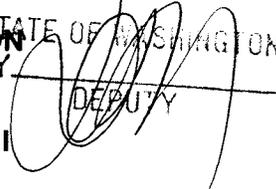


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COURT OF APPEALS
DIVISION II

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39509-6-II

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

STATE OF WASHINGTON
BY 
DEPUTY

JERRY RIDDELL and LILLIAN
RIDDELL, husband and wife,

Court of Appeals No. 39509-6-II

Appellants,

vs.

Mason County Superior Court No.
06-2-00463-2

ZACHARY M. MONTGOMERY
and SARAH A. MONTGOMERY,
husband and wife,

Respondents.

APPEAL FROM THE SUPERIOR COURT OF
THE STATE OF WASHINGTON
FOR MASON COUNTY
THE HONORABLE TONY SHELDON, JUDGE

BRIEF OF APPELLANTS

Don W. Taylor, WSBA #4134
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This is an appeal from the Superior Court of the State of Washington for Mason County, which on May 4, 2009 entered an Order Granting Montgomery's Motion for Summary Judgment. CP 36-39. The Order Granting Summary Judgment dismissed the Riddells' action to quiet title to the real estate described in the Complaint. The dismissal was based upon the doctrine of res judicata and quieted title in Montgomery. On May 8, 2009, Riddell served and filed a Notice of Appeal to this court. CP 29-35.

I.

PRELIMINARY STATEMENT

Appellants Jerry Riddell and Lillian Riddell will hereafter be referred to as "Riddell". Zachary M. Montgomery and Sarah A. Montgomery will hereafter be referred to as "Montgomery". Lisa Canham will hereafter be referred to as "Canham".

The real estate encompassed within the boundaries of Primary State Highway 21, also known as SR 106 in this action, will hereafter be referred to as "State Highway".

The real estate abutting upon the north boundary of the State Highway will hereafter be referred to as "tidelands". The real estate abutting upon the south boundary of the State Highway will hereafter be referred to as "Riddell Tract" for the real estate owned by Riddell

and "Montgomery/Canham Tract" for the real estate formerly owned by Canham and conveyed to Montgomery.

There is attached hereto three (3) appendices as follows:

- a. Appendix 1 is the Deed to Montgomery. CP 143.
- b. Appendix 2 is the Exhibit Map of the Riddell Tract and Canham Tract prior to the Riddell/Canham lawsuit. CP 75.
- c. Appendix 3 is the Exhibit Map of the Riddell Tract and the Canham Tract after the entry of Judgment in the Riddell/Canham lawsuit. CP 56.

II.

ASSIGNMENTS OF ERROR

1. Riddell assigns error to the entry by the Superior Court for Mason County of an Order Granting Summary Judgment, dismissing Riddell's action and quieting title to the tidelands in Montgomery. CP 36-39.

III.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

The issues pertaining to assignments of error are as follows:

1. Was the Superior Court correct in ruling as a matter of law Riddell had no right, title or interest in the tidelands and quieting title to the same in Montgomery? (In effect granting Montgomery's counterclaim).

Riddell contends that the answer to this issue is "no".

IV.

PROCEEDINGS BELOW

These proceedings commenced with the serving and filing of a Summons and Complaint to Quiet Title to the tidelands in Riddell. CP 145-148. Montgomery appeared in the action and served and filed their Answer and Counterclaim which they amended two times. CP 139-144, 133-138, and 127-132. Riddell followed the Montgomery pleadings with a reply essentially denying the affirmative allegations of the Montgomery pleadings. CP 125-126.

Montgomery contended that the claim of Riddell was barred by the doctrine of res judicata in that it should have been litigated in the earlier action brought by Riddell against Canham under Mason County Cause No.: 03-2-0630-4 wherein Riddell sought to quiet title by reason of adverse possession to a portion of the Canham/Montgomery tract lying south of the State Highway.

V.

FACTS

The exhibit map included as Appendix 2 is an illustration of the Riddell tract and the Canham/Montgomery tract which lay south of the State Highway. According to the Deeds, the westerly boundary of the Riddell tract was the west line of Government Lot 1 of Section 30, Township 22 North, Range 2 West, W.M. The west line of the Canham/Montgomery tract was the west line of the East 150 feet of Government Lot 1, per Deed, and is shown on said map. Appendix 2.

Appendix 3 is a map which was prepared after the trial of Riddell v. Canham and the entry of the Judgment and Decree, Mason County Cause No. 03-2-630-4. It shows the change in the westerly boundary of the Canham Tract to reflect the adverse possession established by Riddell. The tract acquired by Riddell by adverse possession, was the portion of the Canham/Montgomery Tract lying south of the State Highway. Riddell had installed his septic tank and drain field in the tract. The tract is described in the Judgment and Decree entered in Cause No. 03-2-630-4. CP 81-85.

