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Appellate Court No. 63121-7
Skagit County Superior Court No. 07-2-00173-8

IN THE COURT OF APPEALS - STATE OF WASHINGTON
DIVISION ONE

WESLEY F. RIEDEL and LANA L. RIEDEL, husband and wife,

Appellants,

v.

STATE OF WASHINGTON,

Respondent.

APPELLANTS' BRIEF

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I. INTRODUCTION

The Riedels lived in a rural area of Skagit County in a house they had remodeled to their specifications, they had no intention of moving from it. Their main income was from a store they operated on the same property. They sold seafood and a variety of other goods. The balance of the property was used for agriculture. They had no debt on their home, store, or agricultural land. They had no intention of changing things, they were content for life. RP 29-30.

The State, however, determined that the public need for the Riedels' property was greater than the Riedels' right to stay on the property. It condemned and destroyed their house and their store. The Riedels spent months attempting to work through the labyrinth of conflicting statements, letters, advice, and actions with which they were being pummeled by the State Department of Transportation. CP 70. This condemnation lawsuit followed.¹

The parties engaged in a single mediation session. At the mediation the Riedels relied on the State's prior promises as to access from the State highway, and as to drainage to the State highway ditch. After mediation the State reneged

¹ The State of Washington filed a condemnation petition against the Riedel property in January of 2007. CP 322-325. A stipulated order adjudicating public use and necessity was entered May 11, 2007, and a stipulated order to immediate use and possession was entered May 31, 2007. CP 326-330, 331-333. On June 8, 2007 a Note for Trial Docket was filed, a jury trial had been requested. CP 336-339, 334-335. On October 22, 2007 a Notice of Trial Date was issued.

on these promises.

At mediation the understanding was that the Riedels could rebuild their home and business on the property they retained. After mediation it was learned that they could not do so.

At mediation the Riedels were told they should accept a value determination that was less than their property was worth because they could make up the difference by getting more in relocation benefits as part of a “global settlement”. However the Riedels would learn that the State would not engage in such “global” settlements.

A provision of the agreement, consistent with the “global settlement” expectation, required the State to promptly and in good faith resolve the remaining relocation issues. No further negotiations occurred.

Instead of promptly negotiating in good faith the State went to court to obtain the Riedels' property at the price in the mediation agreement. It asserted that the language requiring prompt good faith resolution of relocation was meaningless. The Riedels, having expected a “global settlement” and relied on the State's promises, including the prompt good faith resolution of relocation issues, argued the agreement was not enforceable, and even if it was, should not be enforced because the State had breached the agreement.

Despite the injustice of a “mediation agreement” founded on broken State

promises, factual mistakes affecting value, and the State's selective compliance with the agreement, the court entered judgment transferring the Riedels' property to the State.

II. ASSIGNMENTS OF ERROR

1. The trial court erred when it enforced a mediation agreement despite the State's failure to meet its burden of proof as to the existence of an agreement and as to the lack of a disputed term.
2. It was error for the trial court to enforce a mediation agreement in a condemnation proceeding when the mediation agreement was contingent on the prompt resolution of any and all issues related to relocation benefits, and that prompt resolution never occurred.
3. It was error for the trial court to enforce a mediation agreement in a condemnation proceeding when the State failed to comply with the good faith and timeliness provisions of the agreement.
4. It was error for the trial court to enforce a mediation agreement in a condemnation proceeding when elements of value were either not known or not considered at the mediation.
5. It was error for the trial court to enforce a mediation agreement in a condemnation proceeding when the State failed to fulfill, and withdrew,

commitments it had made prior to mediation, and which the condemnee relied on at mediation.

6. In its order of January 16, 2008 the trial court erred in finding that the State relied on, and the Riedels benefited from, the agreement, that the agreement was reasonable, negotiated at arms length, and that the Riedels surrendered no substantive rights by signing the agreement.
7. The trial court erred when it found that the State had not breached the parties agreement, that the parties had agreed that Six Hundred Thousand Dollars for the taking of the Riedels' property was just compensation, and that the property taken was that described in Exhibit "A" to its Order, Settlement Agreement, and Decree of Appropriation entered January 29, 2009.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. When the parties to a mediation agreement in a condemnation proceeding disagree as to the meaning of a material term of the agreement, and the State's position is that the written term is meaningless despite the condemnees reliance on it, should it be enforced against the condemnee?
2. When a mediation agreement is contingent on the prompt resolution of

other issues, and those issues are not promptly resolved, is it a separate enforceable agreement?

3. When the State fails to comply with a prompt and good faith provision that is specifically negotiated for, is the remainder of the mediation agreement in a condemnation proceeding enforceable?
4. In a condemnation proceeding, is a mediation agreement that does not consider or resolve all elements of value, such as the size of the property condemned, drainage rights, property access, and limitations on use of the remaining property caused by the taking, a fair and equitable agreement?
5. Is the State able to take advantage of a reduced price obtained in mediation based on its promises, even though it withdraws its premeditation promises to provide access and drainage?

IV. STATEMENT OF THE CASE

The parties signed a contingent mediation agreement that was founded on promises that were later broken, factual errors, and a fundamental lack of agreement as to what was agreed to. Rather than assisting in resolving the litigation, the mediation agreement simply introduced additional issues, controversy, and litigation.

Prior to mediation the State made promises to the Riedels concerning the taking of their property and the use of the remaining property. The Riedels relied on these promises at mediation. The belief prior to and at mediation was that the Riedels would be able to rebuild their home and store on the property they would retain, and could continue to use their agricultural acreage. The State broke its promises, and the remaining property cannot be used in the manner anticipated.

