be effective the 5<sup>th</sup> day of July, 1985, by and among SUE H. WALBRIDGE, a widow, and L. R. MONTGOMERY and MARJORIE V. MONTGOMERY, husband and wife, WITNESSETH:

*S.H.W.  
M.V.M.  
L.R.M.*

For and in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. Ownership: The parties hereto each own certain adjacent parcels of real property situated in Thurston County, State of Washington. The respective ownerships and parcels owned are as follows:

A. Sue H. Walbridge is the owner of certain real property in Thurston County described as follows:

Two portions of Government Lot three (3), in Section thirty-two (32), Township nineteen (19) North, Range Two (2) West, W.M., more particularly described as follows:

Beginning at a point on the East line of said Lot 3, South 0°19'29" West 362.40 feet from the Northeast corner thereof; running thence South 48°23'27.3" West along the North line of a 40-foot road 657.51 feet to the initial point of this description; thence South 48°23'27.3" West along said North line of road 100 feet; thence North 41°38'42" West 348.74 feet, more or less, to the Government Meander line; thence North 47°10'09" East along said Meander line 100.02 feet more or less to a point North 41°38'42" West from said initial point; thence South 41°38'42" East 350.88 feet, more or less, to the said initial point. (Being Tract 9 of Anderson's Sunset Beach Addition, an unrecorded plat) and

Beginning at a point on the East line of said Lot 3, South 0°19'29" West 416.32 feet from the Northeast corner thereof; running thence South 48°23'27.3" West along the South line of a 40-foot road 622.37 feet to the initial point of this description; thence South 48°23'27.3" West along said South line of road 100 feet; thence South 41°38'42" East 591.42 feet, more or less, to the South line of said Government Lot 3; thence North 89°58'29" East along said lot line 133.77 feet, more or less to a point South 41°38'42" East from said initial point; thence North 41°38'42" West 678.86 feet, more or less, to the said initial point. (Being Tract 22 of Anderson's Sunset Addition, an unrecorded plat.)

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Professional Arts Bldg, Suite 1  
Olympia, WA 98501

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A portion of Government Lot 3, Section 32, Township 19 North, Range 2 West, W.M., described as follows: Beginning at a point on the East line of said Lot 3, South 0°19'29" West 362.40 feet from the Northeast corner thereof; running thence South 48°23'27.3" West along the North line of a 40 foot road, established prior to April 28, 1949, a distance of 657.51 feet to the initial point of this description; thence South 48°23'27.3" West along said North line of road, 92 feet; thence North 41°38'42" West 100 feet; thence North 02°34'18" East 64.600 feet; thence North 48°23'29" East 46.949 feet; thence South 41°38'42" East 146.327 feet to the initial point.

~~EXCEPTING~~ portion ~~deeded~~ to Thurston County for road by Deed recorded in Volume 5 of Right of Way Deeds, page 63, under Auditor's File No. 454226, records of said County.

TOGETHER WITH a walkway easement running with the above-described property only over a portion of Government Lot 3, Section 32, Township 19 North, Range 2 West, W.M., described as follows: Beginning at a point on the East line of said Lot 3, South 0°19'29" West 362.40 feet from the Northeast corner thereof; running thence South 48°23'27.3" West along the North line of a 40 foot road, established prior to April 28, 1949, a distance of 657.51 feet; thence North 41°38'42.0" West 146.327 feet to the initial point of beginning of this description; thence North 41°38'42.0" West to the Government meander line; thence South 47°10'09" West along said Government meander line a distance of 6 feet; thence South 41°38'42" East to a point South 48°23'29" West of the point of beginning; thence North 48°23'29" East to the point of beginning. AND over all bench Southeasterly of the Government meander line and running ninety-four feet in a Southwesterly direction.

Said parcel will hereinafter be referred to, for convenience, as "Parcel A".

