No. 32909-7

COURT OF APPEALS
OF THE STATE OF WASHINGTON,
DIVISION III

MADELYNN M. TAPKEN,

Appellant,

v.

SPOKANE COUNTY, a municipal corporation,

Respondent

and

CONRAD MALINAK,

Appellant.

ON APPEAL FROM SPOKANE COUNTY SUPERIOR COURT
Honorable John O. Cooney

OPENING BRIEF OF APPELLANT MADELYNN M. TAPKEN

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TABLE OF CONTENTS

Page

Page

INDEX TO APPENDICES

Appendix	Exhibit #	Clerk's Description
1	P126	Photographs of Approached Intersection Southbound
2	P127	Photographs of Approached Intersection Southbound
3	P128	Photographs of Approached Intersection Southbound
4	P129	Photographs of Approached Intersection Southbound
5	P130	Photographs of Approached Intersection Southbound
6	P131	Photographs of Approached Intersection Southbound
7	P8	Photograph of Scene Taken on 9/28/11
8	P61	Google Earth Photograph, August 2011 (Aerial Viewing Intersection from North Looking South)
9	P86	Yield Sign Applications and Placement
10	P116	Intersection(s) Within Intersections – Contact Points; Edward Stevens
11	D208	Vicinity Map with Malinak's Routes Marked

TABLE OF AUTHORITIES

Page(s)

Washington Cases

Page(s)

Page(s)

Page(s)

Page(s)

Statutes and Court Rules

Treatises

Other Authorities

I. INTRODUCTION

Madelynn Tapken was seated as a passenger on the back of a motorcycle when the operator, Conrad Malinak, lost control of the bike at an unusual, triple-Y intersection in south Spokane County called the "Waverly 'Y.'" Malinak intended to veer right at the 'Y' and reduced his speed 5 to 10 miles per hour below the posted speed limit of 45 miles per hour. But the curve's sharpness was obscured, and by the time he could fully appreciate the curve's 90-degree bend, it was too late to slow down enough to negotiate the curve safely. He abruptly attempted to veer left instead but lost control of the bike, which went over a steep bank and landed in a rock quarry. Tapken sustained a traumatic brain injury and is paralyzed below the chest. She and Malinak pursued claims for negligent road design and maintenance against Spokane County.

The trial court denied the County's pre-trial motion for summary judgment on negligence and proximate cause. But three weeks into the trial and two days before the County was to rest its defense case, the trial court granted judgment as a matter of law on negligence and proximate cause, dismissing all claims against the County.

Judgment as a matter of law on negligence or proximate cause is rarely appropriate, as these matters are properly left to the jury in all but the most extraordinary cases, where no reasonable juror could find the defendant liable. Tapken and Malinak presented substantial evidence, including expert testimony, from which a jury could find negligence by

the County. The experts testified that the road configuration and signage could mislead motorists to conclude that the right leg of the 'Y' that Malinak was entering was the main roadway or arterial, and not to expect a sharp curve; that the curve's sharpness was obscured by the road configuration and a large hawthorn bush; that motorists were not warned to expect a sharp, blind curve or to reduce their speed for such conditions; and that these factors combined to cause motorists to enter the curve too fast to negotiate it safely. While the posted speed limit was 45 miles per hour, the undisputed expert testimony was that the reasonable safe speed for the curve was only 20 miles per hour.

There was also substantial evidence to support a finding that the County's negligence was a proximate cause. Malinak testified that he was misled by the configuration and signage to believe "the main part of the highway went to the right" and would not involve a sharp curve; that the curve's sharpness was obscured and could not be appreciated until he was past the hawthorn bush; that because he was not warned and could not appreciate the curve's sharpness until it was too late, he slowed only 5 or 10 miles per hour, and not enough to negotiate the curve safely; and that to avoid losing control in the curve he attempted an emergency maneuver into the straighter, left leg of the 'Y,' but lost control anyway.

Because there was substantial evidence on negligence and proximate cause, the judgment of dismissal should be reversed and the case remanded for trial. In conjunction with the reversal, this Court

should decide three important issues. First, the number of prior accidents at the Waverly 'Y,' and evidence of the specific prior accidents the trial court found were substantially similar to the subject accident, are relevant and should be admitted. Second, expert testimony on causation should be allowed as permitted under ER 704. Finally, because there is no substantial evidence to support a finding that Tapken voluntarily did anything that was a proximate cause of the accident, this Court should reverse the denial of Tapken's motion for summary judgment to strike the County's affirmative defense of contributory negligence.

II. ASSIGNMENTS OF ERROR AND ISSUES ON APPEAL

A. Assignments of Error.

1. The trial court erred in granting the County's motion for judgment as a matter of law under CR 50(a).

2. The trial court erred in excluding evidence of the number of prior accidents and of the specific prior accidents that it found were substantially similar to the subject accident.

3. The trial court erred in excluding testimony on causation by Tapken's expert witness, Steven Harbinson.

4. The trial court erred in denying Tapken's motion for partial summary judgment to strike the County's affirmative defense of contributory negligence.

B. Issues on Appeal.

1. Were Tapken and Malinak entitled to have the jury decide the County's liability where they presented substantial evidence from which the jury could have found that (a) the County breached its duty to keep the roadway reasonably safe for ordinary travel and (b) the accident

occurred because Malinak was going too fast to make the curve, which was due to the County's negligence?

2. In the event the judgment is reversed and a trial is ordered:

a. Should the number of prior accidents and evidence of the specific prior accidents the trial court found were substantially similar to the subject accident be admitted to prove notice to the County of an inherently dangerous condition?

b. Should Tapken's expert witness, Steven Harbinson, be allowed to testify to his opinions on causation where ER 704 allows such testimony even if it embraces an ultimate issue to be decided by the trier of fact?

c. Should the County's affirmative defense of contributory negligence be stricken where a motorcycle passenger cannot reasonably be expected to match opposite lean directions in a fraction of a second?

III. STATEMENT OF THE CASE

A. Madelynn Tapken was a passenger on a motorcycle when its operator, Conrad Malinak, was misled by road conditions and not warned to slow down enough to make a sharp, blind curve.

Tapken and Malinak met as co-workers at a Spokane-area restaurant during the summer of 2011. RP 951-52. Tapken had previously ridden as a motorcycle passenger with other friends and her father, and said she liked to take rides, so Malinak offered to take her out on his 2005 Suzuki. RP 953; SRP[1] 9-10, 13. Tapken knew how to behave properly as a passenger, including that she should match and not resist the operator's leaning of the motorcycle on turns. RP 953, 956-57; SRP 9-10.

[1] Supplemental Verbatim Report of Proceedings ("Volume 11").

(A motorcycle is turned mainly by leaning it in the direction of the turn, as opposed to turning the handlebars. RP 972.) After getting stuck in traffic on their first ride in mid-September 2011, Malinak and Tapken planned a second ride, which they went on a couple of weeks later, on September 28, 2011. RP 952, 954, 994-95; SRP 14. This ride resulted in the accident.

Malinak planned a general route for the September 28th ride. RP 962, 998. Hoping to avoid traffic, he headed "into South Spokane County in between the farm towns on the Palouse." RP 957, 998. It was a sunny afternoon. RP 964. Malinak and Tapken made their way southbound on State Route 27 to the town of Fairfield, where they turned onto Prairie View Road and continued southbound toward Waverly. RP 999. Just before Waverly, they came upon a 'Y' intersection known as the "Waverly 'Y.'" *See* RP 674, 690. It is actually a *triple*-'Y' intersection, in that *each* of the three intersecting roads splits into two legs as they converge, leaving a triangle of empty space in the center. *See* Exhs. P84, P61 (Appx. 8).

Prairie View Road between Fairfield and the Waverly 'Y' covers about four miles and has several curves.[2] *See* RP 962; Exhs. D208 (Appx. 11), D209.[3] At least eight curve-warning and advisory speed signs were posted on that stretch. RP 962-63, 1008-19; Exh. D209. Malinak thus

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[2] The road starts out as East Prairie View Road in Fairfield and changes to South Prairie View Road about midway to the Waverly 'Y.'

[3] *See also* http://goo.gl/kfNfVB (Google Maps).

believed that if he needed to slow down significantly for a curve, he would see a sign providing advance warning. RP 1015.

At the Waverly 'Y' heading southbound, the road leg to the left is the continuation of Prairie View Road and heads toward the town of Waverly. *See* Exh. D208 (Appx. 11). The right leg of the 'Y' turns sharply onto Spangle-Waverly Road and heads toward Spangle. *See* Exh. P61 (Appx. 8), P84, D208 (Appx. 11). The curve to the right is approximately 90 degrees and is sharper than the curve to the left. RP 1016-17; *see* Exhs. P61 (Appx. 8), P75, P84.

Malinak recalled having seen a sign before reaching the Waverly 'Y,' though after the accident he did not recall what the sign said. RP 965, 1116-17. About 775 feet before the Waverly 'Y,' heading southbound on Prairie View Road, there was a "yield ahead" sign. *See* RVPD[4] 20; Exh. P126 (Appx. 1). Besides the yield-ahead sign, there were no other warning signs, such as a curve-warning or advisory speed-limit sign, for southbound motorists approaching the Waverly 'Y.' RP 966-67; Exhs. P84, P126-131 (Appx. 1-6).

A southbound motorist would encounter a yield sign at the Waverly 'Y' whether he chose to go left or right; there was a separate

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[4] Redacted Videotaped Perpetuation Deposition of Edward M. Stevens ("Volume 10"). The videotaped perpetuation deposition of Edward M. Stevens was redacted according to court order, CP 2011-13, and viewed by the jury on September 18 and 22, 2014. *See* RP 1262. The redacted video has been transcribed for this Court together with the verbatim reports of proceedings.

yield sign for each direction, on each leg of the 'Y.' RVPD 20-21; Exhs. P75, P84. From a southbound motorists' vantage point, the yield sign on the left leg was clearly visible from hundreds of feet away. RVPD 20-21; *see* Exh. P8, P86 (Appx. 9). The yield sign on the right leg was obscured by a dense hawthorn bush and first became visible at 123 feet away. RP 967, 1024; RVPD 20-22, 25, 34; *see* Exhs. P8, P86 (Appx. 9). The photographs at appendices 1 through 6 are selected trial exhibits that depict the Waverly 'Y,' facing the direction that Malinak and Tapken were traveling.

Malinak thought he had driven through the Waverly 'Y' perhaps three or four times before, possibly in a car rather than a motorcycle, but he did not remember it particularly. RP 964, 1070-71, 1110-13, 1115. Approaching the intersection with Tapken on September 28, 2011, Malinak perceived that it was a 'Y' and decided to take the right leg, onto Spangle-Waverly Road, to head toward U.S. 195 and ultimately back to Spokane. RP 967-68, 998, 1195; *see* Exh. D208 (Appx. 11). Seeing the yield sign on the left, he concluded that the main road or arterial went to the right:

> As I came to the intersection, I do remember seeing one yield sign on the left-hand side of the intersection and I remember seeing a large bush on the right side. And the way that the road appeared, it appeared that the main part of the highway went to the right.

RP 967. Malinak never saw the obscured yield sign on the right. RP 971.

Malinak had been driving at about the posted speed limit of 45 miles per hour since Fairfield, except on curves. RP 968. Approaching the Waverly 'Y' and perceiving some degree of a curve, he reduced his speed by 5 to 10 miles per hour, down to about 35 or 40 miles per hour. RP 968, 1022-23. He looked left and saw no traffic approaching from that direction. RP 1024. Just before entering the right-hand curve, Malinak started leaning to the right in anticipation of making a turn, and Tapken appropriately matched his lean to the right. RP 968, 970. At that same moment, they passed the hawthorn bush and Malinak first observed how sharp the right curve was and realized they were going too fast to negotiate it safely. RP 967-68. Malinak testified, "I saw that the curve was way too sharp and I knew that, if we tried to make that curve at 35 or 40, the motorcycle would have went off the roadway." RP 968.