Promised Access. Prior to the condemnation the Riedels had three highway access points, two to their store and one to their home. RP 34-37. Prior to the mediation the State promised that they would have two large access points after the condemnation. However after the mediation the State reduced the access to one “large” and one “small”. RP 35.

Prior to the mediation the State promised that u-turns would be provided both East and West of the access points so that store customers, guests, and emergency vehicles could easily reverse direction to visit and leave the retained Riedel property. After mediation the State decided not to keep this promise. RP 34-37.

The promised access was important to the Riedels in determining at mediation what amount they would accept for the property. RP 37. The State's broken access promises substantially reduce the value of the retained property.

*Exhibit 2, Appraiser's Letter.*²

Promised Drainage. The right of the Riedels to drain their property was established in 1934. *Exhibit 1, Title Examiner Letter, Exhibit 8, Deed*, RP 38-39. The drainage is essential for the agricultural use of a large portion of the retained property. RP 37-38, 40-41. Prior to mediation the State committed to hook up the drainage lines from the retained property to the state highway drainage. RP 38-41. In a limited access hearing the State had written that the drainage ditch on the south side of SR 20 would be used for drainage of adjacent farm fields.

The drainage was not provided despite the State's premediation promises. RP 38, 40. The agricultural property is not much good without drainage. RP 41, 56. The State has paid the Riedels nothing for this loss.

The Mediation. On October 24, 2007 the Riedels, relying on the premediation promises of the State, went to a mediation. The Riedels believed the appraisal obtained by their attorney was inaccurate and incomplete and were upset that their attorney, Mr. Pierson, had submitted it to the State without even letting them see it.³ CP 399-400.

The Riedels did not like the way the mediation was going and resisted agreeing to the offered property value, but their attorney threatened to “just walk

2 The Superior Court Clerk filed the exhibits relevant to this appeal under Court of Appeals No. 62892-5 as noted on the Clerk's Supplemental. Copies of the exhibits appear in Appendix D to this brief.

3 Mr. Pierson was recommended to the Riedels by the State. CP 399.

away and leave them on their own if they did not sign.” CP 400. They were told that it was a “global settlement” in which they could make up for the low valuation through increased relocation money. CP 70. They later learned this was not true. CP 400.

The Riedels signed the mediation agreement setting the value of their home and business at \$600,00 only after the State promised to pay their attorney fees and costs to date, and agreed in writing to “cooperate in good faith for a prompt resolution of any and all issues related to relocation benefits, including but not limited to the Riedels' inventory and equipment and moving expenses.” CP 218, Appendix A.⁴

The Riedels were very frustrated with what happened to them at mediation. They were so upset and sick about it that they fired Pierson the next day. He withdrew on October 29, only four days after the mediation.

Mistakes as to cost and fee amount. At mediation Pierson placed the attorney fee and cost amount due from the State at \$45,000. In doing so he failed to include the \$3,750 in costs the Riedels had paid directly, despite the fact they gave him this total in writing at the mediation and before he came up with the \$45,000 total. CP 400.

⁴ The agreement at issue was not introduced at the evidentiary hearing. It appears in the court file at various points, often with some of the concluding language cut off, apparently in the reproduction process. The copy at Appendix A may be complete, but no original or testimony authenticating a copy appears in the record.

After mediation Pierson demanded another \$10,000 in fees from the Riedels, in addition to the \$45,000 they had already paid.⁵ Pierson then filed an attorney fee lien against the condemnation award. When the trial court struck the lien Pierson filed an appeal.⁶ The State refuses to pay the additional fee and cost amount, asserting that the Riedels are just stuck with the miscalculation by Pierson. RP 69.

Lack of Good Faith. The State did not comply with its written commitment to “cooperate in **good faith** for a **prompt** resolution of any and all issues related to relocation benefits, including but not limited to the Riedels' inventory and equipment and moving expenses.” *Emphasis added.* The State takes the position that the commitment is meaningless. RP 10-11. However the Riedels believed the provision had meaning and would not have signed if the provision was not in the document. RP 73-74.

Court Hearing After Mediation. Immediately after Pierson's withdrawal was effective the State moved to enforce the “settlement” against the pro se Riedels. The State had not made any attempt to comply with the prompt resolution in good faith mediation requirement. The Riedels resisted. They filed a letter supported by exhibits seeking to set aside the agreement. CP 346-385. They pointed out that the State would not negotiate, that there was great

5 The actual amount demanded varied. CP 400.

6 Court of Appeals No. 62892-5-1.

uncertainty about what the State was taking, and that there was no agreement on relocation benefits and other issues.

In a reply to the State's motion they pointed out that changes had been made to the original document after signing. CP 14. The reply is extensive, discussing all of the issues that still remain unresolved. CP 13-69.

On January 16, 2008 Judge Meyer entered an order finding the stipulation enforceable despite the Riedels' pro se opposition. CP 5-6. He found the mediation agreement was enforceable because it was in writing and signed, because the State made payments thereunder that benefited the Riedels, it was “reasonable as to the topics it addresses”, was negotiated for at arms length, and because “No substantive rights of the Riedels were surrendered.”⁷ He however struck from the order language that would have required the Riedels to sign a stipulated decree of appropriation. CP 6.

The Riedels obtained counsel in the hope of getting the mediation agreement set aside. The State brought a second motion to enforce the agreement. The Riedels filed a declaration supported by numerous exhibits demonstrating the State's failure to comply with the prompt good faith provision for the resolution of the remaining issues. CP 70-196. On May 16, 2008 Judge Cook denied the motion to enter judgment because the State had not complied with the prompt

⁷ Error has been assigned to several of these findings.

good faith resolution requirement.⁸

Despite Judge Cook's ruling the State's conduct did not change. The Riedels filed a second declaration with additional timelines, summary notes, and documents detailing their extensive struggle to obtain the prompt good faith cooperation payments promised by the State. CP 70-196, 290-310. Rather than cooperating in good faith the State sent denial letters, demanded meaningless information, and arbitrarily refused to pay claims. There were no negotiations, no prompt resolution.