Four tracts of land come into play in the Riddell/Canham action and the Riddell/Montgomery action. They are the Riddell Tract

and the Montgomery Tract. Both of these tracts lie southerly of the southerly boundary of the State Highway. There is the State Highway which is 60' in width on a northerly to southerly direction. Appx. 2 & 3, CP 75 and 56. The westerly and easterly boundaries of the State Highway tract are the westerly boundary and easterly boundary of Government Lot 1. There are the tidelands which abut upon the State Highway. Said tidelands do not abut upon the tracts of Riddell and Canham/Montgomery lying south of the State Highway. Said tidelands are neither contiguous to nor abut upon either the Riddell or Canham/Montgomery Tracts lying south of the State Highway. There is a strip of land 60' wide included between the southerly boundary of the tidelands, which is the northerly boundary of the State Highway and the southerly boundary of the State Highway which is the northerly boundary of the Riddell and Canham/Montgomery Tracts. Appx. 2 & 3, CP 75 & 56.

The State of Washington installed on the north boundary of the highway to protect the highway from the waters of Hood Canal, a rock seawall. Riddell had noticed, from time to time, that the waves would wash some of the rocks out of the seawall. When Riddell encountered these rocks on the beach, he would move them back into the seawall. Riddell Deposition page 43, Exhibit 6 to Declaration

of Christina Mehling in Support of Motion for Summary Judgment.

CP 111.

The description of Canham to Montgomery deed is in part as follows:

“The west 100 feet of the east 1,150 feet of Lot 2 of Section 19 and the west 100 feet of the east 1,150 feet of Lot 1 of Section 30, Township 22 North, Range 2 West, W.M., in Mason County, Washington.

EXCEPTING THEREFROM Primary State Highway No. 21

TOGETHER WITH all tidelands lying in front of, adjacent to and abutting on said property.

EXCEPTING THEREFROM that portion awarded to Jerry Riddell and Lillian Riddell, husband and wife in Judgment and Decree filed June 23, 2006 under Mason County Superior Court Cause No. 03-2-0630-4, described as follows:

That part of the west 100 feet of the east 1,150 feet of Government Lot 1 of Section 30, Township 22 North, Range 2 West, W.M., in Mason County, Washington, also known as Lots 22 and 23 of the unrecorded Plat of Navy Yard Highway Addition No. 1, described as follows:

BEGINNING at the southwest corner of said Government Lot 1; thence south 88° 34' 53" east along the south line thereof

170.05 feet to the east line of the west 170.00 feet of said Government Lot 1; thence north 0° 03' 36" east along said east line 976.42 feet to the TRUE POINT OF BEGINNING; thence south 89° 56' 18" east 59.40 feet; thence North 0° 03' 36" east 129.79 feet to the south margin of Primary State Highway No. 21; thence southwesterly along said margin 65.67 feet to a point that lies north 0° 03' 36" east of the TRUE POINT OF BEGINNING; thence south 0° 03' 36" west 102.50 feet to the TRUE POINT OF BEGINNING.

In Mason County, Washington.

EXCEPTING THEREFROM Primary State Highway No. 21."

The Deed further states, in part that it is subject to:

"Any question that may arise as to the location of the lateral boundaries of the tidelands or shorelands described herein."

Appx. 1, CP 143.

VI.

ARGUMENT

1. **Summary Judgment.** Summary judgment rulings are reviewed de novo. Summary judgment is appropriate if there is no genuine issue of material fact AND the moving party is entitled to judgment as a matter of law. CR 56(c). All facts and reasonable

inferences therefrom must be reviewed in the light most favorable to the non-moving party. Questions of law are reviewed de novo. Potter v. Washington State Patrol, 165 Wn.2d. 67, 78 (2008).

A motion for summary judgment is properly granted where there is no genuine issue as to **ANY** material point and . . . the moving party is entitled to a judgment as a matter of law. (Emphasis ours). All facts and reasonable inferences are viewed in the light most favorable to the non-moving party. Questions of fact may be determined on summary judgment as a matter of law where reasonable minds could reach but one conclusion. But, a court must deny summary judgment when a party raises a material fact dispute. Smith v. Safeco Insurance Co., 150 Wn.2d. 478, 78 P.3d. 1274 (2003) at pp. 485-486. Michak v. Transnation Title Insurance Company, 148 Wn.2d. 788, 64 P.3d. 22 at pp. 794-795 (2003) restates the earlier rule of the obligation of the appellate court in reviewing a summary judgment proceedings. The court further states at page 495 as follows:

“A court weighing a summary judgment motion thus places ‘the emphasis . . . upon facts’ and regards a fact as ‘an event, an occurrence, or something that exists in reality’.” Greenwood v. University of Puget Sound, Inc., 110 Wn.2d. 355 at 359, 753 P.2d. 517 (1988).