B. L. R. Montgomery and Marjorie V. Montgomery are the owners of certain real property in Thurston County, Washington, described as follows:

Part of Government Lot 3 in Section 32, Township 19 North, Range 2 West, W.M., and more particularly described as follows:

Beginning at a point on the East line of said Lot 3 South 0°19'29" West 362.40 feet from the Northeast corner thereof; running thence South 48°23'27.3" West along the North line of a 40-foot

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road 757.51 feet to the initial point of this description; thence South 48°23'27.3" West along said North line of road 100 feet; thence North 41°38'42" West 346.60 feet more or less, to the Government meander line; thence North 47°10'09" East along said meander line 100.02 feet, more or less, to a point North 41°38'42" West from said initial point; thence South 41°38'42" East 348.74 feet, more or less to said initial point; being Tract 6 of an unrecorded plat of Anderson's Sunset Beach Addition, situated in Thurston County, Washington.

Said parcel will hereafter be referred to, for convenience, as "Parcel B".

2. Existing Driveway and Garage. There exists on Parcels A and B a paved driveway and parking area extending from the road known as Sunset Beach Drive at the eastermost corner of Parcel B and running in a northwesterly direction along the northeast border of said parcel approximately 190 feet to a garage located on Parcel B, the northeast wall of said garage being located less than one foot from said northeast border of Parcel B. The driveway also leads to a connecting driveway from parcel A, said parcel A being adjacent to Parcel B along the above-mentioned northeast border of Parcel B.

3. Easements Granted. For the purpose of providing ingress to and egress from Parcel A, L. R. Montgomery and Marjorie V. Montgomery, husband and wife, do hereby grant to Sue H. Walbridge a perpetual non-exclusive easement over and across the existing paved driveway on Parcel B which is mentioned above in paragraph "2". Said easement shall extend over said driveway beginning at the point at which said driveway meets the road known as Sunset Beach Drive and running approximately 115 feet in a northwesterly direction to a point where said driveway is intersected by a connecting driveway from Parcel A.

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For the sole purpose of providing space for the maneuvering and parking of motor vehicles, Sue H. Walbridge does hereby grant to L. R. Montgomery and Marjorie V. Montgomery, husband and wife, a perpetual exclusive easement over and across a certain portion of the paved driveway and parking area which is mentioned in paragraph "2", said portion being described as follows:

Beginning at a point on the East line of Government Lot three (3), in Section thirty-two (32), Township nineteen (19) North, Range two (2) West, W.M., South 0°19'29" West 362.40 feet from the Northeast corner thereof; thence running thence South 48°23'27.3" West along the North line of a 40-foot road 757.51 feet; thence North 41°38'42" West approximately 185 feet, more or less, to a point along said line, which is approximately 5 feet Southeast of the easternmost corner of the garage located on Parcel B (said Parcel B being Tract 8 of Anderson's Sunset Beach Addition, an unrecorded plat which borders Tract 9 of said unrecorded plat to the West), said point being the initial point of this description; thence North 47°10'09" East approximately 15 feet to the edge of the presently existing paved parking area; thence South 41°38'42" East approximately 30 feet, more or less; thence South 47°10'09" West approximately 15 feet; thence North 41°38'42" West, to the said initial point.

Sue H. Walbridge does also hereby grant to L. R. Montgomery and Marjorie V. Montgomery, husband and wife, an easement over that portion of Parcel A which is directly beneath the present one-foot eave overhang of the present garage on Parcel B. Said garage borders approximately 20 feet of the boundary line between Parcel A and Parcel B, and is located approximately 190 feet North 41°38'42" West from where said boundary line intersects the North line of a 40-foot road known as Sunset Beach Drive.

4. Binding Effect of Agreement. This Agreement shall bind the parties hereto, their heirs, successors and assigns, and the covenants herein contained shall be construed as covenants running with the land.

8597050010

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective the day and year first above written.

L. R. Montgomery  
L. R. Montgomery

Marjorie V. Montgomery  
Marjorie V. Montgomery

Sue H. Walbridge  
Sue H. Walbridge

STATE OF WASHINGTON )  
County of Thurston )

SS.