On December 19, 2008 an evidentiary hearing was held before Judge Meyer to determine if the mediation agreement should be enforced. CP 288. Whether or not the State had complied with the prompt good faith resolution provision was an important issue. Prior to the hearing the State suddenly reversed decisions denying moving and relocation benefits that had been administratively appealed by the Riedels, and paid the majority of the outstanding relocation claims. RP 70.

At the hearing the State presented no testimony, it relied on declarations it had previously filed concerning relocation payments that had been paid or were still in dispute. The Riedels objected to proceeding by declaration because they understood that the matter was set for a "full evidentiary hearing". RP 4, 20. The

⁸ A CD of this hearing was filed with the trial court. CP 210-211.

State produced no testimony, by declaration or otherwise, concerning what happened at mediation.

Mr. and Mrs. Riedel each testified. The court admitted their prior declarations, an opinion letter by an expert as to their drainage rights, and an opinion letter by an expert as to the elements of value not considered at mediation. In addition to the State's broken promises as to access and drainage, the lack of prompt resolution, and the State's lack of good faith, the testimony focused on the failure to agree on what property was condemned and the lack of just compensation.

Property Condemned. There is substantial uncertainty as to physical location of the property line between the Riedel property and the state highway. RP 33, 61-67. The State did not supply a legal description for what was being taken that could be correlated with the legal description under which the Riedels took ownership. RP 62-63. No one knows what physical property the State has taken. The Riedels believed that the State would conduct a survey to clear this question up. RP 61-4. In fact, the State did not.

However, the Riedels' own measurements, supported by markers from neighboring surveys, show the State has physically taken far more than it is paying for, and that the Riedels are left with less than what their original legal description says they should have. By the Riedels' measurement the State took a

138-foot wide strip 664-feet long. The State claims it took a 75-foot wide strip. The discrepancy is 63 feet for a distance of 664 feet. If the Riedels are correct and the mediation agreement is enforced, they will be paid for approximately half the land the State took. RP 62-66.

Just Compensation. Access and drainage are elements of value on which the Riedels were misled by the State. Additional impacts on value came to light after the mediation. It was discovered that the retained property could not in fact be used to reestablish the business taken by the State, and that a replacement residence could only be constructed behind the existing barn, greatly reducing its value. *Exhibit 2.* Despite the mistaken premises upon which the entire mediation agreement was founded, the State continues to insist on its enforcement.

V. LEGAL ARGUMENT

A) Standard of Review

The party moving to enforce a purported settlement agreement bears the burden of establishing that there is no genuine dispute over either the existence of the agreement or over a material term thereof. Although the moving party may offer proof by affidavits and declarations, the court, like on summary judgment, must view the evidence in the light most favorable

toward the nonmoving party. The issue is whether a genuine dispute exists. If there is a genuine dispute then agreement cannot be enforced. The appellate court reviews the enforceability of a settlement agreement de novo. Brinkerhoff v. Campbell, 99 Wn. App. 692, 994 P.2d 911 (2000).

B) The State did not Meet its Burden of Proof as to the Enforceability of the Mediation Agreement

It is the party moving to enforce the agreement that bears the burden “to prove there is no genuine dispute regarding the existence and material terms of a settlement agreement.” In Re Marriage of Langham and Kolde, 153 Wn.2d 553, 561, 106 P.3d 212 (2005), citing In re Marriage of Ferree, 71 Wn.App. 35, 41, 856 P.2d 706 (1993). Here the State did not meet its burden. The declarations relied on by the State do not establish the formation of a complete noncontingent agreement and fail to establish that there was no dispute as to material terms.

The Riedels asserted that the mediation agreement was contingent upon the prompt resolution of additional relocation issues. Indeed the agreement states “The parties agree to cooperate in good faith for a prompt resolution of any and all issues related to relocation benefits, including but not limited to ...” The State, despite its burden of proof, introduced no evidence on the issue. It simply argued that this term of the agreement was meaningless. RP 10-11.

The Washington Court has long adhered to the objective manifestation theory in construing the words and acts of alleged contractual parties. Patterson v. Taylor, 93 Wn. App. 579, 969 P.2d 1106 (1999). The State made no attempt below to explain how or why the Riedels should have known that the State's commitment to resolve additional issues promptly and in good faith was meaningless. If the language is given its normal meaning then the agreement was contingent on the resolutions of additional issues. This was the Riedels understanding

In Patterson the agreement, unlike the one in this case, informed the parties that the agreement was final and binding. Patterson at 588. Here the only language that could be interpreted as making the agreement final and binding is the caption, "CR 2 Agreement". Nowhere in the record is there any evidence that the parties agreed that the document was a final and binding expression of their resolution of all material issues. Indeed, the concluding language of the agreement, which requires prompt good faith negotiation toward resolution of additional issues, is quite the opposite.

The substance of the written agreement was disputed below. Paragraph numbers 1, 2, and 3 have the initials "AP" written near alterations to the original text. (These may be the initials of Amanda Phily, the State's attorney, but there is no evidence on the point.) There are no other initials near these alterations.

Paragraph number 4 appears to have been added based on the smaller and different style lettering. There are no initials at all near this alteration. The prompt good faith resolution language appears to have been added at the end of the document after the signatures as an asterisk in the margin appears to have a mate at the end of the paragraph 3.