2. **SR 106, Primary State Highway 21 as a Boundary:**

RCW 47.04.040 provides that upon and after April 1, 1937, all rights-of-way of any primary state highway, together with all appurtenances thereto, the right or interest in or to which was, or is, in any county, road district, township and economical improvement district or other highway or road district or political subdivision of the State of Washington shall be and the same is hereby transferred to and vested in the State of Washington for the use in connection with such primary state highway under the Department of Transportation.

All public highways in the State of Washington which have been designated to be primary state highways or secondary state highways or classified as primary roads and which have been constructed and improved and maintained for a period of seven years prior to April 1, 1937 at the expense of the State shall operate to vest in the State of Washington all right, title and interest to the right-of-ways thereof, including the roadway and ditches and existing drainage facilities, together with all appurtenances thereto and no infirmities in the records of title to such public highways shall be construed to invalidate or vacate such public highways or to divest

the State of Washington of any right, title or interest in the right-of-way thereto.

Accordingly, the 60 foot strip of the State Highway is a tract of land lying between the Riddell Tract, the Canham/Montgomery Tract and the tidelands. The south boundary of the State Highway is the north boundary of the lands of Riddell and Canham/Montgomery Tracts. This is recognized in the description of the real estate conveyed to Montgomery by the words in the Deed stating:

“Excepting therefrom Primary State Highway No. 21”

The term “except” is generally meant to preclude the described property. Ray v. King County, 120 Wn.App. 564, 86 P.3d. 183 (2004) at page 589.

In Ray v. King County, the court in discussing an exception of a right-of-way, states in part as follows:

“Here, the deed excludes the right-of-way at issue in this case, another indication that a successor in interest to the Hilchkanums believed that the right-of-way previously conveyed to the railway was not part of the fee conveyed to Rays. For these reasons, we do not rely on expert opinion to decide the questions before us.”

Ray v. King County, supra at p. 588.

The tidelands are north of the north boundary of the State Highway and accordingly do not abut upon the Canham/Montgomery Tract.

The location of this north boundary of the State Highway and the line of ordinary high tide was not an issue in the 2003 case between Riddell and Canham. It is definitely an issue of fact in the present case.

3. **Boundary of Tidelands:** The boundary of second class tidelands runs from the line of ordinary high tide to the line of extreme low tide. RCW 29.105.060(18). This is the rule for lands acquired after statehood, November 11, 1889. For tidelands acquired before statehood, the seaward boundary is either the line of extreme low tide or the meander line, whichever is further seaward. The reason for the change is Article XVII, § 1 of Washington State Constitution, Declaration of State Ownership, which provides in part as follows:

“The State of Washington asserts its ownership in the beds and shores of all navigable waters in the State up to and including the line of ordinary high tide, in water where the tide ebbs and flows and up to and including the line of ordinary high water within the banks of all

navigable rivers and lakes. Provided, that this section shall not be construed so as to debar any person from asserting claim to vested rights in the courts of the State.”

Based on this language, the most seaward line of the tidelands was changed from either the line of low tide or the meander line, whichever was more seaward.

The Washington Courts have stated that the location of the lateral lines of tidelands is as follows:

“[1] First: In adjudicating the ownerships of tidelands between adjoining upland owners on a concave shore line, each upland owner is entitled to a proportionate share of the tidelands extending to the low water mark.

[2] Second: The course or courses of the boundaries of the upland properties should be disregarded, each upland owner being entitled to share ratably in the adjoining tidelands, having regard only to the amount of shore line which he owns, lying between the points where the lateral boundaries of his upland meet the shore line or the government meander line, whichever, in the particular case, constitutes the water boundary of his upland.

[3, 4] Third: Tidelands should be apportioned between the respective upland owners so that, as the whole length of the water boundary of the land within the concave shore, cove, or bay is to the whole length of the low water line so is each landowner’s proportion of the

shore line to each owner's share of tidelands along the line of low water. Tidelands may be divided between adjoining owners by erecting lines perpendicular to the general course of shore line only in cases where the shore line is straight, or substantially so."

Spath v. Larsen, 20 Wn. (2d) 500, 524-525, 148 P.2d. 834 (1944).

The location of each boundary of the tidelands is clearly an issue of fact. In Riddell v. Canham, there was no issue with respect to the location of the boundaries of tidelands. None of these properties fronted upon the tidelands.

In Riddell v. Montgomery, the location of the boundaries of the tidelands is an issue of fact. To determine the location, it requires the services and opinions of registered surveyors. In determining the location of the line of ordinary high tide, the surveyor will have to determine whether this boundary was obliterated or lost. This determination is required, because the State has constructed a seawall of rocks along the northerly boundary of the State Highway to protect the road and right-of-way from the water. The line of ordinary high tide, being the southerly boundary of the tidelands, may have been obliterated by the installation of the rock seawall.