Thus, only a split second after initiating the lean to the right, Malinak abruptly shifted his weight the other direction, reversing his lean from right to left, in an emergency attempt to make the straighter, left-hand curve and stay on Prairie View Road instead of going right onto Spangle-Waverly Road. RP 967-70, 1061. He explained in his testimony:

> Well, as I came to the intersection, as I got closer and closer as my view was past the bush, I could see that the way to the right was actually an extremely sharp curve, a curve that I was not prepared for. I realized that I was going way too fast to make that curve, and in an emergency reaction to the situation, I attempted to take the left-hand turn or corner there to keep the motorcycle on the roadway.

RP 967-68.

B. The motorcycle went over a steep bank and crashed, seriously injuring Tapken.

The motorcycle followed Malinak's reversal of lean direction, but only back to a vertical position; it did not lean to the left. RP 969. Although Malinak could not see Tapken behind him, he believes that Tapken's body may have leaned farther right when he abruptly leaned the bike from right to left, affecting his ability to lean the bike leftward. RP 969. When asked about the amount of time that Tapken had to react to his sudden reversal of lean direction, Malinak testified that Tapken had "less than the split second that I had." RP 970.

Rather than making either the right or left curve, the motorcycle proceeded straight through the 'Y,' over a steep bank or cliff, and into a rock quarry. RP 971-72, 1031. Tapken and Malinak went airborne and landed 20 to 30 feet apart. RP 973-74. Tapken was seriously injured in the crash. Her helmet was caved in, her breathing was impaired, and she was nonresponsive. RP 974-75, 1034. She was airlifted to Sacred Heart Medical Center, where she remained in a coma for three weeks. RP 978-79, 1032; CP 203-04. She sustained a traumatic brain injury and is paralyzed from the chest down. CP 1166, 1168. She has no recollection of the accident. SRP 15, 45. Malinak was also injured, but remembers the accident and the circumstances leading up to it. *See* RP 1032-34.

C. Tapken and Malinak pursued negligence claims against Spokane County.

In March 2013, Tapken filed a complaint against the County and Malinak alleging negligence. CP 5. Malinak denied negligence and asserted a cross claim against the County, consistent with Tapken's claim. CP 22. The County denied negligence and alleged as an affirmative defense that Tapken was contributorily negligent. CP 16. The County based this allegation solely upon Malinak's statement to the investigating officer that Tapken had leaned farther right when he abruptly reversed his lean direction from left to right. *See, e.g.,* CP 655. No alcohol or drugs were involved in the accident. RP 965, 1472. There was no evidence that Malinak exceeded the posted speed limit. RP 1472.

D. The trial court denied Tapken's motion for summary judgment to strike the County's affirmative defense of contributory negligence.

Tapken moved for summary judgment to strike the County's affirmative defense of contributory negligence on the basis that a motorcycle passenger cannot reasonably be expected to match opposite lean directions in a fraction of a second. CP 173, 183-84. The trial court denied Tapken's motion, concluding that a question of fact existed as to whether Tapken had sufficient opportunity to react. RP 102; CP 1022-23.

E. Tapken and Malinak alleged that the County breached its duty to keep its roads reasonably safe for ordinary travel.

During the litigation and at trial, Tapken and Malinak asserted that the County was negligent in (1) retaining the complicated and misleading

configuration of the Waverly 'Y'; (2) failing to maintain the obscuring hawthorn bush; and (3) failing to eliminate, or warn motorists of, an inherently dangerous condition that caused motorists to enter the curve too fast to negotiate it safely. They presented testimony from three expert witnesses in support of these theories: (1) Edward Stevens testified as an expert in road design and maintenance; (2) Steven Harbinson testified as an expert in accident reconstruction and motorcycle operation and safety; and (3) Richard Gill, Ph.D., testified as an expert in human factors, which focuses on human interaction with the products of engineering. Following is a summary of the expert testimony and related evidence.

1. The road design misled motorists not to expect a sharp curve, and obscured the curve's sharpness.

Mr. Stevens testified that of the thousands of intersections he had studied in his 40-plus year career, the Waverly 'Y' had the most complex and confusing layout he had ever seen. RVPD 87-88. Dr. Gill testified that the configuration and signage "fails to provide the traveling public with the information that they need to properly and safely navigate the roadway" and "exceeds the perceptual and cognitive and decision-making ability" of the typical motorist. RP 873, 894.

Leading up to the Waverly 'Y,' the yield sign on the left leg was visible to southbound motorists, but the yield sign on the right leg was not, because it was obscured by a dense, black hawthorn bush. RVPD 20-21 (Stevens); RP 743 (Harbinson), 886 (Gill). Mr. Stevens and Dr. Gill

testified that the visible yield sign on the left, combined with the lack of a visible yield or curve-warning sign on the right, could mislead motorists to conclude that the road to the right was the main roadway or arterial, and not to expect a sharp curve or second yield sign and intersection in that direction. RVPD 68, 85-86, 145, 153-54 (Stevens); RP 886 (Gill).

The right-hand curve was approximately 90 degrees. RP 1016-17; *see also* RVPD 21. Its sharpness was obscured by the road configuration and the hawthorn bush. RVPD 22, 31-34, 77-78, 86 (Stevens); RP 742-43 (Harbinson), 885 (Gill). A motorist could not see the apex of the curve or fully appreciate its sharpness until 60 feet after starting into the curve. RVPD 22, 32-34 (Stevens); RP 767-70, 772, 791, 800 (Harbinson).

2. The County failed to maintain a hawthorn bush that further obscured the curve's sharpness.

The County's regional road maintenance facility was located in Spangle, just a few miles away from the Waverly 'Y.' RP 689-90. The shop foreman, Jay Baird, testified that he had driven through the Waverly 'Y' probably thousands of times. RP 692. But the hawthorn bush was not trimmed before the accident because no one complained and "[i]t wasn't obstructing out on the roadway as far as hitting vehicles' mirrors or anything like that." RP 699. The County had no written vegetation-control policy and no records of vegetation maintenance at the Waverly 'Y.' RP 518-19. Mr. Greene visited the Waverly 'Y' two years before the accident and took photographs, but could not remember why. RP 519,

522. The County had authority to trim vegetation, minimally up to 30 feet from the center line. RP 507-08, 609, 700.

3. The blind curve was an inherently dangerous and misleading condition that the County failed to warn motorists of, or eliminate.

(a) A combination of factors caused motorists to enter the curve going too fast to negotiate it safely.

Mr. Stevens opined that the misleading design and signage, sharpness of the curve, downhill slope, and obstructive bush created an inherently dangerous condition in that motorists would enter the curve going too fast to negotiate it safely. RVPD 20-22, 66-67, 86-87. Mr. Stevens and Mr. Harbinson concluded that the reasonable safe speed for the curve is just under 20 miles per hour—25 miles per hour below the posted speed limit of 45 miles per hour. RVPD 64, 84 (Stevens); RP 767 (Harbinson).

The County traffic engineer and CR 30(b)(6) representative, Barry Greene, admitted that the curve could not be negotiated at the posted speed limit of 45 miles per hour. RP 530. He did not know at what reduced speed it could safely be negotiated because the County had never studied or tested it. RP 530, 630, 671. The reasonable safe speed for a curve can be determined by a simple test using a ball-bank indicator, a device that costs as little as $20. RP 891, 895 (Gill).

Mr. Harbinson testified that a moving object will travel about 66 feet per second at 45 miles per hour, and 59 feet per second at 40 miles per

hour. RP 771-72. Given a standard perception-reaction time of 1.5 seconds, a vehicle entering the curve at 45 miles per hour would travel 30 feet beyond the apex of the curve before the motorist could potentially begin to react with braking. RP 772. Entering the curve at 40 miles per hour, a motorcycle operator would be unable to slow down in time to make the curve. RP 777-78.

(b) The County failed to warn motorists of the curve.

Unlike on other County arterials, no signs warned southbound motorists of the sharpness of the right-hand curve at the Waverly 'Y,' or the need to reduce one's speed to 20 miles per hour to negotiate the curve safely. RP 828-29 (Harbinson); 891 (Gill); *see also* RVPD 76 (Stevens). Mr. Greene testified that the County's arterials generally are signed with curve-warning and advisory speed signs. RP 620. Each of the several curves on Prairie View Road between the town of Fairfield (four miles away) and this intersection had a curve-warning and advisory speed sign ahead of it. RP 620, 633 (Greene); Exh. D209. Dr. Gill testified that this created a reasonable expectation that all significant curves on this road would have advance warning. RP 882-83 (Gill).

The Waverly 'Y' was not maintained and signed properly to allow motorists to perceive and react to the road configuration and conditions. RVPD 76, 83 (Stevens); RP 873, 894 (Gill). Mr. Stevens and Mr. Greene, the County's own traffic engineer, agreed that the yield-ahead

sign 775 back did not warn motorists that there were *two* yield signs ahead (one for each direction), that the curve to the right was sharp, or the extent to which a motorist needed to slow down for the curve, regardless of whether there was any conflicting traffic. RP 504, 1524 (Greene); RVPD 80-82 (Stevens). A yield sign is used to control an intersection and is not properly used to slow traffic for conditions other than merging traffic. RP 512-13 (Greene); RVPD 68, 85 (Stevens).

(c) The County failed to eliminate the dangerous and misleading condition.

Mr. Stevens and Dr. Gill opined that the intersection could have been made reasonably safe by converting the triple-'Y' into a simple 'T' intersection with a stop sign for at least one leg. RVPD 71-76 (Stevens); RP 893 (Gill); *see* Exh. P90. This could have been done in two days or less by changing only the signage and striping, without adding or removing any asphalt. RVPD 75-76. Mr. Greene acknowledged that this fix was feasible. RP 564.

F. Before trial, the trial court denied summary judgment to the County on liability, concluding that genuine issues of material fact existed as to negligence and proximate cause.

Before trial, the County moved for summary judgment on liability. CP 28. The County asserted that Tapken and Malinak could establish neither a breach of duty by the County nor proximate cause. *See* CP 42.

The County advanced two main arguments as to breach of duty. First, the County argued that the intersection and sharp curve were "open

and apparent" conditions for which it could not be held liable. CP 44-45, 47-48. Second, the County argued that it had no duty to warn Malinak because, having driven through the Waverly 'Y' on three or four previous occasions, he must have known of the alleged hazards. CP 45-47. As to proximate cause, the County argued that causation could not be shown because Malinak did not actually lose control in the curve, and the only reasonable conclusion was that the riders' "conflicting leans" were the sole proximate cause of the accident. CP 50-43.

Six weeks before trial, the trial court denied the County's motion. CP 809; *see also* CP 1020-21. On the issue of breach of duty, the trial court observed that the County may be held liable for breach of its duty "to build and maintain the safety of public roadways" or for failing to eliminate inherently dangerous or misleading conditions. CP 808. The Court stated that "[w]hether a condition is inherently dangerous or misleading is a material fact." CP 808.

Addressing proximate cause, the court concluded that "[t]he statements of Mr. Malinak and Mr. Harbi[n]son result in more than one [possible] conclusion as to the causation of the accident." CP 809. The court explained:

> In this case, Mr. Malinak testified during his deposition that the corner to the right at the "Waverly Y" was too sharp to negotiate. Mr. Malinak testified that he realized he could not make the turn at the speed he was traveling. According to Steve Harbi[n]son, had Mr. Malinak known the sharpness of the "Waverly Y" curve, he could have reduced his speed as he

> approached the "Waverly Y," then could have safely made the turn. ...
>
> While there does seem to be some discrepancies in Mr. Malinak's testimony..., it is not the place of the Court to weigh credibility; that is the job of the trier of fact. ...

CP 809. The court concluded, "After taking into consideration all of the facts and evidence presented, ...the Court concludes that there are sufficient issues of material fact that must be resolved by the trier of fact." CP 809. The negligence claims against the County thus proceeded to trial.