The Riedels assert that the document was altered after it was signed. CP 14. The Court made no meaningful findings of fact. Because the State bore the burden of proving the existence of the agreement, and the lack of a dispute as to material terms, the lack of findings on these issues must be construed against the State. Life Insurance Co. v. Turnbull, 51 Wn.App. 692, 754 P.2d 1262 (1988). It failed to meet its burden of proof.

The State's assertion that there was a final agreement because its promise to resolve relocation issues promptly and in good faith was meaningless only confirms a genuine dispute as to the meaning of that term of the agreement. The Riedels genuinely believed that the good faith prompt resolution term required the State to change its tactics and promptly resolve the relocation issues in good faith, and that the price they were agreeing to was conditioned on the State's performance of that term. No matter which party's position is correct, there is a genuine dispute regarding the existence of a material term; the agreement is not enforceable.

C) A Stipulated Agreement Conditioned on Resolving Other Issues is Not Enforceable Under CR 2(A)

A stipulated agreement is not enforceable under CR 2(A) when it is conditioned on achieving agreement on unresolved issues. In Re Marriage of Langham and Kolde, 153 Wn.2d 553, 106 P.3d 212 (2005). Here the last term of the agreement states the parties' duty and commitment to continue negotiations to resolve the remaining issues. This is consistent with the Riedels' understanding that the negotiation was "global" and included relocation benefits. It states "The Parties agree to cooperate in good faith for a prompt resolution of any and all issues related to relocation benefits, including but not limited to the Riedels' inventory and equipment and moving expenses." The Riedels believed that this provision would allow them to "make up" for the lower acquisition amount in the continuing negotiations by getting more money in relocation benefits. They did not believe that negotiations were over. CP 400.

In Langham the parties signed a stipulation resolving a dispute as to stock options. However, because a cover letter accompanying the executed agreement stated that other issues "must be settled at the same time", execution of the agreement did not make it binding. The court held that the "same time" statement in the letter evidenced an intent that all outstanding issues be settled, and because that condition was not satisfied, the stipulation was not binding. Langham at 613.

If the parties have not yet resolved their disagreement over material issues there is not an enforceable agreement. Veith v. Exterra Wetsuits, 144 Wn. App. 362, 183 P.3d 334 (2008). In Veith the moving party claimed the agreement contained all material terms, and that the opposing party did not genuinely dispute those terms. However the court found, that as in this case, there were additional material issues that had not been agreed upon. The settlement agreement was therefore unenforceable.

The failure to resolve even fairly straightforward issues prevents enforcement of a CR 2(A) agreement. Lavigne v. Green, 106 Wn. App 12, 23 P.3d 515 (2001). In Lavigne there was no material issue as to the terms of the property damage settlement agreement sought to be enforced, but the language of the release, indemnity, and hold harmless provisions were not specifically agreed upon. The trial court decision to enforce the agreement was therefore reversed.

A dispute unrelated to the terms of the agreement will result in the agreement being disputed for CR 2(A) purposes. Brinkerhoff v. Campbell, 99 Wn. App. 692, 994 P.2d 911 (2000). In Brinkerhoff a personal injury suit against the causing driver was settled at mediation based on the plaintiff's belief that the coverage limit was \$100,000. The plaintiff's attorney asserted that the insurance company had actively misled him as to the coverage limit, which was in fact \$250,000 backed by a \$1 million umbrella policy. The court found that, although

it related to a defense rather than to the terms of the agreement, a material dispute existed and the trial court therefore abused its discretion by enforcing the agreement.

The State has taken unilateral action, such as reducing the promised access, deciding not to supply drainage, and deciding that it need not follow the provision of the agreement that required payment directly to the Riedels.⁹ RP 3. The State's unilateral actions are not a substitute for a prompt good faith resolution of “any and all issues related to relocation”.

Here the mediation agreement was explicitly conditioned on further negotiation and a prompt agreement on additional relocation issues. No such agreement has ever been reached. The order appealed from recognizes this. It provides “entry of this order does not resolve issues raised by the Riedels regarding drainage rights & u-turn access, which the parties shall address by mediation.” CP 313. The agreement is not enforceable.

D) The Court should Set Aside the Mediation Agreement Due to the State's Breach

The mediation agreement was conditioned on achieving prompt agreement

⁹ This became an issue because Pierson asserted a lien against money paid into the court registry in an attempt to achieve payment of a disputed legal fee.

on unresolved issues. That did not happen. The timelines submitted by the Riedels establish that there was nothing “prompt” about it. In fact, agreement on all issues has still never been achieved.

The Riedels' pro se submittals document their continuing struggle to gain the State attention and cooperation. CP 340-345. 346-385, 13-69. These submittals were backed up by the first declaration the Riedels filed after obtaining counsel. CP 70-196.

Prior to the May 16, 2008 hearing before Judge Cook, Riedels' counsel sent a letter to the State pointing out that WSDOT continued its pattern of non-cooperation, and that its failure to “cooperate in good faith for a prompt resolution of any and all issues related to relocation benefits” was a material breach of the mediation agreement. CP 221. After Judge Cook denied the State's Second Motion to Enforce Judgment another letter was sent to the State outlining the issues that required resolution. CP 222-223.

The Second Declaration of Wes and Lana Riedel outlines the State's failure to engage in good faith negotiations for a prompt resolution, even after the hearing in front of Judge Cook, and after the letters from their attorney. CP 225-281.

On October 2, 2008 the State brought the matter back before Judge Meyer. He ordered that a full evidentiary hearing be held on the issue of the State's

compliance with the agreement. CP 289.