The issue in Washington Nickel v. Martin, 13 Wn. App. 180, 534 P.2d 59 (1975) was whether or not defendants were occupying

plaintiffs' property. The resolution of this issue depended upon the determination of the location of the beginning point in a legal description, i.e., the east quarter corner of Section 34, Township 23 North, Range 17 East, W.M., Chelan County, Washington. The evidence as to the location of the corner was disputed. Plaintiff contended the corner is a "lost corner" while defendant contended it was an "obliterated corner". The court stated that the difference between an obliterated corner and a lost corner was as follows:

" . . . an obliterated corner may be defined as one of which no visible evidence remains of the work of the original surveyor in establishing it but of which the location may be shown by competent evidence. A lost corner is one which cannot be replaced by reference to any existing data or *sources of information*, although it is not necessary that evidence of its physical location may be seen or that one who has seen the marked corner by produced."

The court further stated that the applicable law is stated in Hale v. Ball, 70 Wash. 435, 126 Pac. 942 (1912) as follows:

"While presumptively quarter section corners are set upon a true line and at a point equidistant between section corners, it is well known that it is not always so. In fact, the carelessness and inattention marking the original government surveys in this part of the country have led the courts to say of their

own judicial knowledge that a survey is seldom correct. Koenig v. Whatcom Falls Mill Co., 67 Wash. 632, 122 Pac. 16; Hyde v. Phillips, 61 Wash. 314, 112 Pac. 257. When it is made to appear by competent evidence that a government monument does not accord with the survey or plat, the corner as established on the ground must control. . . .

. . . If no monument or marking of a quarter corner can be found, or the testimony of its location be overcome by better evidence, a court will decree the establishment of a corner under the rule prevailing in the land department of the United States; that is, at a point equidistant from the section corners. King v. Carmichael, 45 Wash. 127, 87 Pac. 1120; Koenig v. Whatcom Farms Mill Co., supra. But it does not follow that, if there be evidence of a corner which has been destroyed or obliterated by the lapse of time, a court will direct the establishment of a corner under the rule stated, or any other rule, for the law establishes an obliterated corner where the surveyor actually located it, and not where it ought to be located by a correct survey. Inmon v. Pearson, 47 Wash. 402, 92 Pac. 279.”

Based on the assumption of a “lost corner”, plaintiff’s surveyor argued that the defendants’ buildings were on plaintiff’s property. However, defendants’ surveyors testified that while they did not find the original corner post, they found the bearing trees referred to in the original survey notes and were able to reestablish the original corner. This

reestablished corner was located at a point different from the one plaintiff established by proportional distance.

The court stated that:

“[3] After considering the testimony of the experts, the trial court found that the plaintiff had failed to establish that the east quarter corner of Section 24 was a “lost corner” and went on to find that, by clear and convincing evidence, the defendants has established an “obliterated corner.” The findings of the trial court are supported by substantial evidence and will not be disturbed.”

In any event, there is an issue of fact as to whether the line of ordinary high tide as established by the government surveyors is either a lost monument or an obliterated monument. It requires survey evidence to resolve the same which the court will then make a decision after considering the same. There is an issue of fact warranting the reversal of the order of summary judgment entered in these proceedings.

4. **Statute of Frauds**: Since the line of ordinary high tide, the south boundary of the tidelands in fact does not abut upon or is continuous with anything but the State Highway, a review of the description of tidelands in the Canham/Montgomery Deed leads to the conclusion that it does not meet the Statute of Frauds.

In order to comply with the Statute of Frauds, a contract or deed for the conveyance of land must contain a description of the land sufficiently definite to locate it without recourse to oral testimony, or else it must contain a reference to another instrument which does contain a sufficient description. Howell v. Inland Empire Paper Co., 28 Wn. App. 494, 624 P.2d. 739 (1981) at page 495, citing Bigelow v. Mood, 56 Wn.2d 340, 341, 353 P.2d 429 (1960).

An agreement containing an inadequate legal description of the property to be conveyed was void and is not subject to reformation. Howell v. Inland Empire Paper Co., supra at page 495. See also Dickinson v. Kates, 132 Wn. App. 724, 133 P.3d 498 (2006) at pp. 733-734.

5. **Res Judicata**: The rules with respect to Res Judicata are set forth in Knuth v. Beneficial Wash., Inc., 107 Wn.App. 727, 31 P.3d 694 (2001). The court states in part as follows:

“ . . . A prior judgment has preclusive effect when the party moving for summary judgment in the successive proceeding proves that the two actions are identical in four respects: (1) persons and parties, (2) cause of action, (3) subject matter, and (4) the quality of the persons for or against whom the claim is made.”