G. The trial court excluded the number of prior accidents and evidence of the three specific accidents it found were substantially similar to the subject accident, concluding that notice of a dangerous condition was not disputed.

During discovery, Tapken developed evidence of over *two dozen* prior accidents near the Waverly 'Y' in less than 20 years—all involving single vehicles departing the roadway—to prove notice of a dangerous condition. *See* CP 2018-77. Tapken and Malinak maintained that the sheer number of prior road-departure collisions was relevant and admissible, without regard to the details or substantial similarity of any particular incident, because it should have put the County on notice of the need for an engineering study. RP 536, 540, 1239-40, 1269. Tapken made an offer of proof that the County's own road standards manual required the County to study any location that had a history of road-departure collisions and mitigate the problem. RP 1269. The County never conducted such a study before the accident. RP 1530-31.

In addition, Tapken and Malinak sought to establish the substantial similarity of certain prior accidents, to allow admission of the specific circumstances to prove notice of a dangerous condition. A few weeks before trial, it came to light that the County had recently destroyed photographs from three of the prior accidents. CP 997. The photographs were responsive to requests for production that had been served more than a year before the County destroyed them. *See* CP 992-93, 997, 1001-02, 1006, 1045-49. Although the limited availability of photographs hindered Tapken's ability to demonstrate the substantial similarity of some of the numerous prior accidents, *see* CP 1028, the trial court found that the three accidents that occurred in February 1995, December 2007, and September 2009, were substantially similar to the subject accident. RP 422-23.

The County argued that prior accidents generally were not relevant—even if substantially similar—because notice was presumed and the County would not assert lack of notice as a defense. RP 425-29, 533. The County further represented that it would admit and not dispute having prior notice that the hawthorn bush obstructed the yield sign on the right leg of the Waverly 'Y.' RP 425-29. The County represented that the bush was the reason the yield-ahead sign had been installed. RP 429.

The trial court initially ruled that Tapken and Malinak would be allowed to introduce evidence of the three substantially similar prior accidents, but only in their rebuttal cases, and only if the County presented evidence that it lacked notice that the intersection was dangerous. RP 432.

The court later modified its ruling and excluded all evidence of prior accidents, except that experts and Mr. Greene could be asked if they considered accident history generally in forming their opinions. RP 535, 541-42, 665-66, 711-12, 864-67. The court reasoned that notice was presumed because the County created the dangerous conditions alleged by Tapken and Malinak, and the County was not disputing notice. RP 865. And while the court determined it was "undisputed that...the County destroyed photographs that were timely requested by the Plaintiff," the court declined to sanction the County for destroying evidence, based on the ruling that the evidence was not relevant. CP 2131-33.

The trial testimony was not all consistent with the County's pre-trial representation that it would admit having prior notice that the yield sign was obscured. Mr. Greene testified that, while the bush somewhat impeded sight distance to the yield sign, "[t]he face of the sign was not obscured." RP 627, 638, 642-44. He also testified that the yield-ahead sign was installed so long ago that no records existed of when or why it had been installed. RP 502-03, 629. Furthermore, in a post-accident report in which he concluded the intersection was safe, Mr. Greene stated that the yield-ahead sign was warranted because of the "road geometry"—*i.e.*, because the intersection was on a curve and downhill. RP 500-02. His report did not mention the bush as a reason for the sign. RP 502. Mr. Baird, the maintenance foreman, testified that the bush presented no safety concern relative to sight distance to the intersection. RP 699.

Nevertheless, the trial court rejected Tapken's argument that the prior similar accidents were relevant and admissible to prove that the County had notice that the Waverly 'Y' intersection was inherently dangerous—which the County never purported to admit. RP 535-42, 646-53, 662-66, 861, 867.

H. The trial court excluded the testimony of Tapken's expert witness, Steven Harbinson, on causation because the testimony embraced "the ultimate question for the jury to decide."

During Tapken's direct examination of Mr. Harbinson, her expert on accident reconstruction and motorcycle operation and safety, she asked him to state his opinions as to the cause of the accident. RP 781. Sustaining an objection by the County, the trial court excluded Mr. Harbinson's opinions on causation because "[t]hat's the ultimate question for the jury to decide." RP 782.

I. After the close of Tapken's and Malinak's cases in chief, the trial court granted judgment as a matter of law to the County.

After Tapken and Malinak completed their cases in chief, the County orally moved for judgment as a matter of law under CR 50(a), arguing that no evidence was presented to support a finding against the County on breach of duty or proximate cause. RP 1695-1716.

Regarding breach of duty, the County repeated the same arguments it had made in its pre-trial summary judgment motion: that the hazards were open and apparent and ordinary, and that Malinak knew of the hazards. RP 1695-99. In addition, the County argued that there was no

evidence or testimony that the intersection or its signage violated the Federal Highway Administration's Manual on Uniform Traffic Control Devices (MUTCD). RP 1704-10. As to proximate cause, the County again repeated its previous arguments but also referenced trial testimony by Malinak that a yield sign does not require a motorist to slow down unless there is conflicting traffic. RP 1710-11; *see* RP 1024 (Malinak). The County argued based on this testimony that Malinak would not have slowed down even if the hawthorn bush had been trimmed and the yield sign and curve had been fully visible, and the accident thus would have happened regardless of any negligence by the County. RP 1710-11.

Three weeks into the trial and two days before the County would have rested its defense case, the trial court granted the County's CR 50 motion. RP 1746-56; CP 2126-27. Addressing breach of duty, the court ruled that "the plaintiff has failed to provide substantial and compelling evidence that the County violated its duty to exercise ordinary care in the maintenance and design of its public roads to keep them reasonably safe for ordinary travel." RP 1754.

As to proximate cause, the court found that "the only reasonable conclusion that may be reached is that Mr. Malinak's actions were the cause in fact of the plaintiff's injuries, not the County's actions." RP 1755. Even though Malinak intended to go right at the 'Y' and slowed down in anticipation, the court reasoned that the yield sign *on the left* put Malinak on notice of the need to slow down, but he failed to do so:

> When Mr. Malinak saw a yield sign on the left, he was on notice that not only was he approaching an intersection but was required to slow or stop to accommodate not only other traffic but also other existing conditions. No such attempt was ever made. Rather, Mr. Malinak maintained approximately the maximum speed allowed of 45 miles per hour.

RP 1752-53. The court acknowledged that "[t]he yield sign on the right is obstructed by a bush," but concluded that, "[e]ven if the bush was removed and the yield sign and curve on the right was open and apparent, Mr. Malinak did not believe he had a duty to slow unless other vehicles were present." RP 1749, 1755.

J. Tapken and Malinak appealed from the judgment of dismissal.

After the trial court announced that it was dismissing Tapken's and Malinak's claims against the County, the trial court refused to allow the trial to be completed, at which time the court would have had the option to grant a judgment notwithstanding the verdict. RP 1763-69. This would have avoided having to repeat the three weeks of trial that had already been put on, in the event the dismissal was reversed on appeal.

In response to the County's dismissal from the case, Tapken voluntarily dismissed her claim against Malinak without prejudice, and the court entered an order granting judgment as a matter of law in favor of the County. CP 2126-27, 2128-30. Tapken and Malinak each timely appealed from the judgment. CP 2134-35, 2139.

IV. ARGUMENT

A. The trial court erred in granting the County's motion for judgment as a matter of law on liability.

1. Standard of review.

A motion for judgment as a matter of law is a challenge to the sufficiency of the evidence to support a verdict in favor of the nonmoving party. *Leach v. Ellensburg Hosp. Ass'n*, 65 Wn.2d 925, 931-32, 400 P.2d 611 (1965). The appellate court engages in de novo review of a decision granting or denying a judgment as a matter of law, applying the same standard as the trial court. *Schmidt v. Coogan*, 162 Wn.2d 488, 491, 173 P.3d 273 (2007). "Judgment as a matter of law is not appropriate if, after viewing the evidence in the light most favorable to the nonmoving party and drawing all reasonable inferences, substantial evidence exists to sustain a verdict for the nonmoving party." *Id.* "Substantial evidence is said to exist if it is sufficient to persuade a fair-minded, rational person of the truth of the declared premise." *Guijosa v. Wal-Mart Stores, Inc.*, 144 Wn.2d 907, 915, 32 P.3d 250 (2001), quoting *Brown v. Superior Underwriters*, 30 Wn. App. 303, 306, 632 P.2d 887 (1980).

No discretion is involved in ruling on a motion for judgment as a matter of law. *Osborn v. Lake Washington School Dist. No. 414*, 1 Wn. App. 534, 535, 462 P.2d 966 (1969). The court "must defer to the trier of fact on issues involving conflicting testimony, credibility of the witnesses, and the persuasiveness of the evidence." *Faust v. Albertson*, 167 Wn.2d 531, 538, 222 P.3d 1208 (2009), quoting *State v. Hernandez*, 85 Wn. App.

672, 675, 935 P.2d 623 (1997). The court must interpret the evidence most strongly against the defendant and most favorably to the plaintiff, and draw every reasonable inference in favor of the plaintiff. *Osborn*, 1 Wn. App. at 535.

A question of fact may be determined as a matter of law only when reasonable minds could reach but one conclusion; otherwise, the question is for the jury alone. *Owen v. Burlington N. & Santa Fe R.R. Co.*, 153 Wn.2d 780, 788, 108 P.3d 1220 (2005). "[I]ssues of negligence and proximate cause are generally not susceptible to summary judgment." *Id.*[5]

2. Breach of duty.

(a) A municipality has a duty to design and maintain its roadways in a condition reasonably safe for ordinary travel.

A municipality (such as the County) owes a duty to members of the public to design and maintain its roadways in a condition reasonably safe for ordinary travel. *Keller v. City of Spokane*, 146 Wn.2d 237, 249, 44 P.3d 845 (2002). This duty is owed to all persons, whether negligent or fault free. *Id.* A municipality is held to the same negligence standards as private parties. RCW 4.92.010; *Keller*, 146 Wn.2d at 242-43.

[5] Summary judgment cases are on point because the court applies the same standard whether a motion is brought under CR 50(a) and CR 56(c). *See Caulfield v. Kitsap County*, 108 Wn. App. 242, 249, 29 P.3d 738 (2001) ("It makes no substantive difference in the standard of review whether the procedural mechanism for the trial court to arrive at its result was a motion for summary judgment, a motion for directed verdict, or a motion for judgment as a matter of law.").

The municipality's duty extends to design as well as maintenance. *Raybell v. State*, 6 Wn. App. 795, 803, 496 P.2d 559 (1972). Our courts have recognized that "highway design and the manner in which drivers are informed of the design plays more than an incidental part in highway accidents." *Id.* A municipality is required to eliminate an inherently dangerous or misleading condition or, where such a condition cannot be eliminated, to post warning signs and otherwise guard against accidents. *Owen*, 153 Wn.2d at 786-88; *McCluskey v. Handorff-Sherman*, 125 Wn.2d 1, 6, 882 P.2d 157 (1994); *Provins v. Bevis*, 70 Wn.2d 131, 138, 422 P.2d 505 (1967). These requirements are "part of the overarching duty to provide reasonably safe roads for the people of this state to drive upon." *Owen*, 153 Wn.2d at 788.

(b) Whether a municipality has satisfied its duty is a question of fact that depends on all the surrounding circumstances.

Whether roadway conditions are reasonably safe for ordinary travel, or instead are inherently dangerous or misleading, is a question of fact that depends on all the surrounding circumstances. *Owen*, 153 Wn.2d at 788; *Chen v. City of Seattle*, 153 Wn. App. 890, 894, 223 P.3d 1230 (2009), *review denied*, 169 Wn.2d 1003 (2010). If a roadway is inherently dangerous or misleading, the adequacy of any corrective actions taken by the government is an additional question of fact. *Owen*, 153 Wn.2d at 788-89. Compliance with legal standards, such as those set forth in the MUTCD, is not dispositive. *Id.* at 908; *Grimsrud v. State*, 63 Wn. App.