The State continued its lack of cooperation toward a prompt resolution of the relocation issues, but just before the December 19, 2008 evidentiary hearing, it suddenly paid most of the outstanding claims despite the pending administrative appeals. RP 70. But drainage, access, and other relocation issues were not resolved.

The State did not attempt to demonstrate at the hearing that it complied with the prompt good faith resolution provision of the mediation agreement, nor did it explain its sudden decision to pay most of the outstanding claims. It argued that the prompt good faith resolution provision was meaningless because it was not a contingent condition to enforcement of the rest of the agreement, and because the State was required by statute to achieve a prompt good faith resolution.

There was nothing about CR 2(A) that dispenses with the common law of contracts. It does not make contracts enforceable that would not otherwise be enforceable; it does prevent enforcement of agreements that do not comply with it. It is intended to prevent litigation over the terms of disputed agreements. If there is a material dispute the agreement simply cannot be enforced. Brinkerhoff v. Campbell, 99 Wn. App. 692, 994 P.2d 911 (2000).

The prompt good faith resolution provision was specifically negotiated for

and added at the bottom of the agreement. The State's position would require the court to find the language was legally meaningless despite the Riedels' negotiation for it and reliance on it. This is contrary to established principles of contract interpretation. PUD of Lewis County v. WPPSS, 104 Wn.2d 353, 705 P.2d 1195 (1985). It is also patently unfair. The State did not comply with the prompt good faith requirement; it breached the agreement and cannot enforce the agreement against the Riedels.

E) The Law of Contracts Prevents Enforcement of the Agreement

When enforcing a contract the court is to give meaning to all of the contract language. Navlet v. Port of Seattle, _ Wn.2d ___, 194 P.3rd 221(2008). The mediation agreement language was specifically negotiated for, and must be given meaning. If, despite the added language, the Riedels were no better off, then the language is meaningless. If they were at the mercy of an arbitrary, inconsistent, and burdensome bureaucracy, whether or not the State committed to a prompt good faith resolution of outstanding issues, then they were truly hoodwinked by the State. Such a hoodwinking is contrary to “good faith” and statutory policy.

Even though it has been established that the mediation value premise, that the Riedels could simply move their home and business further into the property,

was faulty, the State still insists that the agreement be enforced. If there was a mutual mistake as to the potential use of the property then the agreement is not enforceable. Nationwide v. Watson, 120 Wn.2d 178, 840 P.2d 851(1992). If the State knew all the time that Skagit County would not allow the Riedels to redevelop then it would be inequitable to enforce the agreement against the Riedels.

F) Neither the Purposes of State Law nor of CR 2(A) would be Served by Enforcement of the Agreement

State law is intended to encourage and expedite the acquisition of real property for public works programs by agreements with owners, to reduce litigation, and to promote public confidence in land acquisition practices. RCW 8.26.010(b). Appendix B. The purpose of CR 2(A) is to insure that negotiations between the parties simplify or avert a trial, rather than propagate additional disputes. In re Marriage of Ferree, 71 Wn.App. 35, 41, 856 P.2d 706 (1993).

Forcing the Riedels to accept inadequate compensation because they relied on the State's contractual obligation to resolve the remaining issues promptly and in good faith would be inconsistent with the legislative directive and the purpose of CR 2(A). There is no possible prejudice to the State in allowing the Riedels their day in court.

The purpose of the Relocation Assistance -- Real Property Acquisition Policy, set forth in RCW 8.26, is to assure that the Riedels and people like them “shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole and to minimize the hardship of displacement on such persons.” RCW 8.26.010(a). The State seems motivated by some other agenda. Perhaps it is the low price it negotiated in the mediation based on premediation promises it did not keep, and a good faith prompt resolution promise, it failed to keep.

The State is specifically barred from using court procedures “or any coercive action” to compel an agreement. RCW 8.26.180(7). Appendix C. Ever since the mediation the State has sought to enforce its condemnation price while avoiding its own responsibilities. Setting aside the mediation agreement would remove the hammer wielded by the State. The parties would then be free to negotiate a fair value, or to have the value set by a jury. This is what should happen when parties cannot agree in a condemnation case.

VI. THE RIEDELS ARE ENTITLED TO PAYMENT OF THEIR ATTORNEY FEES AND COSTS

The law provides for the payment of the attorney fees and costs when a citizen's property is taken by the State through condemnation. RCW 8.25.070,

075. If the Riedels prevail on this appeal, this court should order the Superior Court to award fees for the appeal if the other conditions of law are met. In addition, if the court finds that the State has not acted in good faith, or asserted a frivolous or untenable position, the Riedels could be awarded attorney fees as a sanction. RAP 18.9, CR 11, RCW 4.84.185.

VII. CONCLUSION

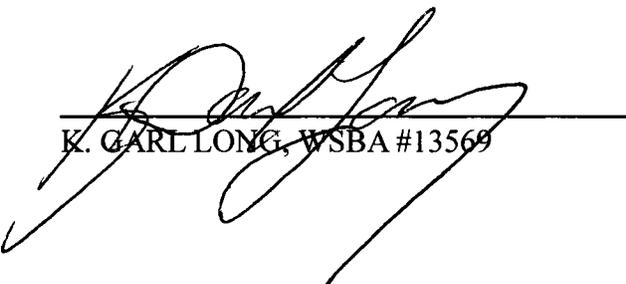
The purpose of mediation is to resolve cases by agreement. Here the State behaves as if the purpose of mediation is to achieve the taking of a citizen's property at less than fair value by making, but not keeping, promises as to access, drainage, prompt resolution of other issues, and good faith.