Knuth v. Beneficial Wash., Inc., supra at p. 731.

In discussing the issue (2) cause of action, the court further states as follows:

“[6] Knuth maintains that the causes of actions are not the same. To determine whether or not the causes of action are the same, courts examine the following criteria: (1) whether the second action **would impair rights or interests established in the prior judgment**, (2) **whether the two actions deal substantially with the same evidence**, (3) whether the two suits involve an alleged infringement of the same right, and (4) whether the two suits arise out of the same transactional nucleus of facts. *Kuhlman, 78 Wn.App. at 122.*”
(*Emphasis ours*)

Knuth v. Beneficial Wash., Inc., supra at p. 732 citing Kuhlmann v. Thomas, 75 Wn.App. 115, 119-120 879 P.2d. 365 (1995).

The prosecution of the case of Riddell v. Montgomery, does not impair any rights or interest established in the Judgment entered in Riddell v. Canham. Additionally, the two actions do not deal substantially with the same evidence and the two actions do not involve any infringement of the same right. Accordingly, the trial court incorrectly applied the doctrine of res judicata and should be reversed.

Symington v. Hudson, 40 Wn. 2d. 331 (1952), relied upon by Montgomery involved a second action to quiet title involving the same

parties and exactly the same real estate. The res judicata rule was properly applied. However, the rule of Knuth v. Beneficial Wash., Inc., supra is the rule which should be applied to the present case. As indicated herein, the prosecution of the case of Riddell v. Montgomery does not impair any rights or interests established in the Judgment in Riddell v. Canham. They are clearly independent and separate cases.

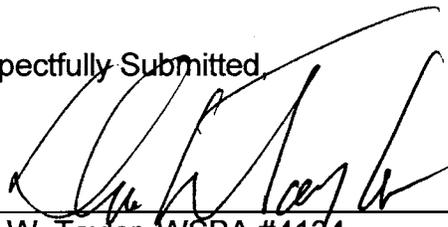
VII.

CONCLUSION

Riddell respectfully requests this Court to reverse the judgment of the trial court as set forth in the Order Granting Summary Judgment, and remand this case to the Mason County Superior Court for trial on the merits.

DATED: ^{September}~~August~~ 4, 2009.

Respectfully Submitted



Don W. Taylor, WSBA #4134
Of Owens Davies Fristoe
Taylor & Schultz, P.S.
Attorneys for Appellants Riddell



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Mason Co, WA

AFTER RECORDING MAIL TO:
ZACHARY M. MONTGOMERY
14424 148TH ST E
ORTING, WA 98360

AFFIDAVIT
No. 19139
WA R.E. EXCISE TAX

JUL 07 2005

PAID 3729.10
LISA FRAZIER
Treas. Mason County

Filed for Record at Request of
Approved Escrow, Inc.
Escrow Number: 051392MC-B

Q-151501

Statutory Warranty Deed

Grantor(s): LISA M. CANHAM

Grantee(s): ZACHARY M. MONTGOMERY, SARA A. MONTGOMERY

Abbreviated Legal: QUARTER: GOVERNMENT LOT 1 OF SECTION 30 AND GOVERNMENT LOT 2 OF SECTION 19 SECTION 30, TOWNSHIP 22 NORTH, RANGE 2 WEST W.M. , records of MASON County, WA

Additional legal(s) on page: 2

Assessor's Tax Parcel Number(s): 222195000022

THE GRANTOR LISA M. CANHAM, a single person for and in consideration of TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION WHICH IS PAID BY A QUALIFIED INTERMEDIARY AS PART OF A 1031 DEFERRED EXCHANGE

in hand paid, conveys and warrants to ZACHARY M. MONTGOMERY and SARA A. MONTGOMERY, husband and wife the following described real estate, situated in the County of MASON, State of Washington: See Attached Exhibit "A"

Dated this 29th day of June, 2005

By [Signature] By _____
LISA M. CANHAM

By _____ By _____

STATE OF WASHINGTON }
County of PIERCE } SS:

I certify that I know or have satisfactory evidence that LISA M. CANHAM

is the person who appeared before me, and said person acknowledged that she signed this instrument and acknowledge it to be her free and voluntary act for the uses and purposes mentioned in this instrument.

Dated: July 1, 2005

[Signature]

BRITTANY J. CAMPEAU
Notary Public in and for the State of WASHINGTON
Residing at TACOMA
My appointment expires: 10/29/2006





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LAND TITLE CO 540 20 04 Mason Co, WA

EXHIBIT "A"

DESCRIPTION:

The West 100 feet of the East 1150 feet of Lot 2 of Section 19 and the West 100 feet of the East 1150 feet of Lot 1 of Section 30, Township 22 North, Range 2 West, W.M., in Mason County, Washington.