546, 551-52, 821 P.2d 513 (1991). A municipality's duty to keep its roadways in a reasonably safe condition "is not necessarily limited only to eliminating physical defects or to implementing mandatory traffic control devices." *Chen*, 153 Wn. App. at 907.

For instance, in *Owen*, a car was hit by a train at a railroad crossing. 153 Wn.2d at 784-85. The plaintiff alleged that the accident occurred because various factors, including high traffic volume, a crown in the roadway, and traffic signals located just beyond the tracks, combined to cause frequent queuing of vehicles across the tracks. *Id.* at 784. While the city of Tukwila maintained that it complied with all MUTCD requirements, the plaintiff asserted that the particular circumstances required additional safety measures, such as more warning signs, greater notice of approaching trains, or separating the rail and vehicle grades. *Id.* at 785, 790. The Supreme Court concluded it was error to grant summary judgment to Tukwila because the jury could conclude from the plaintiff's evidence that the roadway was inherently dangerous or misleading and thus not in a condition reasonably safe for ordinary travel. *Id.* at 790.

In *Chen*, a pedestrian was struck in a marked crosswalk. 153 Wn. App. at 894-95. Seattle maintained that the hazards of the crosswalk were open and obvious and that it complied with the MUTCD. *Id.* at 905, 908. While the plaintiff's experts agreed there was nothing confusing or misleading about the crosswalk itself, they opined that the particular

conditions, including the width of the street, limitations of human perception, and the volume and speed of traffic, made the crosswalk inherently dangerous to pedestrians. *Id.* at 897-90. The Court of Appeals concluded it was error to grant summary judgment to Seattle.

In reaching this conclusion, the Court of Appeals held that whether a roadway is inherently dangerous or misleading depends on the all the surrounding circumstances, rather than any particular shortcoming:

> Although relevant to the determination of whether a municipality has breached its duty, evidence that a particular physical defect in a roadway rendered the roadway dangerous or misleading or evidence that a municipality was in violation of a law concerning roadway safety measures are not essential to a claim that a municipality breached the duty of care owed to travelers on its roadways. A trier of fact may conclude that a municipality breached its duty of care based on the totality of the circumstances established by the evidence.

Id. at 894; *see also id.* at 901, 903.

(c) Expert testimony that a roadway is inherently dangerous or misleading precludes judgment as a matter of law on breach of duty.

While expert testimony is not required in a road design case, judgment as a matter of law is inappropriate where the plaintiff presents expert testimony that the roadway is inherently dangerous or misleading: "[A]n expert opinion on an 'ultimate issue of *fact*' is sufficient to defeat a motion for summary judgment." *Chen*, 153 Wn. App. at 910 (emphasis in original), quoting *Eriks v. Denver*, 118 Wn.2d 451, 457, 824 P.2d 1207 (1992), quoting *Lamon v. McDonnell Douglas Corp.*, 91 Wn.2d 345, 352,

588 P.2d 1346 (1979). For instance, in *Chen*, the court held that expert testimony by Edward Stevens that the crosswalk was unsafe was itself sufficient to create a jury question on negligence. 153 Wn. App. at 910; *see also Wojcik v. Chrysler Corp.*, 50 Wn. App. 849, 854-55, 751 P.2d 854 (1988) (reversing a summary judgment in favor of Kitsap County, holding that expert testimony by Mr. Stevens that a road was unsafe, together with the plaintiff's explanation of the accident, was sufficient to create a jury question on negligence).

(d) Tapken presented substantial evidence, including expert testimony, that the Waverly 'Y' was inherently dangerous and misleading to southbound motorists and that the County failed to eliminate or warn against the danger.

Here, even as the trial court ruled that Tapken failed to present substantial evidence to support a finding that the County breached its duty, the court acknowledged there was evidence that the hawthorn bush impeded motorists' sight distance. RP 1749 ("The yield sign on the right is obstructed by a bush[.]"). The court's primary concern appears to have been whether the jury could find that the impeded sight distance from the bush was a cause in fact. *See* RP 1754-55. Immediately following its statement that there was no substantial evidence as to negligence, the court stated that, "[a]t best, the Court or a jury would be called to speculate that the bush impeded Mr. Malinak's sight distance." RP 1754.

Breach of duty is a distinct issue from causation. *Lynn v. Labor Ready, Inc.*, 136 Wn. App. 295, 306, 151 P.3d 201 (2006). The evidence

of impeded sight distance, by itself, meant that the County was not entitled to judgment as a matter of law on breach of duty. Impeded sight distance was a primary basis for Mr. Stevens' opinion that the roadway was inherently dangerous and misleading. *See* RVPD 20-22, 32-34, 66-68, 85-86. Moreover, the overgrown bush was not the only unsafe condition asserted by Tapken and Malinak, of which substantial evidence was presented. They presented evidence of multiple conditions that combined to make the southbound approach to the Waverly 'Y' inherently dangerous and misleading. *Chen* allows such an approach to proving liability in this context. 153 Wn. App. at 894, 901, 903.

Mr. Stevens and Mr. Gill testified that the visible yield sign on the left, combined with the lack of a visible yield or curve-warning sign on the right, could mislead motorists to conclude that the road to the right would be the main road or arterial, and not to expect a sharp curve or second yield sign and intersection in that direction. RVPD 68, 85-86, 145, 153-54 (Stevens); RP 886 (Gill). Tapken's evidence, including testimony from all three of her experts, also supported a finding that the curve itself, as well as the bush, prevented southbound motorists from perceiving the sharpness of the curve as they approached the Waverly 'Y' and until they were well into the curve itself. RVPD 22, 31-34, 77-78, 86 (Stevens); RP 742-43 (Harbinson), 885 (Gill).

Mr. Stevens and Mr. Harbinson opined that the conditions at the Waverly 'Y' combined to deprive motorists of a sufficient perception-

reaction time for the curve, and thus caused them to enter it at speeds greater than the reasonable safe speed of 20 miles per hour. RVPD 20-22, 66-67, 86-87 (Stevens); RP 767-72, 791-92 (Harbinson). Mr. Stevens and Dr. Gill opined that the County's signage failed to warn motorists of this hazard and that the problem could be fixed by converting the Waverly 'Y' into a 'T' intersection. RVPD 71-76 (Stevens); RP 893 (Gill); *see* Exh. P90. This expert testimony, together with Malinak's contemporaneous perception of the road conditions, was sufficient to avoid judgment as a matter of law on breach of duty. *See Wojcik*, 50 Wn. App. at 854-55.

The County maintained that the intersection was safe as a matter of law because the curve was ordinary, open, and apparent, and the configuration and signage technically complied with design standards. But these arguments sought improperly to have the court consider particular road characteristics in isolation. A roadway may be inherently dangerous even if the configuration and signage are in technical compliance with design standards or if modifying the signage alone would not eliminate the danger. *Chen*, 153 Wn. App. at 901, 903; *Grimsrud*, 63 Wn. App. at 551-52. *Chen* mandates that all the surrounding circumstances be considered in determining whether a roadway is inherently dangerous or misleading. 153 Wn. App. at 901, 903. Although curves—even relatively sharp ones—are not extraordinary, the County's arguments failed to take into account all the surrounding circumstances, including the obscured visibility, lack of warning (unlike on previous

curves), and the unusual and misleading nature of the intersection testified to by Tapken's experts. *See Owen*, 153 Wn.2d at 788.

Tapken presented substantial evidence from which the jury could have concluded that the Waverly 'Y' was inherently dangerous or misleading and thus not reasonably safe for ordinary travel. It was error to grant judgment as a matter of law to the County on breach of duty.

3. Proximate cause.

(a) Factual causation is a question of fact.

Proximate causation has two elements: factual and legal causation. *Schooley v. Pinch's Deli Market, Inc.*, 134 Wn.2d 468, 474, 951 P.2d 749 (1998). Only the first element—factual causation—is at issue here. There is substantial evidence of factual causation if the jury could find that, but for the defendant's actions, the plaintiff would not be injured. *See Schooley*, 134 Wn.2d at 478. "Establishing cause in fact involves a determination of what actually occurred and is generally left to the jury." *Id.*; *see also Joyce v. State*, 155 Wn.2d 306, 322, 119 P.3d 825 (2005); *Bernethy v. Walt Failor's, Inc.*, 97 Wn.2d 929, 935, 653 P.2d 280 (1982); *Moyer v. Clark*, 75 Wn.2d 800, 804-05, 454 P.2d 374 (1969).

Where causation involves the ability to perceive and react to road conditions, typically there must be evidence that the involved motorist was confused or misled by the road conditions or would have paid attention to warning signs. *See Miller v. Likins*, 109 Wn. App. 140, 147, 34 P.3d 835

(2001).[6] But causation need not be proven to a certainty. *Gardner v. Seymour*, 72 Wn.2d 802, 808, 180 P.2d 564 (1947); *Klossner v. San Juan County*, 21 Wn. App. 689, 692, 586 P.2d 899 (1978). It is sufficient that the plaintiff's evidence allows a reasonable person to conclude that the harm more probably than not happened in such a way that the defendant's negligence played a role. *Gardner*, 72 Wn.2d at 808; *see also Hernandez v. W. Farmers Ass'n*, 76 Wn.2d 422, 425-26, 456 P.2d 1020 (1969). Causation may be proven by circumstantial evidence and inferences. *Klossner*, 21 Wn. App. at 692. An accident can have more than one proximate cause. *Goucher v. J.R. Simplot Co.*, 104 Wn.2d 662, 676, 709 P.2d 774 (1985); *Travis v. Bohannon*, 128 Wn. App. 231, 242, 115 P.3d 342 (2005); *see also* WPI 15.01, 15.04.

Thus, where the evidence provides a basis for the jury to conclude that the government's negligence probably was a cause of the accident, it is error to grant judgment as a matter of law. For example, in *Wojcik*, a

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[6] In the cases where this causal link was found missing, the motorists were unavailable to testify or could not recall the accident. *See, e.g., Johanson v. King County*, 7 Wn.2d 111, 123, 109 P.2d 307 (1941) (affirming post-verdict dismissal where there was no evidence that the motorist, who was killed in the accident, was misled by the County's failure to obliterate an old yellow center stripe after the highway was widened); *Miller v. Likins*, 109 Wn. App. 140, 147, 34 P.3d 835 (2001) (affirming summary judgment where there was no evidence that the motorist was misled by the absence of a more prominently marked fog line or other alleged defects because, "like the driver in *Johanson*, he passed away before he could give his own sworn account of how the accident happened"); *Kristjanson v. City of Seattle*, 25 Wn. App. 324, 326, 606 P.2d 283 (1980) (affirming summary judgment where causation was speculative absent evidence that one motorist, who had no recollection of the accident, could have avoided it with additional sight distance, or that the other motorist, who drove recklessly, might have heeded warning signs).

driver lost control, drove off the roadway, rolled his vehicle, and struck a utility pole while attempting to pass another vehicle. 50 Wn. App. at 851. The plaintiff alleged that Kitsap County was negligent in striping the center line and in constructing and maintaining the shoulder. *Id.* at 853. Opposing summary judgment, he submitted testimony of Edward Stevens that there should have been a double-yellow line at the point the plaintiff began to pass, and the shoulder was too steep and narrow and needed a guard rail. *Id.* at 853, 855. The Court of Appeals concluded it was error to grant summary judgment to Kitsap County on breach of duty and proximate cause, and reversed. *Id.* at 855-58.

Analyzing proximate cause as to the striping, the *Wojcik* court observed that the plaintiff testified he did not begin passing until he reached the end of the double-yellow center line. 50 Wn. App. at 859. The court held this allowed an inference that he would have been alerted to avoid passing had the stripe been in place, and thus created a fact question as to whether the absence of the stripe was a proximate cause. *Id.* As to the narrow shoulder, the court held that Mr. Stevens' testimony supported an inference that, had the shoulder been properly designed and maintained, the vehicle would not have rolled over. *Id.* at 858-59.