Mediation is only fair when the facts are known. Here the physical location of the property condemned is uncertain, there is no agreement as to whether drainage rights have been taken, and the entire mediation was based on the false belief that the Riedels could relocate their home and business on their remaining property.

The Riedels did not ask to have their home and business destroyed for a highway. The State cannot be prejudiced by a fair determination of value. If the agreement is set aside the State and the Riedels can either reach agreement, or the

Riedels can have a jury determine the value.¹⁰ The agreement should be set aside.

RESPECTFULLY SUBMITTED this 14th day of September, 2009.


K. CARL LONG, WSBA #13569

¹⁰ Washington State Constitution, Article I, Section 16.

APPENDIX

- A. CR 2(A) AGREEMENT
- B. RCW 8.26.010
- C. RCW 8.26.180
- D. HEARING EXHIBITS 1 THROUGH 8

CR 2A Agreement

Re: State v. Riedel, SR 20 project (Skagit County
Parcel No. 1-16593

On October 24, 2007, a mediation was held between the State of Washington, Department of Transportation and Wesley and Lana Riedel. Judge Terrence Carroll presided as the mediator. The following agreement was reached between the parties and their attorneys.

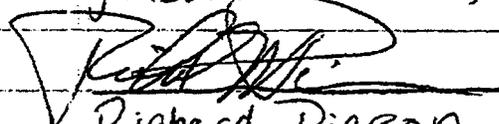
① WSDOT agrees to pay the Riedels \$600,000 as just compensation for the acquisition of a portion of their real property described in the condemnation petition filed by WSDOT. This payment constitutes full and final settlement of all the Riedels claims against WSDOT regarding the just compensation for the ~~of~~ acquisition of the real property.

② WSDOT agrees to pay the Riedels \$45,000 for ~~the fees and costs of~~ AP ~~for expert witnesses and other~~ attorney and expert witness fees and costs.

Appendix A

③ WSDOT agrees that if the Riedels purchase and occupy a replacement house for \$350,000 or more within 12 months after the date they vacate the house on the property that is the subject of this case. AND if the Riedels make a claim for a replacement housing ~~AP~~ ^{AP} ~~written~~ payment within 6 months after occupying the replacement house, WSDOT will pay the Riedels a replacement housing payment in the amount of \$98,000.*

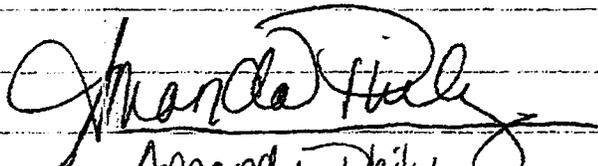
④ The parties agree that Judge Carroll will retain jurisdiction as to any questions regarding interpretation of this agreement



Richard Pierson
Attorney for Wesley
and Lana Riedel

10/24/07
Date

Lana Riedel Wesley Pierson



Amanda Philby
Assistant Attorney General
Attorney for the State of Washington

10/24/2007
Date

219

* The parties agree to cooperate in good faith for a prompt resolution of any and all issues related to relocation benefits, including but not limited to the Riedels inventory and equipment and moving expenses

RCW 8.26.010

Purposes and scope.

(1) The purposes of this chapter are:

(a) To establish a uniform policy for the fair and equitable treatment of persons displaced as a direct result of public works programs of the state and local governments in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole and to minimize the hardship of displacement on such persons;

(b) To encourage and expedite the acquisition of real property for public works programs by agreements with owners, to reduce litigation and relieve congestion in the courts, to assure consistent treatment for owners affected by state and local programs, and to promote public confidence in state and local land acquisition practices.

(2) Notwithstanding the provisions and limitations of this chapter requiring a local public agency to comply with the provisions of this chapter, the governing body of any local public agency may elect not to comply with the provisions of RCW 8.26.035 through 8.26.115 in connection with a program or project not receiving federal financial assistance. Any person who has the authority to acquire property by eminent domain under state law may elect not to comply with RCW 8.26.180 through 8.26.200 in connection with a program or project not receiving federal financial assistance.

(3) Any determination by the head of a state agency or local public agency administering a program or project as to payments under this chapter is subject to review pursuant to chapter 34.05 RCW; otherwise, no provision of this chapter may be construed to give any person a cause of action in any court.

(4) Nothing in this chapter may be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence immediately before March 16, 1988.

[1988 c 90 § 1; 1971 ex.s. c 240 § 1.]

NOTES:

Section captions -- 1988 c 90: "Section captions and part divisions in this act do not constitute any part of the law." [1988 c 90 § 19.]

RCW 8.26.180
Acquisition procedures.

Every acquiring agency shall, to the greatest extent practicable, be guided by the following policies:

(1) Every reasonable effort shall be made to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany at least one appraiser of the acquiring agency during his inspection of the property, except that the lead agency may prescribe a procedure to waive the appraisal in cases involving the acquisition of property with a low fair market value.

(3) Before the initiation of negotiations for real property, the acquiring agency shall establish an amount which it believes to be just compensation therefor, and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of the real property to be acquired prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The acquiring agency shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount it established as just compensation. Where appropriate the just compensation for the real property acquired, for damages to remaining real property, and for benefits to remaining real property shall be separately stated.

(4) No owner shall be required to surrender possession of real property before the agreed purchase price is paid or deposited with a court having jurisdiction of condemnation of such property, in accordance with applicable law, for the benefit of the owner an amount not less than the acquiring agency's approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding of such property.

(5) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully

occupying real property shall be required to move from a dwelling or to move his business or farm operation without at least ninety days written notice of the date by which such move is required.