EXCEPTING THEREFROM Primary State Highway No. 21.

TOGETHER WITH all tidelands lying in front of, adjacent to and abutting on said property.

EXCEPTING THEREFROM that portion awarded to Jerry Riddell and Lillian Riddell, husband and wife in Judgement and Decree filed June 23, 2005, under Mason County Superior Court Cause No. 03-2-0630-4, described as follows:

That part of the West 100 feet of the East 1150 feet of Government Lot 1 of Section 30, Township 22 North, Range 2 West, W.M., in Mason County, Washington, also known as Lots 22 and 23 of the unrecorded Plat of Navy Yard Highway Addition No. 1, described as follows:

BEGINNING at the Southwest corner of said Government Lot 1; thence South 86°34'53" East along the South line thereof 170.05 feet to the East line of the West 170.00 feet of said Government Lot 1; thence North 0°03'36" East along said East line 976.42 feet to the TRUE POINT OF BEGINNING; thence South 88°56'18" East 59.40 feet; thence North 0°03'36" East 129.79 feet to the South margin of Primary State Highway No. 21; thence Southwesterly along said margin 85.67 feet to a point that lies North 0°03'36" East of the TRUE POINT OF BEGINNING; thence South 0°03'36" West 102.50 feet to the TRUE POINT OF BEGINNING.

In Mason County, Washington.

EXCEPTING THEREFROM Primary State Highway No. 21.

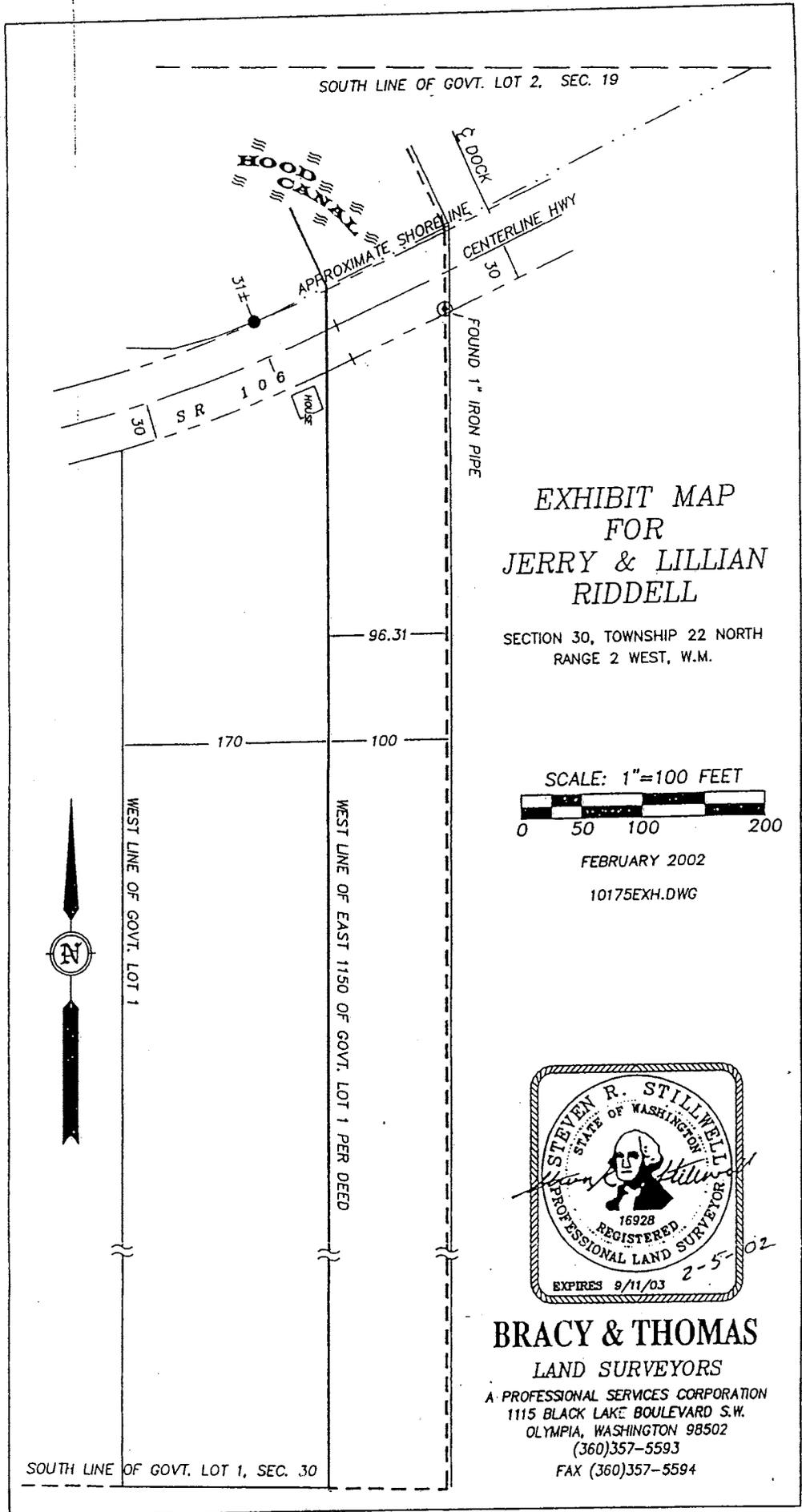
SUBJECT TO ANY PROHIBITION OR LIMITATION ON THE USE, OCCUPANCY OR IMPROVEMENTS OF THE LAND RESULTING FROM THE RIGHTS OF THE PUBLIC OR RIPARIAN OWNERS TO USE ANY WATERS WHICH MAY COVER THE LAND OR TO USE ANY PORTION OF THE LAND WHICH IS NOW OR MAY FORMERLY HAVE BEEN COVERED BY WATER, AND THE RIGHT OF USE, CONTROL OR REGULATION BY THE UNITED STATES OF AMERICA IN EXERCISE OF POWER OVER NAVIGATION.