On this day personally appeared before me L. R. Montgomery and Marjorie V. Montgomery, husband and wife, to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 3<sup>rd</sup> day of June, 1985.

Paul A. Powers  
NOTARY PUBLIC in and for the State of Washington, residing at Olympia

STATE OF WASHINGTON )  
County of Thurston )

SS.

On this day personally appeared before me Sue H. Walbridge, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that she signed the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 28<sup>th</sup> day of June, 1985.

Paul A. Powers  
NOTARY PUBLIC in and for the State of Washington, residing at Olympia

**APPENDIX.....3**

**A-7**



THURSTON COUNTY TITLE CO.

55698E

SAFECO TITLE INSURANCE COMPANY

THIS SPACE RESERVED FOR RECORDER'S USE

Filed for Record at Request of

NAME Stiles W. Moore  
ADDRESS 3806 Sunset Beach Dr NW  
CITY AND STATE Olympia, WA 98502

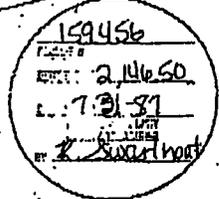
Vol: 1509 Page: 511  
File No: 8707310162

THURSTON COUNTY  
OLYMPIA, WA  
07/31/87 11:25 AM  
REQUEST OF: TTC  
Saw S. Reed, AUDITOR  
BY: SHANIN, DEPUTY  
\$6.00 ND

STATUTORY  
WARRANTY DEED

THE GRANTOR SUE H. WALBRIDGE, an unmarried woman, as her separate estate  
for and in consideration of TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION  
in hand paid, conveys and warrants to STILES W. MOORE and POKI K. MOORE, husband and wife  
the following described real estate, situated in the County of Thurston State of  
Washington:

SEE EXHIBIT "A" ATTACHED HERETO BY THIS REFERENCE MADE A PART HEREOF.



159456

Dated July 28, 19 87

Sue H. Walbridge  
Sue H. Walbridge

By \_\_\_\_\_  
By \_\_\_\_\_

STATE OF WASHINGTON  
COUNTY OF Thurston ) M.

On this day personally appeared before me  
Sue H. Walbridge  
to me known to be the individual described in and who  
executed the within and foregoing instrument, and acknowl-  
edged that she  
signed the same as JSK  
free and voluntary act and deed, for the uses and purposes  
therein mentioned.

GIVEN under my hand and official seal this  
30th day of July, 19 87

Joseph P. [Signature]  
Notary Public in and for the State of Washington, residing  
at Olympia

My Commission expires: \_\_\_\_\_



STATE OF WASHINGTON  
COUNTY OF \_\_\_\_\_ ) M.

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 volun-  
tary act and deed of said corporation, for the uses and pur-  
poses therein mentioned, and on oath stated that \_\_\_\_\_  
authorized to execute the said  
instrument and that the seal affixed to the corporate seal of  
said corporation.

Witness my hand and official seal hereto affixed the day and  
year first above written.  
Notary Public in and for the State of Washington, residing  
at \_\_\_\_\_

Exhibit "B"

## EXHIBIT "A"

That portion of Government Lot 3, Section 32, Township 19 North, Range 2 West, W.M., described as follows:

Beginning at a point on the East line of said Lot 3, South 0° 19' 29" West 362.40 feet from the Northeast corner thereof; running thence South 48° 23' 27.3" West along the North line of a 40-foot road 657.51 feet to the initial point of this description; thence South 48° 23' 27.3" West along said North line of road 100 feet; thence North 41° 38' 42" West 348.74 feet, more or less, to the Government Meander line; thence North 47° 10' 09" East along said Meander line 100.02 feet more or less to a point North 41° 38' 42" West from said initial point; thence South 41° 38' 42" East 330.88 feet, more or less, to the said initial point. EXCEPT that portion described as follows:

Beginning at a point on the East line of said Lot 3, South 0° 19' 29" West 362.40 feet from the Northeast corner thereof; running thence South 48° 23' 27.3" West along the North line of a 40-foot road established prior to April 28, 1949 a distance of 657.51 feet to the initial point of this description; thence South 48° 23' 27.3" West along said North line of road, 92 feet; thence North 41° 38' 42" West 100 feet; thence North 02° 34' 18" East 64.600 feet; thence North 48° 23' 29" East 46.949 feet; thence South 41° 38' 42" East 146.327 feet to the initial point.