(6) If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(7) In no event shall the time *of condemnation be advanced, on negotiations or condemnation and the deposit of funds in court for the use of the owner be deferred, or any other coercive action be taken to compel an agreement on the price to be paid for the property.

(8) If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings shall be instituted. The acquiring agency shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(9) If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the head of the agency concerned shall offer to acquire that remnant. For the purposes of this chapter, an uneconomic remnant is a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property and that the head of the agency concerned has determined has little or no value or utility.

(10) A person whose real property is being acquired in accordance with this chapter may, after the person has been fully informed of his right to receive just compensation for the property, donate the property, any part thereof, any interest therein, or any compensation paid for it to any agency as the person may determine.

[1988 c 90 § 12; 1971 ex.s. c 240 § 18.]

NOTES:

***Reviser's note:** The word "or" may have been intended. The language of subsection (7) of this section apparently reflects similar language found in 49 C.F.R. 24.102(h).

Section captions -- 1988 c 90: See note following RCW 8.26.010.



GUARDIAN NORTHWEST TITLE & ESCROW *Formerly First American Title Company of Skagit County*

1301-B Riverside Drive / PO Box 1667, Mount Vernon, WA 98273
Toll Free: 800-869-7045 Phone: 360-424-0115 Fax: 360-424-5885 www.gnwttitle.com

December 16, 2008

Garl Long, Attorney
Via: garl@longlaw.biz

Re: Reidels

Dear Mr. Long:

Your clients the Reidels were in our offices last week to discuss their property rights in response to the actions of the State Department of Transportation efforts to take part of their property for the widening of Highway 20.

In the course of that discussion, the Reidels expressed concern about the loss of drainage rights for which they were not being compensated as, according to them, existing drainage ditches have been cut off without replacement. During that discussion, we reviewed the deed recorded May 23, 1934 as Skagit County Auditor's File No. 262398 in Volume 164 of Deeds, Pages 373-4, said deed includes the following reservation of rights to the predecessor of the Reidels and of others:

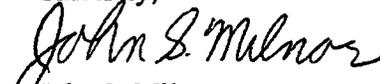
"SUBJECT to the right of the grantor to construct and maintain ditches across said right-of-way for the purpose of draining adjoining land now owed by the grantor".

The Reidels are successors to a large portion of the Conner Land Company's (the "grantor") lands that benefited from said reservation. We have found nothing of record to indicate that said rights have ever been abandoned or extinguished.

Thus, we note that said rights were reserved for the benefit of the property being condemned and for the remaining property of the Reidels. Therefore, you may wish to explore whether the cutting off of these reserved drainage rights from the remaining Reidel property adversely affects said remainder property. If there is an adverse affect said result may be a matter for appraisal and/or adjudication. We have no knowledge as to whether or not any compensation offered to the Reidels includes any amount for the taking of drainage rights appurtenant to their remaining property.

The undersigned is and has been a Senior Title Officer, Loss Claims Administrator and Special Projects Coordinator for title insurance companies for approximately 30 years.

Sincerely,


John S. Milnor

Appendix D - Ex 1

#2

DAVID PARSONS & ASSOCIATES, INC.
Real Estate Brokers, Appraisers, & Consultants

Email: dparsons@cnw.com website: www.dparsonsappraisal.com

1316 E. College Way, Mt. Vernon, WA 98273 2208 Samish Way Street, Bellingham, WA 98226
(360) 428-8544, Fax (360) 428-8713 (360) 733-8183, Fax (360) 676-1528

November 06, 2008

Mr. Garl K Long
Attorney at Law
1215 S 2nd Street
Mount Vernon
WA, 98273

RE: "Riedel Property" 17662 and 17748 State Route 20, Burlington, WA 98233

Dear Garl,

I am a certified general real estate appraiser in Washington State. I enjoy the designation as Senior Residential Appraiser of the American Appraisal Institute and I have served on the Board of Directors for the Seattle Chapter of the Appraisal Institute (2003-2005), and again in 2007 and also elected for 2008. I am a current member of the Bellingham-Whatcom Real Estate Board, Northwest Multiple Listing Service, and the Commercial Brokers Association. I am a past Chair of the Whatcom County Board of Equalization. I am also a Washington State Licensed Real Estate Broker with over 34 years experience.

As you are aware I have been retained by Wes and Lana Riedel in order to express my opinion of value for the just compensation for the above mentioned property in relation to the three appraisals which I have been supplied with. In this regard I have reviewed both the State of Washington Appraisals and the appraisal obtained by the Riedel's and completed by "The Bonjorni Company".

It is my firm belief that both appraisals performed on behalf of the State of Washington have severely underestimated the value of the just compensation of the subject property. Primarily the main deficiency within these reports is that they have given no value to the income producing capacity of the property. The Bonjorni Appraisal although containing several errors does take into account the income producing capacity of the property. More importantly the opinion of just compensation reported by "Bonjorni" of \$957,760 appears to be fair and reasonable based upon the comparables and methodology applied to the subject property and reported within the appraisal. It is noted in order to give a more accurate opinion of just compensation, I would need to perform a more substantial narrative appraisal analysis, similar to those provided to me via the State and our mutual client the Riedel's, namely the Bonjorni Appraisal.