(b) Tapken presented substantial evidence that the County's negligence was a proximate cause.

Malinak's testimony provided a basis to find a causal link between the County's negligence and the accident. Specifically, it would have

allowed the jury to find he was going too fast to negotiate the curve safely because of the County's negligence.

First, Malinak testified he was misled by the configuration and signage approaching the Waverly 'Y': seeing a yield sign on the road to the left and not seeing one on the right, he did not anticipate a sharp curve or second intersection to the right because "it appeared that the main part of the highway went to the right." RP 967. Second, Malinak testified that the configuration and hawthorn bush obscured his view of the curve's sharpness until it was too late to slow down enough to make the curve. RP 967-68. Third, Malinak testified that, having observed curve-warning and advisory speed signs on all significant curves prior to the Waverly 'Y,' he expected to see such signs on any curve that required significant slowing. RP 1015. He would have slowed down adequately if warned to do so, but similar warning signs were not posted for southbound motorists approaching the Waverly 'Y.' RP 963, 1014-15, 1020, 1118-19.

Malinak slowed by 5 or 10 miles per hour for the intersection and curve, but first realized as he passed the bush that he was still going "way too fast" to make the curve. RP 967-68. Expert testimony confirmed that 35 or 40 miles per hour is too fast to negotiate the curve safely; the reasonable safe speed is 20 miles per hour. RVPD 64, 84; RP 767. Based on his conclusion that he was going too fast, Malinak exited the curve and attempted to go left instead, leading to his loss of control of the motorcycle. RP 967-68, 970, 1061.

Malinak's testimony provided a basis to find that the accident would not have occurred but for the County's negligence. Had Malinak not been misled by the configuration, had the curve's sharpness been visible, or had Malinak been warned of the sharp curve, he would have known that he needed to slow down—not by just 5 to 10 miles per hour—but by at least 25 miles per hour to negotiate the curve safely. Alternatively, the accident would not have occurred had the intersection been reconfigured as a 'T' intersection with a stop sign.

That Malinak lost control after exiting the curve does not defeat causation. He testified that he attempted to retreat to the straighter left-hand curve because he believed that he would certainly lose control if he attempted to make the right-hand curve anywhere close to 35-40 miles per hour. RP 967-70. This provides a basis to find that excessive speed—which was caused by the County's negligence—was a proximate cause of the accident. Whether to credit Malinak's testimony regarding the circumstances of the accident is for a jury to determine. *See Faust*, 167 Wn.2d at 538; *Morinaga v. Vue*, 85 Wn. App. 822, 828, 935 P.2d 639 (1997). It was error to take the issue of proximate cause from the jury.

(c) Whether Malinak slows down for yield signs absent conflicting traffic is a red herring.

The trial court granted judgment as a matter of law on causation primarily based on Malinak's testimony that he generally would not slow down based on a yield sign alone, absent conflicting traffic. The court

stated that, having seen the yield sign *on the left*, Malinak "was required to slow or stop to accommodate not only other traffic but also other existing conditions. No such attempt was ever made." RP 1752. The court further reasoned that the accident would have occurred regardless of any negligence by the County because, "[e]ven if the bush was removed and the yield sign and curve on the right was open and apparent, Mr. Malinak did not believe he had a duty to slow unless other vehicles were present." RP 1755. There are at least three problems with this reasoning.

First, the trial court premised its ruling on a finding that Malinak "failed to reduce his speed" once he saw the yield sign for traffic intending to go *left* at the 'Y.' RP 1755; *see also* RP 1752. But Malinak intended to go right, not left. RP 1195. Moreover, he *did* reduce his speed; he testified that he slowed down 5 to 10 miles per hour because he could see there was a curve (which he expected would be slight or gradual). RP 968, 1022-23, 1159, 1162-63. In addition, Malinak testified that, while he generally would drive at about the posted speed limit, he slowed down as appropriate for curves—if he could see them or was warned. RP 963, 1014-15, 1020, 1118-19, 1161-62.

Whether Malinak satisfied his duty to slow down given the circumstances, the road configuration, and conditions at the time of the accident, is a question of fact. *See Bohnsack v. Kirkham*, 72 Wn.2d 183, 195, 432 P.2d 554 (1967); *Hough v. Ballard*, 108 Wn. App. 272, 284, 31 P.3d 6 (2001). But even if the jury were to find that Malinak was

negligent (such as for not slowing down enough) and that such negligence was a proximate cause of the accident, that would not relieve the County of liability. There can be more than one proximate cause of an accident, and a third party's concurrent negligence does not break the chain of causation. *Travis*, 128 Wn. App. at 242.

Second, although a yield sign requires a motorist to "slow down to a speed reasonable for existing conditions and if required for safety to stop," RCW 46.61.190(3), the pertinent "conditions" are only those relating to conflicting traffic, if any. *See also* MUTCD § 2B.08 (Exh. P86 (Appx. 9)) (providing that vehicles controlled by a yield sign must "slow down or stop when necessary *to avoid interfering with conflicting traffic*" (emphasis added)).[7] A yield sign may be substituted for a stop sign where appropriate, but is properly used only to control an intersection—not to slow traffic for conditions unrelated to conflicting traffic. RVPD 68, 85 (Stevens). *See also* MUTCD §§ 2B.08, 2B.09 (Exh. P86 (Appx. 9)). Mr. Greene, the County's traffic engineer, acknowledged this. RP 512-13.

Here, Malinak observed the roadway intersecting from the left, and there was no conflicting traffic. RP 1024. Even assuming he had a duty to slow down for either of the two yield signs because of the *potential* for conflicting traffic (though he saw none), the yield signs did not warn him to slow down for other, unrelated conditions, such as a sharp curve.

[7] The Washington State Department of Transportation has adopted the MUTCD pursuant to the legislature's authorization. RCW 47.36.030(1); WAC 468-95-010.

Importantly, the degree of slowing necessary to negotiate the curve safely may differ significantly from the degree necessary to observe and yield to conflicting traffic. For example, it may not be necessary to slow down to 20 miles per hour because of the *potential* for conflicting traffic, when no actual traffic is observed. Yet the undisputed reasonable safe speed for the curve was 20 miles per hour.

Third, the trial court in effect determined *as a matter of law* that, had the yield sign on the right been visible and not obscured by the bush, it would have required slowing adequate to negotiate the curve safely, even absent any conflicting traffic. But a yield sign alone cannot be deemed, as a matter of law, to provide motorists adequate warning to slow down from 45 miles per hour to 20 miles per hour for a sharp, blind curve, while observing and yielding to any conflicting traffic approaching from the opposite direction. At best, whether the yield sign, had it not been obscured, would have provided adequate warning would be a question of fact upon which reasonable minds could differ.

Ultimately, then, Malinak's testimony that he generally does not slow down for yield signs absent conflicting traffic is a red herring. The County cannot rely on a yield sign to slow vehicles for conditions other than conflicting traffic. And Malinak does reduce his speed as appropriate for curves and other conditions—as he did on the day of the accident—to the extent he can see them or is warned. The jury should have been

allowed to decide proximate cause. This Court should reverse the judgment and order a new trial.

B. The trial court erred in excluding evidence of the number of prior accidents and of the specific prior accidents it found were substantially similar to the subject accident.

1. Standard of review.

A trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion. *Salas v. Hi-Tech Erectors*, 168 Wn.2d 664, 668, 230 P.3d 583 (2010). A trial court abuses its discretion when it renders a decision that is "manifestly unreasonable or based upon untenable grounds or reasons." *Id.*, quoting *State v. Stenson*, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997). "A decision is based on untenable grounds or for untenable reasons if the trial court applies the wrong legal standard or relies on unsupported facts." *Id.*, quoting *In re Pers. Restraint of Duncan*, 167 Wn.2d 398, 402-03, 219 P.3d 666 (2009).

2. Notice is disputed because the County did not create all of the conditions that made the Waverly 'Y' inherently dangerous or admit notice that they combined to create an unreasonable hazard.

A municipality is deemed to have notice of an unsafe condition created by its employees or agents. *Wright v. Kennewick*, 62 Wn.2d 163, 167, 381 P.2d 620 (1963); *see* WPI 140.02. But to establish liability for other conditions—those not created by the municipality—the plaintiff must prove that the municipality knew or should have known of the condition before the accident. *Russell v. City of Grandview*, 39 Wn.2d

551, 554-55, 236 P.2d 1061 (1951). If a dangerous condition arises because of failure to repair or maintain, then the duty to correct it arises once the municipality has actual or constructive notice of it. *Id.*

All of the surrounding circumstances must be considered in determining whether a roadway is inherently dangerous or misleading. *Chen*, 153 Wn. App. at 901, 903. Accordingly, the issue of notice must also be analyzed in light of all the surrounding circumstances pertinent to the plaintiff's theory of liability. The court determined that the County was deemed to have notice because it created the features of the intersection alleged by Tapken and Malinak to be dangerous. But Tapken and Malinak alleged that a several factors, including the misleading road design, sharpness of the curve, downhill slope, and obstructive hawthorn bush, combined to create an inherently dangerous condition in that motorists would enter the curve going too fast to negotiate it safely. Whether the County had notice of this dangerous combination is disputed.

In addition, although some of the problems, such as the misleading design and signage and lack of warning, were created by the County, the hawthorn bush occurred naturally and was not maintained. And while the County represented before trial that it would acknowledge having prior notice that the bush obscured the yield sign, not all the trial testimony was consistent. Mr. Greene, the County's traffic engineer, testified that the bush did *not* obscure the yield sign; that no records existed of when or why the yield-ahead sign had been installed; and that his own report

identified the "road geometry," and not the bush, as the reason the yield-ahead sign was warranted. RP 500-03, 627, 629, 638, 642-44. And regardless of the signs, the bush also obscured the curve. RVPD 22, 31-34, 77-78, 86 (Stevens); RP 742-43 (Harbinson), 885 (Gill).

Moreover, the issue is not merely whether the government was on notice that a condition existed, but specifically that the condition was inherently dangerous or misleading. *See McCluskey*, 125 Wn.2d at 6; *Russell*, 125 Wn.2d at 554-55. The County never purported to admit prior notice of an inherently dangerous or misleading condition. Mr. Greene testified that the intersection was safe, based on a post-accident assessment that included the accident history. RP 546-47. Mr. Baird, the maintenance foreman, testified that the bush presented no safety concern and had not been removed because "[i]t wasn't obstructing out on the roadway as far as hitting vehicles' mirrors or anything like that." RP 699.

It was error to conclude that notice was undisputed when the County did not create all the conditions and circumstances that Tapken and Malinak alleged made the intersection dangerous or admit that they combined to create an unreasonable hazard.

3. The number of prior accidents and evidence of the specific accidents the trial court found were substantially similar to the subject accident was relevant and admissible.

Excluding the evidence of prior accidents was an abuse of discretion because it hindered Tapken and Malinak's ability to prove

notice of an inherently dangerous condition. The sheer number of prior road-departure collisions, without regard to the details or substantial similarity of any particular incident, is relevant in that it should have put the County on notice that, under its own road standards manual, it needed to conduct an engineering study of the Waverly 'Y' to evaluate whether it was reasonably safe for ordinary travel. *See* RP 1269.

In addition, evidence of specific prior incidents that occurred under substantially similar circumstances is admissible to prove notice to the defendant of a dangerous condition. *Toftoy v. Ocean Shores Props., Inc.*, 71 Wn.2d 833, 835-36, 431 P.2d 212 (1967). The plaintiff need not establish that the prior accidents occurred in precisely the same manner as the subject accident; rather, the pertinent similarities depend on the specific condition for which the evidence would be relevant to show notice. *See Boeing Co. v. State*, 89 Wn.2d 443, 572 P.2d 8 (1978). The trial court determined that three prior accidents were substantially similar to the subject accident, but excluded them because it concluded that notice was not in dispute. As discussed above, notice is disputed.

