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Fletcher Landing and the Public Trust Doctrine

By Roger VanGelder

The Center has filed to intervene in what could be an exciting case regarding the public's right to access the shore. The humble setting for this important test is the somewhat overgrown Fletcher Landing Road on Bainbridge Island. The beach at the end of this road offers views of the sunset over the Kitsap Peninsula and the Olympics. For as long as anyone can remember, upland neighbors have used the road end to access the shore to launch small boats, take evening walks and watch the sunset.

Recently a small group of property owners put up a locked gate, claiming that they owned the beach and that no one else could use it. There are a number of reasons why their claim of is on shaky ground. However, the issue of most interest to the Center is whether the Public Trust Doctrine protects the public's right to access the shoreline regardless of claims of private ownership.

A Brief History of Fletcher Landing

Fletcher Landing road was established on Bainbridge Island in 1899. It was freely used by the public for access to the shoreline and the water. Twelve years after establishment of the road, the State sold the tidelands along that stretch of shoreline to a Mr. Erlandsen, who owned land on both sides of Fletcher Landing road.

In 1958, nearly 60 years after the road was established, after Mr. Erlandsen had died and after the land on either side had been platted and sold, a land speculator made an offer of \$1 to the purchaser of Mr. Erlandsen's estate for the 30 foot strip of tidelands which the road runs across. The speculator then quit-claimed any interest he had gained to the purchasers of some of the inland lots which he was selling. (Note: an individual could quit-claim any interest she might hold in the Empire State Building, but that does not necessarily mean she would then own it.) A group of these property owners has fenced off the end of the road in an attempt to stop continued public access to the shore.

The City of Bainbridge Island is currently taking legal action to reestablish historic public access to the beach at the end of Fletcher Landing Road. However, due to fears of provoking off-island "property rights" organizations, the City Council has chosen to avoid any mention of the Washington Supreme Court's rulings regarding the Public Trust Doctrine. That's where the Center comes in.

Why the Public Trust Doctrine is important in this case

In the 1987 case *Caminiti v. Boyle*, the Washington Court stated that "the [public trust] doctrine has always existed in the State of Washington." The Court further stated in another landmark 1987 case, *Orion Corp. v. State*, that "Historically, the trust developed out of the public's need for access to navigable waters and shorelands. 109 Wn.2d 621 (1987).

Most recently, in *Weden v. San Juan County* (1998), also known as the “Jet-Ski Case”, the Court held that “[T]he doctrine protects ‘public ownership interests in certain uses of navigable waters and underlying lands, including navigation, commerce, fisheries, recreation, and environmental quality.’ The doctrine reserves a public property interest, the *jus publicum*, in tidelands and the waters flowing over them, despite the sale of these lands into private ownership.” (Note: CELP filed an amicus brief in this case which was quoted by the Court in their decision.)

It is important that CELP intervene to argue the applicability of the Public Trust Doctrine in the Fletcher Landing case for two reasons.

First, there could be difficulties involved in the City’s relying primarily upon rights gained solely through historical use. A loss of this case could result in a substantial limitation to the public’s right of access to the water elsewhere, and there is no certainty that the City would appeal such a loss, if left on its own.

Second, although courts at the lower level may skirt what they consider controversial issues, in the event of an appeal, doctrines such as this can become very important. However, it may not be possible to develop arguments at the appellate level that were not previously introduced at the lower level.

In summary, access to the shoreline is a right that has been guaranteed by our State Supreme Court through their recognition of the Public Trust Doctrine. The Fletcher Landing case offers the courts a perfect opportunity to apply the Public Trust Doctrine in a case where historically public tidelands have been sold into private hands, thus assuring continued public access.

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