In Thurston County, Washington.

## SUBJECT TO THE FOLLOWING:

An easement for walkway over the Northeastly 6 feet and over all beach Southeastly of the Government Meander line, as conveyed in Deed recorded under File No. 784725.

Easement for electric transmission and distribution line, etc., together with appurtenances, granted by instrument recorded under File No. 315376, to Puget Sound Power and Light Co. (affects this and other property.)

Water Right Agreement between F. K. Walbridge and Sue Hale Walbridge, husband and wife, and L. R. Montgomery and Marjorie V. Montgomery, husband and wife, recorded under File No. 1029313. Easement for water rights and use of well between the above named parties and also Franklin R. Walbridge, Jr. and Judith Ann Walbridge, husband and wife recorded under File No. 670636, making reference to the above described agreement, together with additional terms and conditions as contained therein. Modifications of said agreement have been recorded under respective File Numbers 793470 and 1029313.

Easement Agreement for joint use and maintenance of common driveway recorded under File No. 8507050010.

Water Easement and Maintenance Agreement dated July 14, 1987 recorded under File No. 87-7140024. (affects this and other property.)

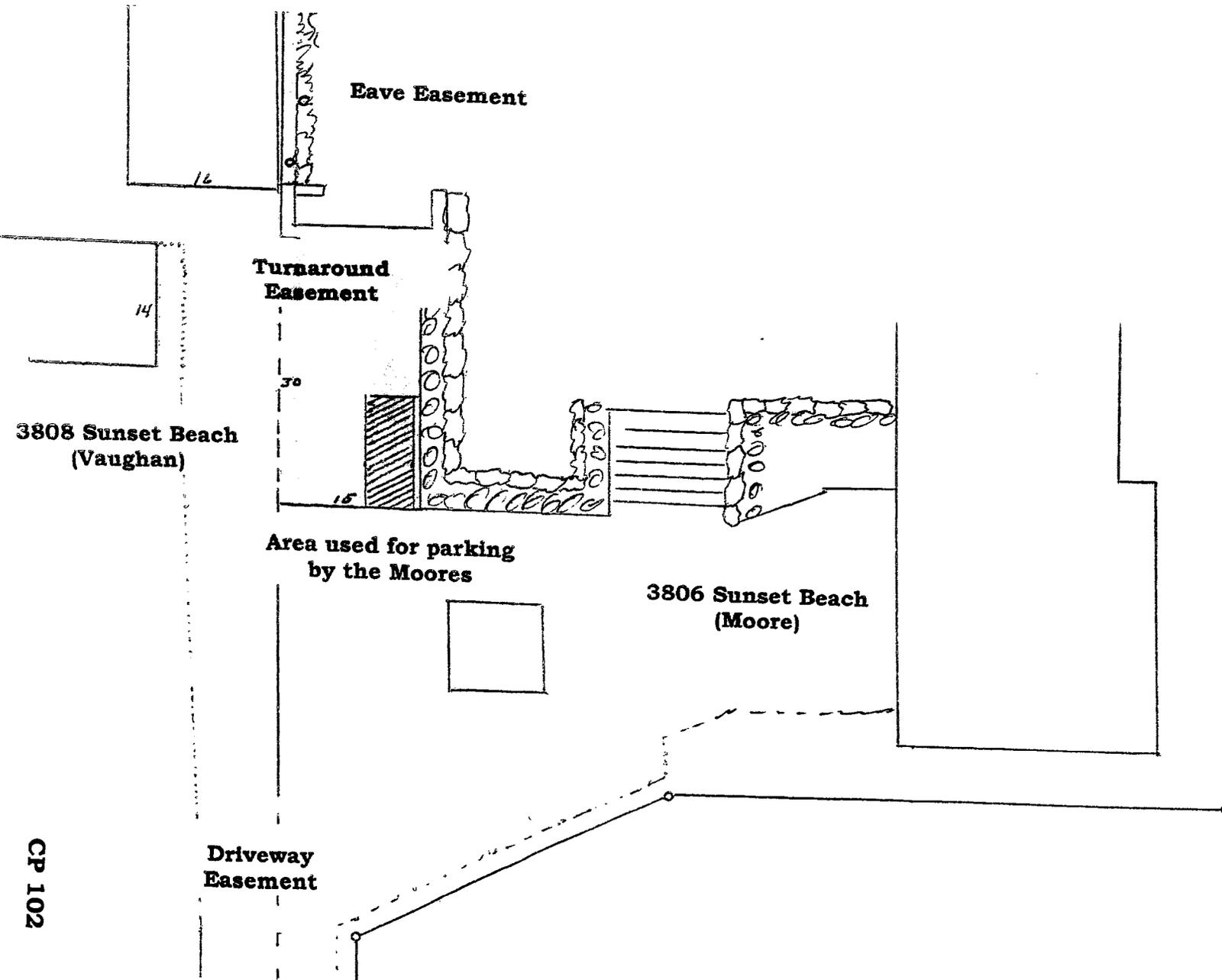
*Sue H. Walbridge*  
Sue H. Walbridge

Vol: 1509 Page: 512  
File No: 8707050010

Exhibit "B"