This Court should instruct the trial court that the number of prior accidents and evidence of the substantially similar prior accidents is admissible on remand.

C. The trial court erred in excluding testimony on causation by Tapken's expert witness, Steven Harbinson.

1. Standard of review.

The standard of review for this evidentiary issue is the same as for the erroneous exclusion of the accident history evidence.

2. Opinion testimony is admissible under ER 704 even if it embraces an ultimate issue for the trier of fact.

ER 704 provides: "Testimony in the form of an opinion or inferences otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." Under ER 704, "[e]xpert opinions that help establish the elements of negligence are admissible." *Davis v. Baugh Indus. Contractors, Inc.*, 159 Wn.2d 413, 420, 150 P.3d 545 (2007). While an expert may not testify to legal conclusions, factual causation is a question of fact. *Bernethy*, 97 Wn.2d at 935. And expert witnesses frequently opine about causation. *See, e.g., Anderson v. Akzo Nobel Coatings, Inc.*, 172 Wn.2d 693, 603-04, 260 P.3d 857 (2011); *Ma'ele v. Arrington*, 111 Wn. App. 557, 562-63, 45 P.3d 557 (2002). While it is preferable that an expert witness avoid using "legal jargon" such as "proximate cause" in phrasing an opinion, this is nevertheless permissible and is not a proper basis to exclude the opinion so long as an appropriate foundation is laid. *Davis*, 159 Wn.2d at 420.

3. Harbinson's causation testimony should be admitted.

The specific reason given by the trial court for excluding Mr. Harbinson's testimony on causation was that causation is "the ultimate

question for the jury to decide." RP 782. This was contrary to ER 704. While a trial court has discretion to proscribe an expert's use of the legal term "proximate cause," the court abused its discretion in excluding Mr. Harbinson's causation testimony altogether. And while the exclusion of this testimony did not prevent Tapken from presenting substantial evidence to support a finding that the County's negligence proximately caused her injuries, this error must not be repeated on remand.

D. The trial court erred in denying Tapken's motion for partial summary judgment to strike the County's affirmative defense of contributory negligence.

1. Standard of review.

This Court reviews a summary judgment de novo, engaging in the same inquiry as the trial court. *Hisle v. Todd Pac. Shipyards Corp.*, 151 Wn.2d 853, 860-61, 93 P.3d 108 (2004). "No discretion is involved in determining whether there is sufficient evidence as a matter of law to submit the issue of contributory negligence to a jury." *Kilde v. Sorwak*, 1 Wn. App. 742, 745, 463 P.2d 265 (1970). A party is entitled to summary judgment if the pleadings, affidavits, depositions, and admissions on file demonstrate that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. CR 56(c).

A party may move for summary judgment by pointing out the absence of evidence to support an element of the opposing party's case. *Young v. Key Pharms., Inc.*, 112 Wn.2d 216, 225 n.1, 770 P.2d 182 (1989). The burden then shifts to the nonmoving party to set forth facts

showing a genuine issue of material fact for trial. *Id.* The nonmoving party may not rely on speculation or argumentative assertions that unresolved fact issues remain. *Seven Gables Corp. v. MGM/UA Entm't Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986).

2. To avoid summary judgment, the County was required to present substantial evidence that Tapken had a reasonable opportunity to react.

Contributory negligence is an affirmative defense that may be asserted where there is evidence that the plaintiff failed to exercise "the care for his own safety that a reasonable person would have used in the same situation." *Jaeger v. Cleaver Constr., Inc.*, 148 Wn. App. 698, 713, 201 P.3d 1028 (2009), citing *Rosendahl v. Lesourd Methodist Church*, 68 Wn.2d 180, 182, 412 P.2d 109 (1966). A passenger generally may be found contributorily negligent only if, "when the accident became imminent, there was something he might have done that he failed to do." *Murray v. Amrine*, 28 Wn. App. 650, 657, 626 P.2d 24 (1981).

Negligence cannot be presumed merely because an accident occurred. *Evans v. Yakima Valley Transp. Co.*, 39 Wn.2d 841, 846, 239 P.2d 336 (1952). The plaintiff's conduct is judged in the context of the circumstances as they appeared to him or her at the time of the accident. *Hull v. Seattle, R. & S. Ry. Co.*, 60 Wash. 162, 167, 110 P. 804 (1910).

> Foresight, not retrospect, is the standard of diligence. It is nearly always easy, after an accident has happened, to see how it could have been avoided. But negligence is not a matter to be judged after the occurrence. It is always a

> question of what reasonably prudent men under the same circumstances would or should, in the exercise of reasonable care, have anticipated.

Gordon v. Deer Park Sch. Dist. No. 414, 71 Wn.2d 119, 124, 426 P.2d 824 (1967), quoting *Winsor v. Smart's Auto Freight Co.*, 25 Wn.2d 383, 387, 171 P.2d 251 (1946).

The defendant must establish contributory negligence by a preponderance of direct evidence or reasonable inferences. *Golub v. Mantopoli*, 65 Wn.2d 361, 364, 927 P.2d 433 (1964). Substantial evidence is required; a scintilla of evidence will not suffice. *Roberts v. Larsen*, 71 Wn.2d 743, 431 P.2d 166 (1967). Absent substantial supporting evidence, it is error to submit contributory negligence to the jury. *Id.*; *Bonica v. Gracias*, 84 Wn.2d 99, 100, 524 P.2d 232 (1974).

To constitute contributory negligence, the plaintiff's conduct must be shown not only to have been a *cause* of her injury, but to have been *negligent*; that is, that the plaintiff breached her duty to use care for her own protection. *Geschwind v. Flanagan*, 121 Wn.2d 833, 838, 854 P.2d 1061 (1993). "Not every action by a plaintiff, even though it be a cause of the mishap, can be characterized as negligent action." *Zukowsky v. Brown*, 1 Wn. App. 94, 99, 459 P.2d 964 (1969), *aff'd*, 79 Wn.2d 586, 488 P.2d 269 (1971) (reversing defense verdict for lack of substantial evidence to support a finding of contributory negligence where, although the plaintiff's sitting sideways and turning quickly in a boat seat may have been a cause of its collapse, such action could not be characterized as

negligent); *cf. Hunsley v. Giard*, 87 Wn.2d 424, 434, 553 P.2d 1096 (1976) ("Not every act which causes harm results in liability.").[8] Where, as here, the defendant alleges that the plaintiff failed to act to avoid injury, the defendant must show that the plaintiff had a reasonable time to react after the perceiving the peril created by the defendant's negligence.[9]

3. Summary judgment should be granted because a motorcycle passenger cannot reasonably be expected to match opposite lean directions in a fraction of a second.

The County's contributory negligence theory is that Malinak lost control of the motorcycle because Tapken did not *simultaneously* match his abrupt, emergency change of lean direction when he suddenly leaned the motorcycle to the left a split second after initially leaning it to the right. Malinak testified at his deposition before trial that Tapken properly leaned to the right in response to his initial lean, but when he abruptly switched to lean left a split second later, her body leaned farther right. CP 218-19, 222. He testified similarly at trial. RP 969. The County premises

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[8] *See also Hughey v. Winthrop Motor Co.*, 61 Wn.2d 227, 377 P.2d 640 (1963) (reversing the judgment on a defense verdict in a slip-and-fall case for lack of substantial evidence to support a finding of contributory negligence where, although plaintiff's action in walking across a repair shop floor was a cause of her injuries, there was no evidence that she did so negligently).

[9] *Liesey v. Wheeler*, 60 Wn.2d 209, 212-13, 373 P.2d 130 (1962) (holding that no question of contributory negligence was raised where the plaintiff had less than half a second to react to the defendant's failure to yield); *Kilde*, 1 Wn. App. at 747-48 (holding that no question of contributory negligence was raised where the plaintiff had only about two seconds to react to defendant's bad left turn); *see also Theonnes v. Hazen*, 37 Wn. App. 644, 647-48, 681 P.2d 1284 (1984) (holding that the defendant driver's excessive speed was not a proximate cause of a collision with a bicycle where the driver had, at most, slightly more than a second to react and avoid the collision).

its affirmative defense of contributory negligence exclusively on this testimony by Malinak. *See, e.g.,* CP 655.

In opposing Tapken's summary judgment motion, the County acknowledged that its theory allows for no reaction time. The County relied on expert testimony that a motorcycle passenger must "mirror" the driver's movements, such that they move "at the same time" and "as one." CP 657-59, 780-81.

No reasonable inference can be made that Tapken could have perceived and matched Malinak's emergency lean reversal. Under normal circumstances, it may be reasonable to expect a motorcycle passenger to match the driver's lean direction near simultaneously, with little or no perceptible delay. Indeed, the County's expert testified that, when the circumstances allow the passenger to anticipate a turn, sometimes the passenger will start leaning before the driver. CP 781. But the circumstances here undisputedly were not normal. Tapken appropriately matched Malinak's initial lean to the right. CP 218, 222-23. But only a "split second" later, he reversed his lean direction in an emergency maneuver. CP 95, 218-19, 222, 224. No reasonable juror could find Tapken negligent for failing to match opposite lean directions within a fraction of a second.

Failure to anticipate another's negligence does not amount to contributory negligence. *Rainier Heat & Power Co. v. City of Seattle*, 113 Wash. 95, 104, 193 P. 233 (1920); *see also Murray*, 28 Wn. App. at 656

(holding that an automobile passenger is not required to anticipate the driver's negligent acts). In any event, there is no evidence or reasonable inference that Tapken should—or could—have anticipated Malinak's sudden reversal of lean direction. There is no substantial evidence of contributory negligence by Tapken.

In response to Tapken's motion for summary judgment on contributory negligence, the County theorized that, notwithstanding the split-second timing and emergency situation, Tapken *did* react to Malinak's sudden reversal of lean direction—by leaning farther right. CP 659. But a breach of duty must result from a voluntary act or failure to act, and there cannot be an "act" without volition. RESTATEMENT (SECOND) OF TORTS § 2 cmt. a, § 282 cmt. a (1965). It is pure speculation to suggest that leaning farther right was voluntary action by Tapken. Under the circumstances, if Tapken's body indeed leaned farther right when Malinak leaned left, it was more likely because of Malinak's whipsaw-like reversal of lean direction than any voluntary action on her part. Tapken's expert, Mr. Harbinson, testified at trial that an unanticipated reversal of lean direction from right to left could cause the sensation of the passenger's body leaning farther right. RP 779-81.

Ultimately, there is no evidence upon which to determine whether Tapken's leaning farther right was voluntary or involuntary. RP 808. A jury may not find negligence based on conjecture. *Sanchez v. Haddix*, 95 Wn.2d 593, 599, 627 P.2d 1312 (1981). "[I]f there is nothing more

substantial to proceed upon than two theories, under one of which a [party] would be liable and under the other of which there would be no liability, a jury is not permitted to speculate on how the accident occurred." *Id.* Accordingly, summary judgment should be entered striking the County's affirmative defense of contributory negligence.

V. CONCLUSION

Tapken and Malinak presented substantial evidence on negligence and proximate cause, which requires a trial on those issues. This Court should reverse and remand for trial and direct the trial court to (1) admit the number of prior accidents and evidence of the specific prior accidents the trial court found were substantially similar to the subject accident, (2) admit expert testimony by Mr. Harbinson on causation, and (3) enter summary judgment on contributory negligence.

Respectfully submitted this 19th day of March, 2015.