ANY QUESTION THAT MAY ARISE AS TO THE LOCATION OF THE LATERAL BOUNDARIES OF THE TIDELANDS OR SHORELANDS DESCRIBED HEREIN.

EASEMENT, INCLUDING ITS TERMS, COVENANTS AND PROVISIONS AS DISCLOSED BY INSTRUMENT UNDER RECORDING NO. 110350, IN FAVOR OF LOUIS HAGEN AND ANNE HAGEN, HUSBAND AND WIFE, FOR THE PURPOSE OF LYING, MAINTAINING, REPAIRING AND REPLACING A WATER PIPELINE, TOGETHER WITH THE RIGHT TO GO UPON SAID LAND FOR SAID PURPOSES. AFFECTS A PORTION OF SAID PREMISES.

ANY RIGHTS IN THE EXISTING SPRING, PONDS AND WATER SYSTEM LOCATED ON THE PREMISES AS DISCLOSED BY INSTRUMENTS UNDER RECORDING NO. 110350.

EXCEPTIONS AND RESERVATIONS CONTAINED IN DEED WHEREBY THE GRANTOR EXCEPTS AND RESERVES ALL OILS, GASES, COAL, ORES, MINERALS, FOSSILS, ETC., AND THE RIGHT OF ENTRY FOR OPENING, DEVELOPING AND WORKING MINES, ETC., PROVIDED THAT NO RIGHTS SHALL BE EXERCISED UNTIL PROVISION HAS BEEN MADE FOR FILL PAYMENT OF ALL DAMAGES SUSTAINED BY REASON OF SUCH ENTRY FROM THE STATE OF WASHINGTON, RECORDED IN VOLUME 78 OF DEEDS, PAGE 184, RECORDS OF MASON COUNTY, WASHINGTON. AFFECTS TIDELANDS.