**APPENDIX.....4**

**A-9**



CP 102

**APPENDIX.....5**

**A-10**

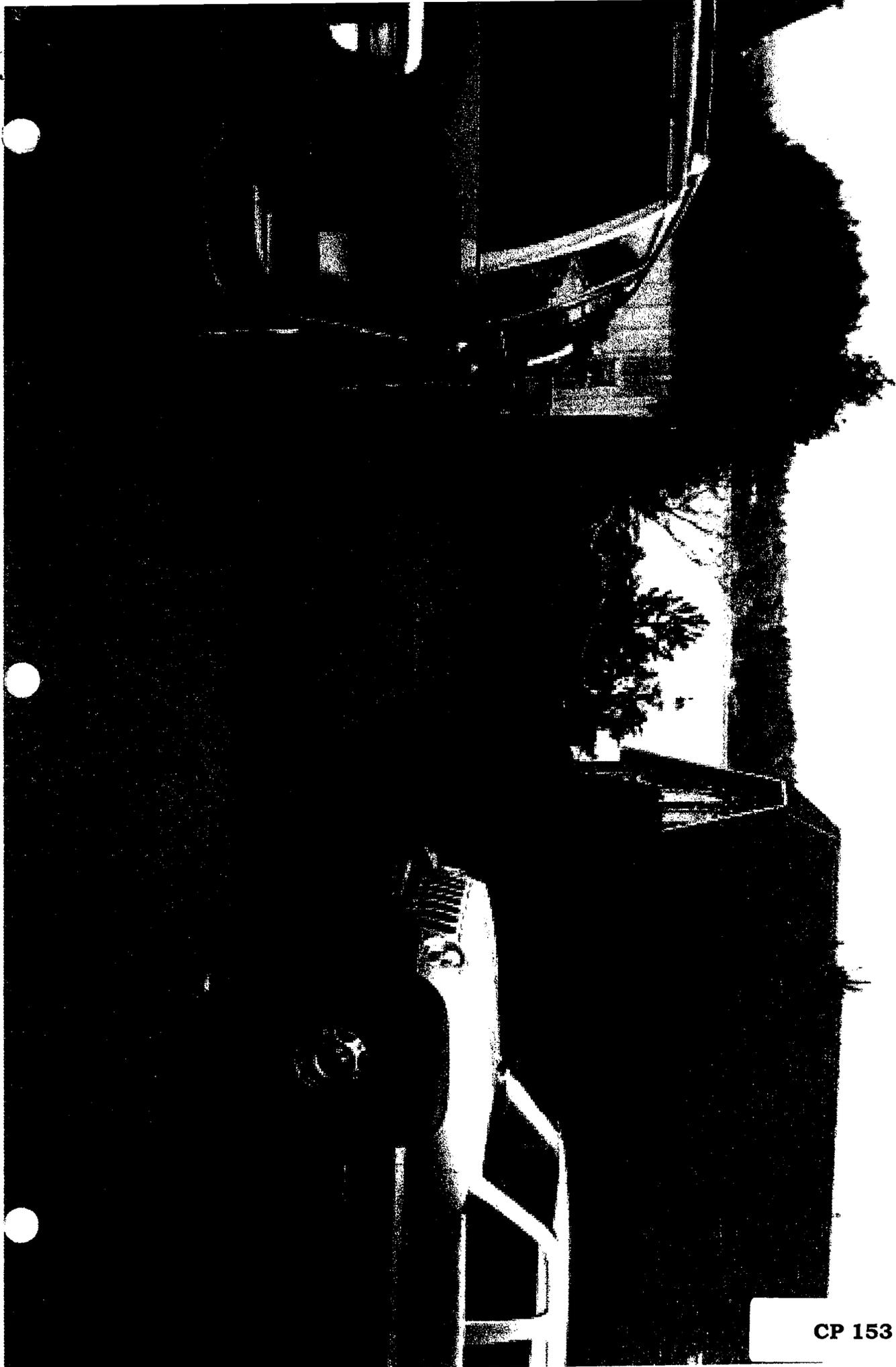
EXHIBIT A



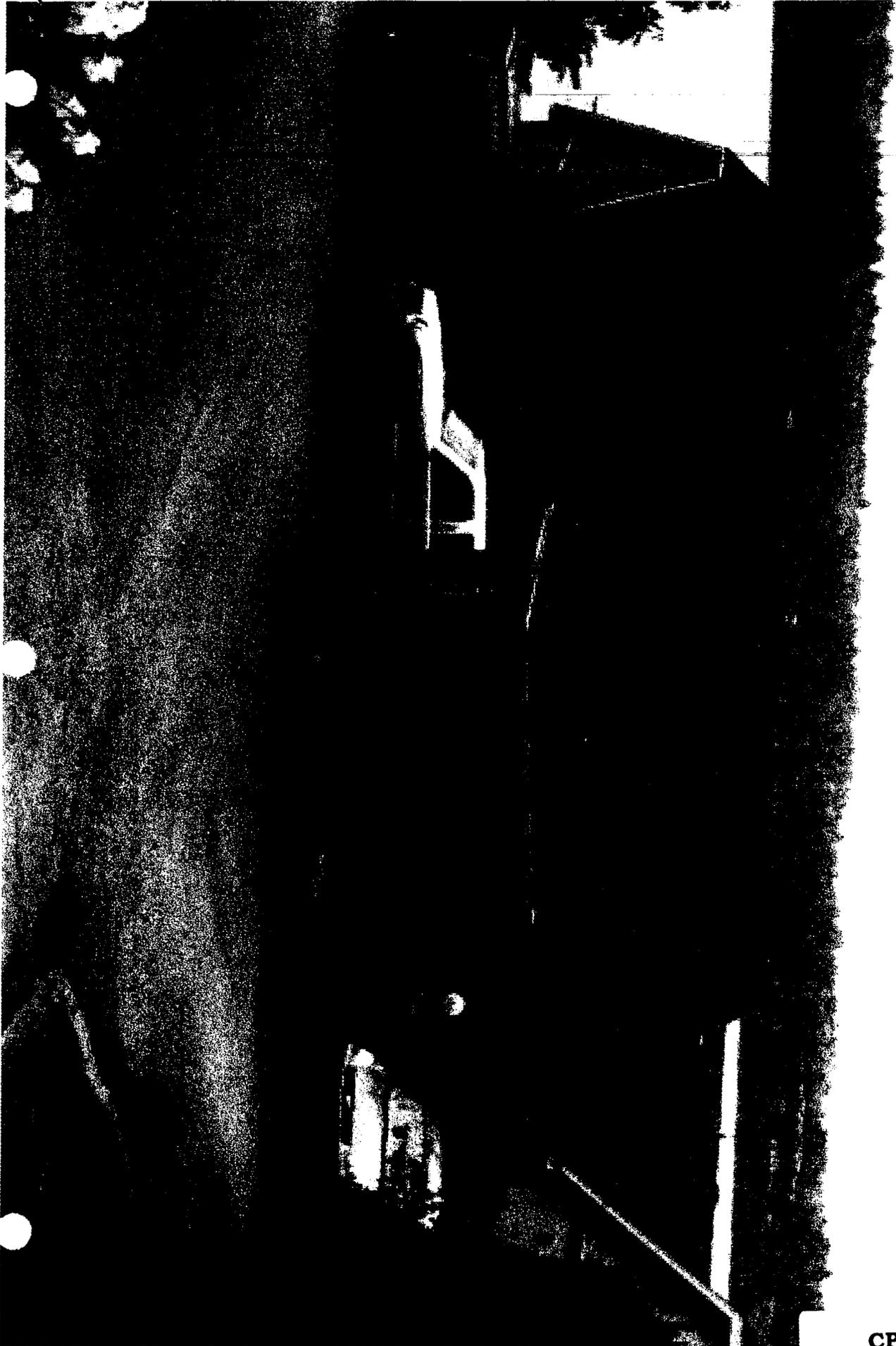
CP 57

**APPENDIX.....6**

**A-11**



CP 153



FILED  
COURT OF APPEALS  
DIVISION II

10 FEB 19 AM 11:40

STATE OF WASHINGTON

BY CM  
DEPUTY

No. 39273-9-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

SUZANNE VAUGHAN, )  
 ) DECLARATION OF SERVICE  
Respondent, )  
 )  
v. )  
 )  
STILES and POKI MOORE, )  
Appellants. )  
 )  