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Madelynn M. Tapken v. Spokane County, et al.
COA Case No. 32909-7

INDEX TO APPENDICES TO OPENING BRIEF OF APPELLANT TAPKEN

Appendix	Exhibit #	Clerk's Description
1	P126	Photographs of Approached Intersection Southbound
2	P127	Photographs of Approached Intersection Southbound
3	P128	Photographs of Approached Intersection Southbound
4	P129	Photographs of Approached Intersection Southbound
5	P130	Photographs of Approached Intersection Southbound
6	P131	Photographs of Approached Intersection Southbound
7	P8	Photograph of Scene Taken on 9/28/11
8	P61	Google Earth Photograph, August 2011 (Aerial Viewing Intersection from North Looking South)
9	P86	Yield Sign Applications and Placement
10	P116	Intersection(s) Within Intersections – Contact Points; Edward Stevens
11	D208	Vicinity Map with Malinak's Routes Marked

APPENDIX 1


08.08.2012

APPENDIX 2


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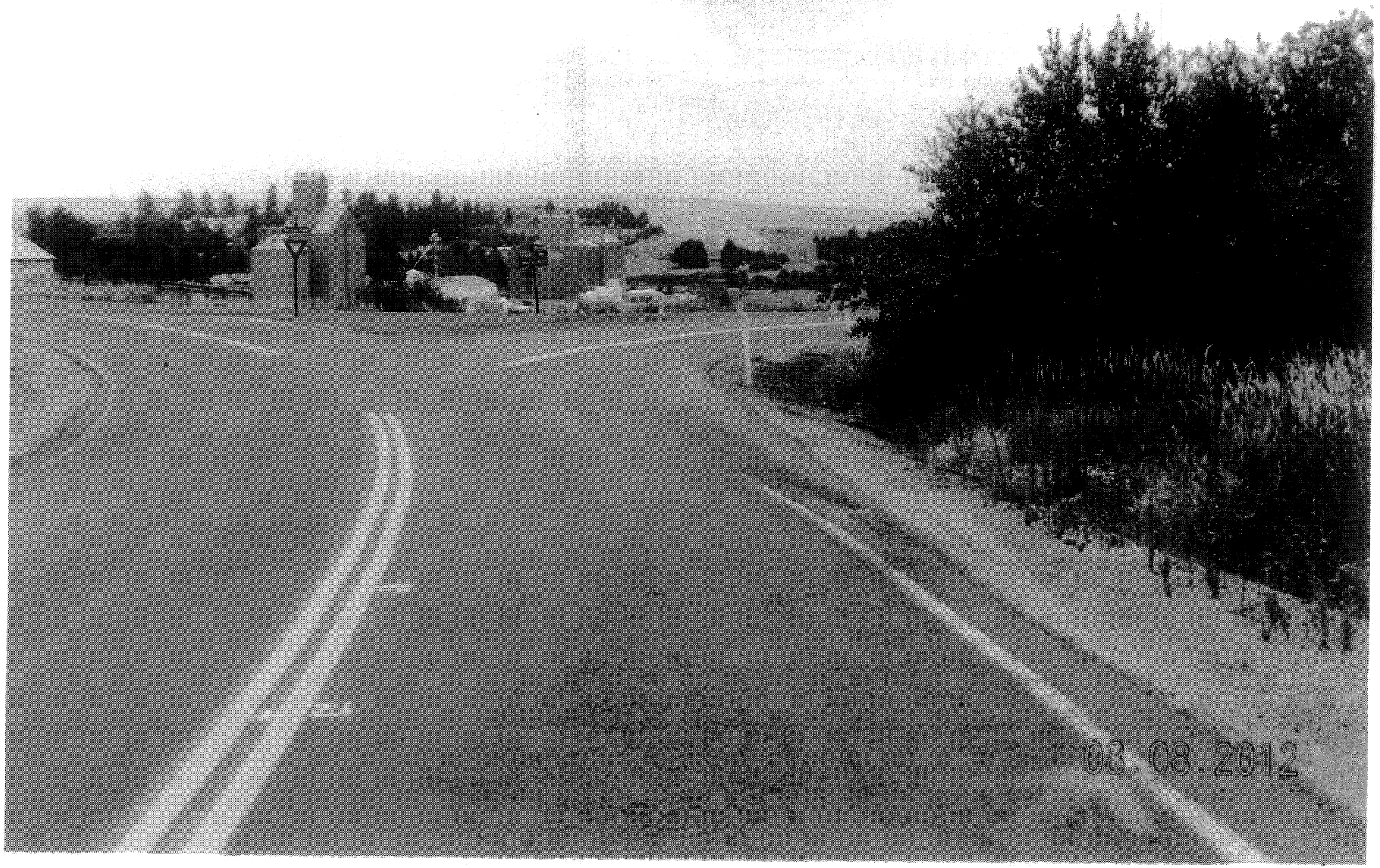
APPENDIX 3


08 08 2012

APPENDIX 4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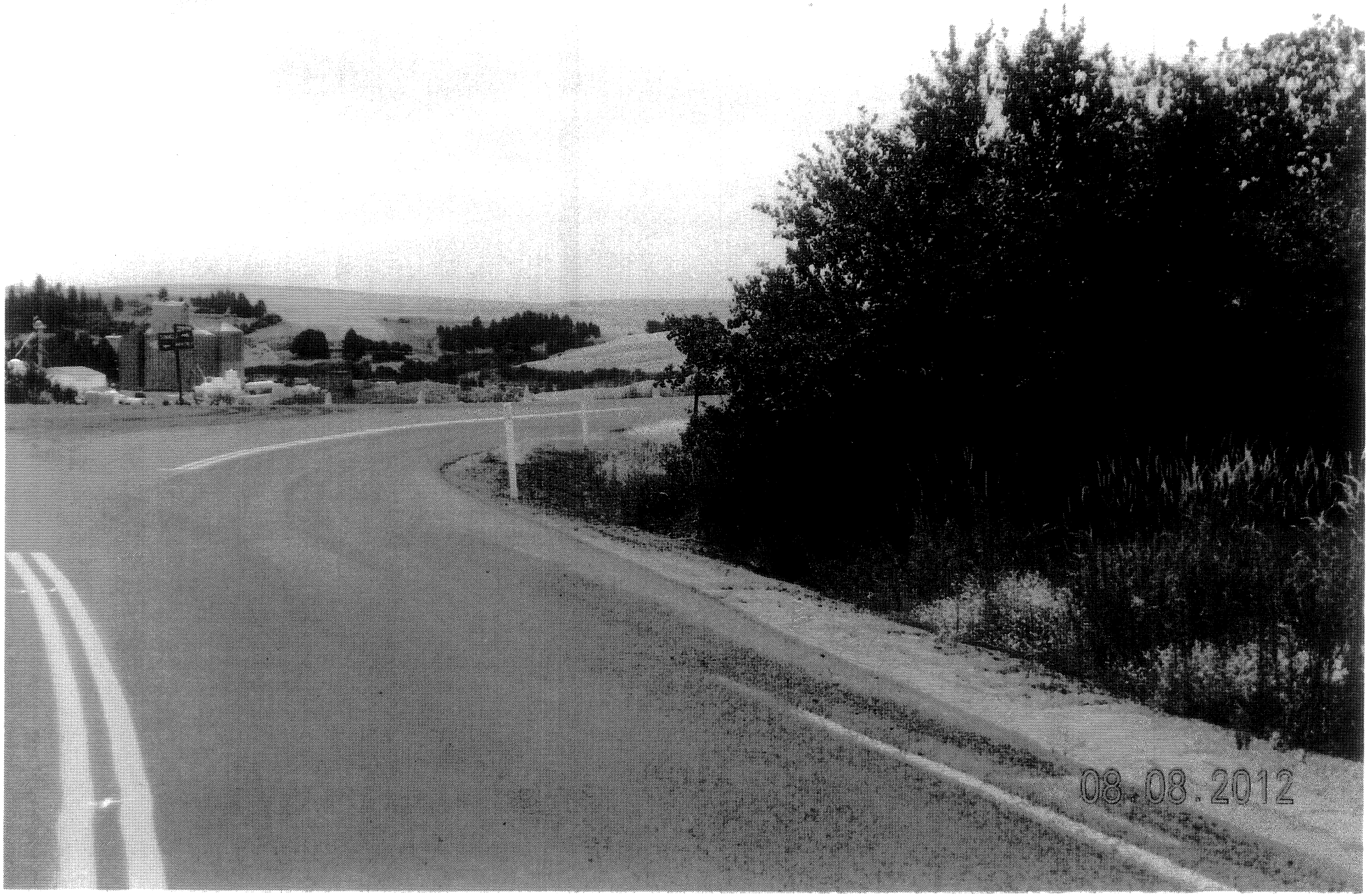
APPENDIX 5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APPENDIX 6

P 131

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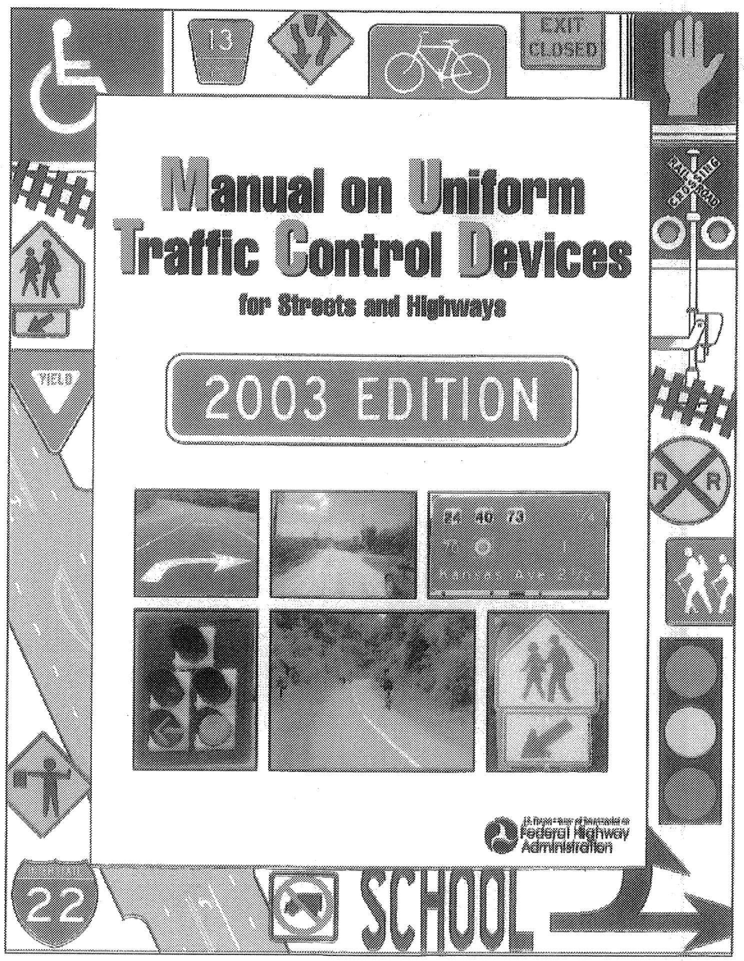
APPENDIX 7

APPENDIX 8


Image Taken 8/20/11
P 61
Legend
S Prairie View Rd & E Spangle Waverly Rd, Fairfield, WA 99012, USA
S Prairie View Rd & E Spangle Waverly Rd, Fairfield, WA 99012, USA
Google earth

APPENDIX 9

P 86



Section 2B.08 YIELD Sign (R1-2)

Standard:

The YIELD (R1-2) sign (see Figure 2B-1) shall be a downward-pointing equilateral triangle with a wide red border and the legend YIELD in red on a white background.

Support:

The YIELD sign assigns right-of-way to traffic on certain approaches to an intersection. Vehicles controlled by a YIELD sign need to slow down or stop when necessary to avoid interfering with conflicting traffic.

Section 2B.09 YIELD Sign Applications

Option:

YIELD signs may be used instead of STOP signs if engineering judgment indicates that one or more of the following conditions exist:

A. When the ability to see all potentially conflicting traffic is sufficient to allow a road user traveling at the posted speed, the 85th-percentile speed, or the statutory speed to pass through the intersection or to stop in a reasonably safe manner.
B. If controlling a merge-type movement on the entering roadway where acceleration geometry and/or sight distance is not adequate for merging traffic operation.
C. The second crossroad of a divided highway, where the median width at the intersection is 9 m (30 ft) or greater. In this case, a STOP sign may be installed at the entrance to the first roadway of a divided highway, and a YIELD sign may be installed at the entrance to the second roadway.
D. An intersection where a special problem exists and where engineering judgment indicates the problem to be susceptible to correction by the use of the YIELD sign.