DESCRIPTIONS OF ORIGINAL PARCELS

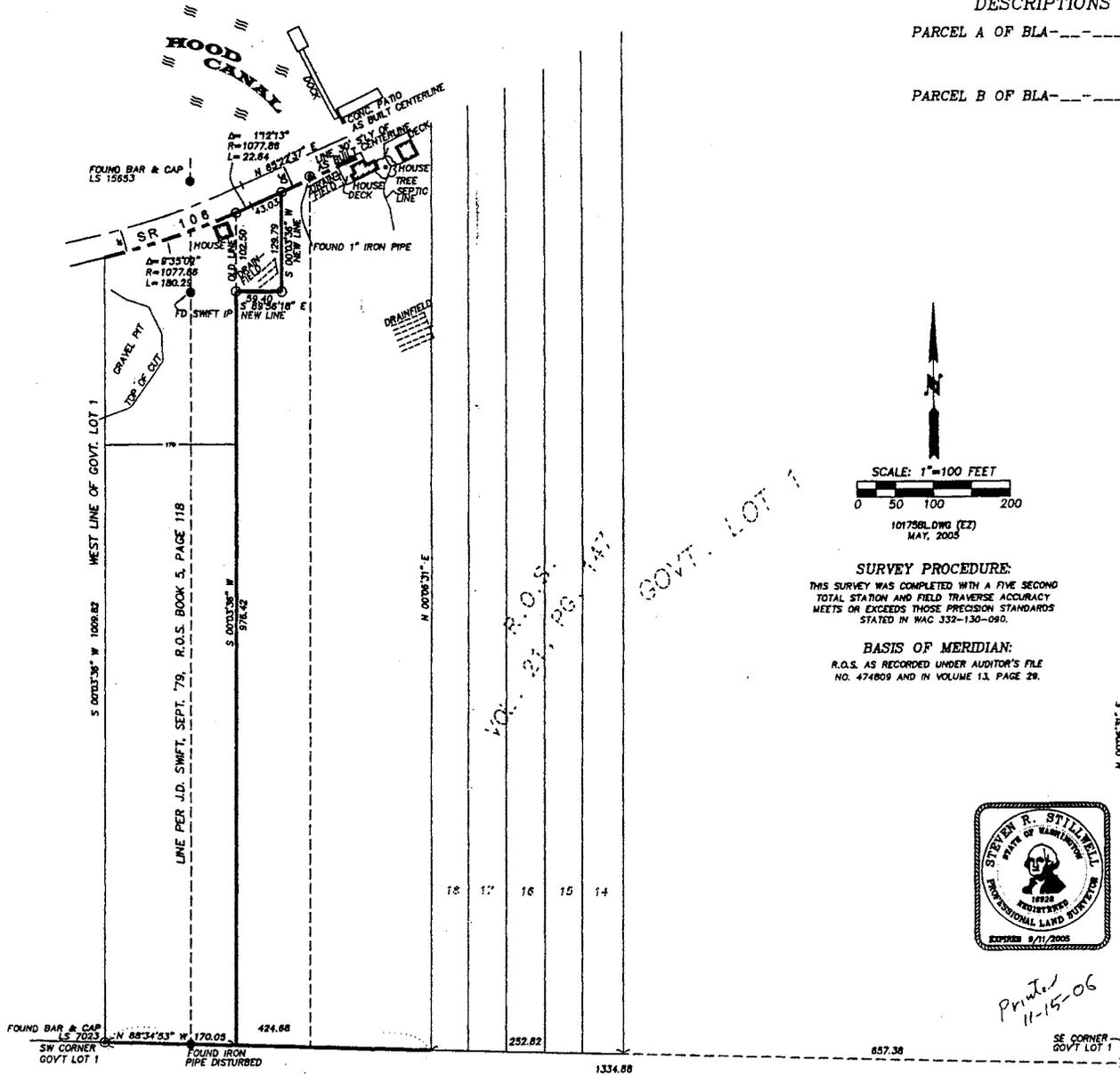
SW 1/4 OF THE SE 1/4 OF SECTION 19, TOWNSHIP 22 NORTH, RANGE 2 WEST, W.M.
 NW 1/4 OF THE NE 1/4 OF SECTION 30, TOWNSHIP 22 NORTH, RANGE 2 WEST, W.M.

ASSESSOR'S PARCEL NUMBER(S), ORIGINAL PARCEL:

DESCRIPTIONS OF ADJUSTED PARCELS

PARCEL A OF BLA-----TC DESCRIBED AS FOLLOWS:

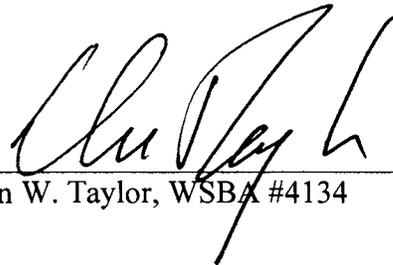
PARCEL B OF BLA-----TC DESCRIBED AS FOLLOWS:



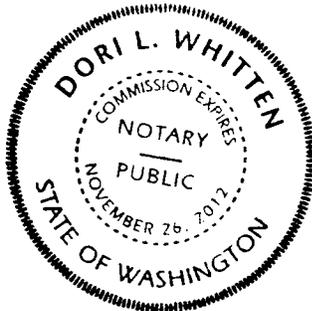
1 Christina Mehling, Esq.
2 VSI Law Group, PLLC
3 3600 Port of Tacoma Road
4 Suite 311
5 Tacoma, WA 98424

6 3. On said date, I caused said envelope, with a copy of this Affidavit and a copy of
7 the Brief of Appellants and supplemental documents enclosed therein to be deposited into the
8 United States mail at the Olympia Post Office, Olympia, Washington, first-class postage prepaid.

9 4. I am informed, believe and therefore state there is regular mail service between
10 the Olympia Post Office and the address above-stated and accordingly, I obtained service by
11 mail upon Christina Mehling, Esq.

12 
13 _____
14 Don W. Taylor, WSBA #4134

15 SUBSCRIBED AND SWORN TO before me on September 4, 2009, by Don W. Taylor.



29 
30 _____
31 NOTARY PUBLIC in and for the State of
32 Washington residing at Lacey
33 My commission expires 11-26-2012.