\_\_\_\_\_ )

Danielle Herrmann declares:

I am now, and at all times herein mentioned was a resident of the State of Washington, over the age of eighteen years and not a party to this action, and I am competent to be a witness herein.

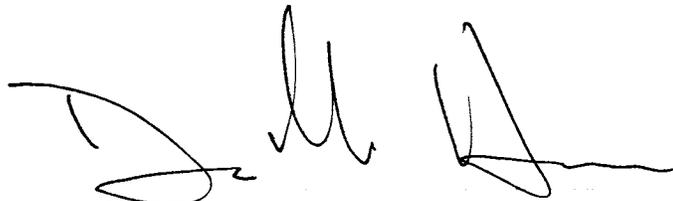
That on February 18, 2010, I caused a copy of the Appellant's Brief and this Declaration of Service to be served to David Ponzoha, Court Clerk for the Court of Appeals, Division II, 950 Broadway, Suite 300, Tacoma, WA 98402, and Martin D. Meyer, U.S. Bank Building,

Suite 12, 402 South Capitol Way, Olympia, WA 98501 via US Mail, Postage

Prepaid.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 18<sup>th</sup> day of February, 2010.

A handwritten signature in black ink, appearing to read 'Danielle Herrmann', with a stylized flourish at the end.

Danielle Herrmann  
Paralegal to Allen T. Miller  
The Law Offices of Allen T. Miller, PLLC  
1801 West Bay Dr. NW, Suite 205  
Olympia, WA 98502  
Phone: (360) 754-9156  
Fax: (360) 754-9472