Standard:

A YIELD (R1-2) sign shall be used to assign right-of-way at the entrance to a roundabout intersection.

Sect. 2B.07 to 2B.09

Section 2B.10 YIELD Sign Placement

Standard:

The YIELD sign shall be installed on the right side of the approach to which it applies. YIELD signs shall be placed on both the left and right sides of approaches to roundabout intersections with more than one lane on the signed approach where raised splitter islands are available on the left side of the approach. When the YIELD sign is installed at this required location and the sign visibility is restricted, a Yield Ahead sign (see Section 2C.29) shall be installed in advance of the YIELD sign.

The YIELD sign shall be located as close as practical to the intersection it regulates, while optimizing its visibility to the road user it is intended to regulate.

YIELD signs and STOP signs shall not be mounted on the same post.

Guidance:

Other than a DO NOT ENTER sign, no sign should be mounted back-to-back with a YIELD sign in a manner that obscures the shape of the YIELD sign.

Support:

Section 2A.16 contains additional information about separate and combined mounting of other signs with YIELD signs.

Guidance:

Yield lines, when used to supplement a YIELD sign, should be located at a point where the road user should yield (see Section 3B.16).

Where two roads intersect at an acute angle, the YIELD sign should be positioned at an angle, or shielded, so that the legend is out of view of traffic to which it does not apply.

Sect. 2B.10

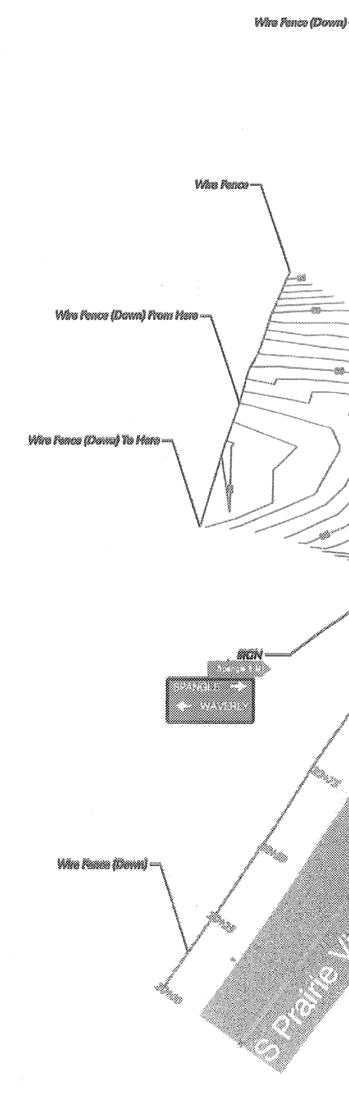
Page 2B-10 2003 Edition

Except at roundabout intersections, where there is a marked crosswalk at the intersection, the YIELD sign should be installed in advance of the crosswalk line nearest to the approaching traffic.

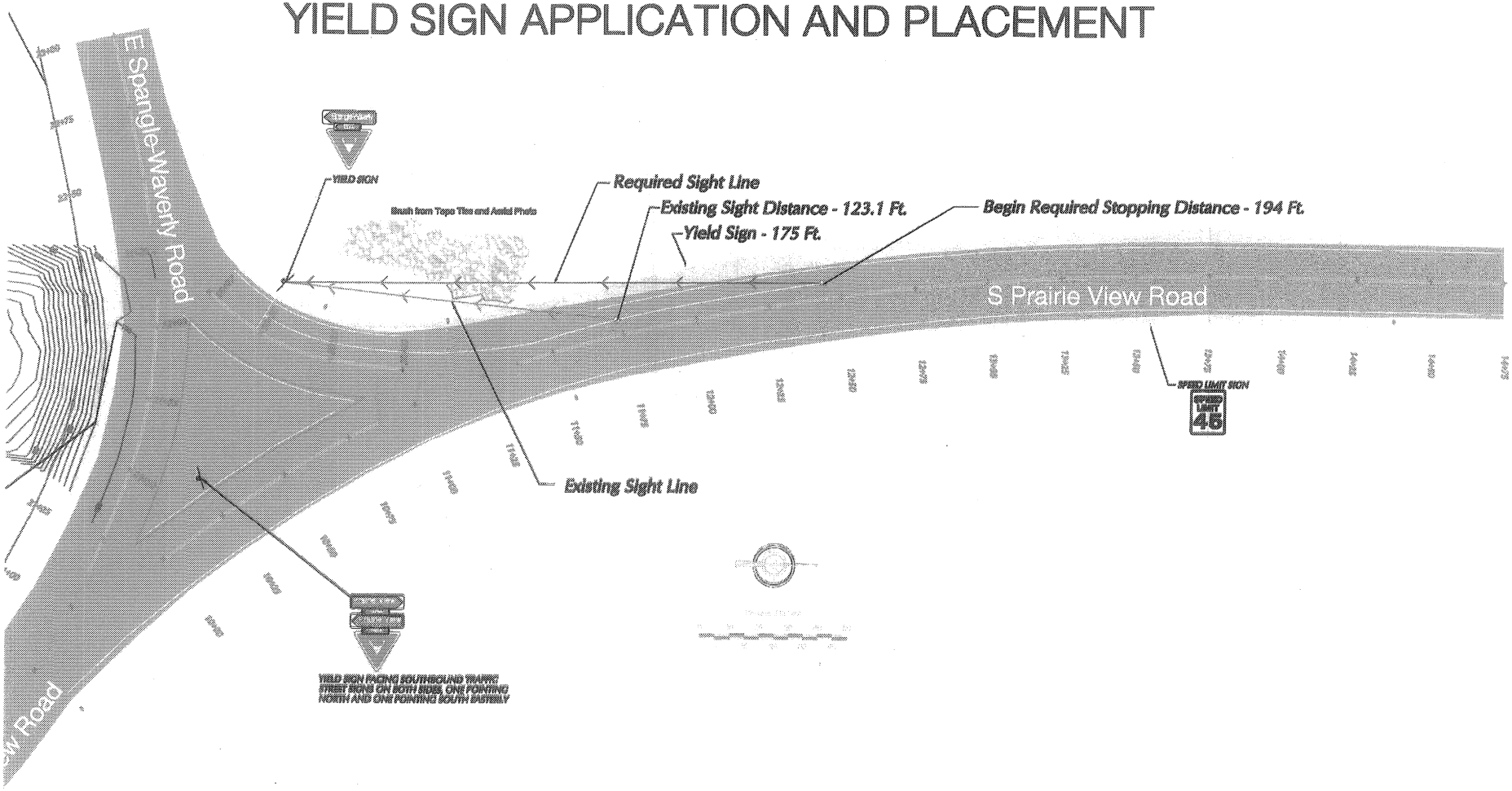
At a roundabout intersection, to prevent circulating vehicles from yielding unnecessarily, the face of the YIELD sign should not be visible from the circulatory roadway.

Option:

At wide-throat intersections or where two or more approach lanes of traffic exist on the signed approach, observance of the yield control may be improved by the installation of an additional YIELD sign on the left side of the road and/or the use of a yield line. At channelized intersections, the additional YIELD sign may be effectively placed on a channelizing island.



YIELD SIGN APPLICATION AND PLACEMENT



APPENDIX 10

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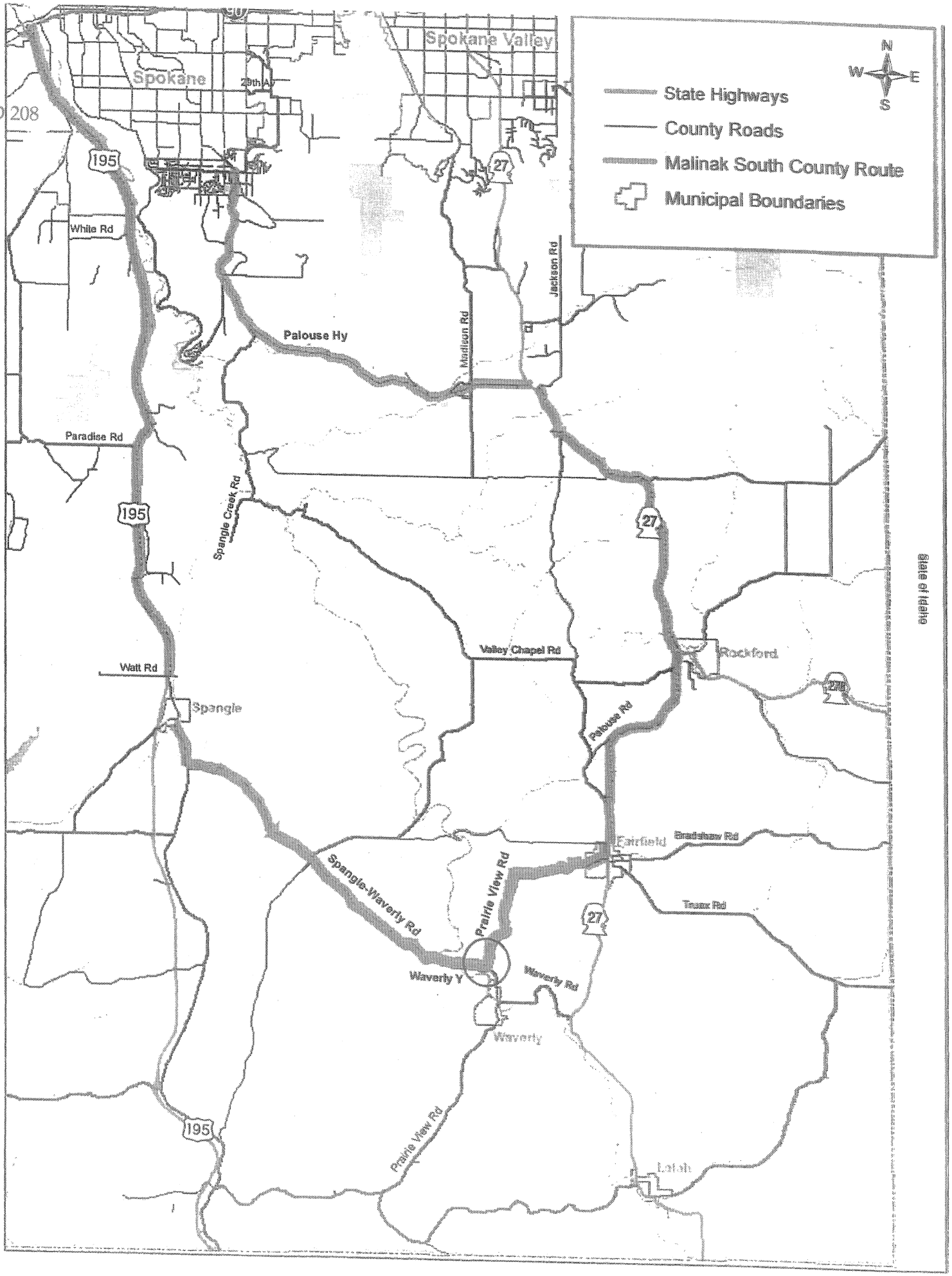
EXHIBIT
Plaintiffs 58
DEPONENT NAME: F. STEVENS
DATE: 09/09/14

APPENDIX 11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Spokane Valley
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27
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Palouse Hy
Madison Rd
Jackson Rd
Paradise Rd
Spangle Creek Rd
Valley Chapel Rd
Rockford
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Spangle
Palouse Rd
Fairfield
Bradshaw Rd
Spangle-Waverly Rd
Prairie View Rd
Tmaxx Rd
Waverly Y
Waverly Rd
Waverly
Prairie View Rd
Latah
State of Idaho
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E
S
State Highways
County Roads
Malinak South County Route
Municipal Boundaries