I also draw your attention to the new information that has occurred subsequent to the original taking analysis. This information I believe has a significant effect to the overall damages to the property and therefore increasing the just compensation allowable to the Riedel's. The new areas where just compensation in my opinion is applicable are outlined overleaf:

Appendix D-Ex 2

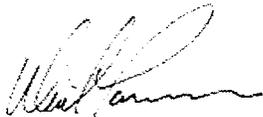


1. The Riedel's have been advised by Skagit County Planning Department that they will not allow the residual site to be operated in its previous capacity and have rejected a zoning change to allow the same.
2. Skagit County have told the Riedel's they would be unable to do business as they were doing prior to the taking, a business where I have been advised has been operating under a special use permit since 1990. Whilst business revenue is not compensable within the State of Washington the loss of the income producing capacity of the site inherently diminishes the value of the land.
3. The Riedel's have been told they can only rebuild a residential dwelling behind the existing barn. This would negatively affect the appeal of the property and distinguish any view amenity currently available to the site from the surrounding territorial and mountain view corridors to the north. It is my opinion the property would be stigmatized in the marketplace knowing any potential purchaser of a property would not entertain the idea of building a residence behind a barn, knowing it could not make use of the territorial mountain outlook. The cost to cure this stigma to the property would be to re-locate the barn (on a new foundation) or rebuild a similar improvement within the property, in a more appropriate location.
4. The new re-alignment of State Route 20 allows only a right in, right out, ingress/egress point to the subject property. The new alignment has negatively limited the security of ingress and egress to the property in relation to what it was prior to the taking with both right and left turning capabilities. The new ingress/egress limitations will substantially limit the potential traffic flow and exposure for a retail commercial use. West bound traffic would have limited if any access to the property. The only west bound access would involve a complicated route along Avon Allen Road, Pulver Road and ultimately State Route 20 coupled with the use of illegal u-turns in order to gain access. Further the residential component would also be affected as a well informed purchaser would identify the access issue and not be willing to entertain the access problem and thus decreasing value.

The additional elements noted above where not involved or assessed in the first approval for just compensation. I believe these additional elements add substantial value to the allowable compensation to the Riedel's.

I hope this provides you with the information you require and a basis for your initial submission to the court. Please do not hesitate to contact me if you require any additional information going forward.

Sincerely,



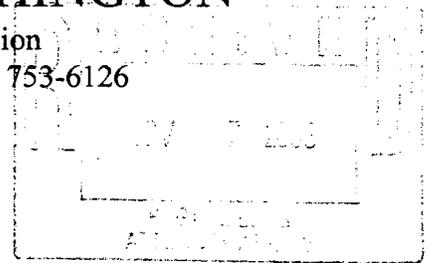
David Parsons, SRA
WA State Certified General Appraiser
1100485



#3

Rob McKenna
ATTORNEY GENERAL OF WASHINGTON

Transportation & Public Construction Division
PO Box 40113 • Olympia WA 98504-0113 • (360) 753-6126



November 5, 2008

SENT VIA FEDEX OVERNIGHT DELIVERY

K. Garl Long
Attorney at Law
1215 South Second Street, Suite A
Mount Vernon, WA 98273-4801

Re: *State v. RIEDEL*
Skagit County Cause No. 07-2-00173-8; Parcel No. 1-16593

Dear Garl,

As you know, the hearing on the State's Motion to Enter Judgment is only a few days away. Although I remain open to discussing a way to resolve this without the need for a hearing, it seems unlikely that will happen at this point. Regardless of whether we work something out or go through with the hearing, the Department has reconsidered its decision to deny certain claims for relocation assistance made by Mr. and Mrs. Riedel. The claims for reimbursement for certain items of equipment (\$2,900), advertising (\$74.25) and time spent conducting inventory (\$165) have been approved. The attached letter and a payment voucher in the amount of \$3,139.25 were mailed to Mr. and Mrs. Riedel yesterday. In light of this decision, I will not be presenting witnesses at the hearing next week to explain why these claims were denied. Rather, I am filing the enclosed Declaration.

The only other claims set forth in the Riedels' letter requesting reconsideration by the Relocation Review Board are for reimbursement for reconnecting utilities to the barn, damages to drain tiles, and legal fees. As noted in a previous letter, John Jensen, the WSDOT Northwest Region Real Estate Services Manager, agreed to reimburse the Riedels for the cost of reconnecting utilities to the barn. Regarding the drain tiles, Mr. Jensen informed me that he authorized WSDOT facilities to repair the damage. I confirmed with Bob Jackson that a new water line was installed on the Riedels' property at WSDOT's request by Kelley Construction. Legal fees are not an eligible relocation expense. WAC 468-100-301(8)(h).

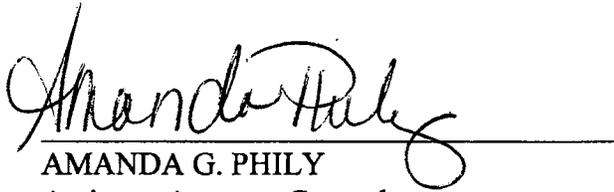
Appendix D-Ex 3

ATTORNEY GENERAL OF WASHINGTON

Riedel
November 5, 2008
Page 2

Please feel free to contact me directly at the number listed below if you wish to discuss this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Amanda Phily", written over a horizontal line.

AMANDA G. PHILY
Assistant Attorney General
Transportation and Public Construction
Telephone: (360) 753-1622

AGP:lt

enclosures

Permit/Franchise No. _____

Applicant - Please print or type all information

Application is Hereby Made For: Permit Category 1 \$500.00
 Franchise Amendment Category 2 \$300.00
 Franchise Consolidation \$300.00 Category 3 \$150.00
 Franchise Renewal \$250.00

Intended Use of State Right of Way is to Construct, Operate, and Maintain a:

A series of four drain line crossings on south side of SR 20 at STAs LL 201+20, 204+38, 206+93, 208+49. on a portion of
 State Route 20 (at/from) Mile Post 58.41 to Mile Post 58.52 in Skagit County,
 to begin in the S 1/2 Section 1 Township 34N North: Range 3E West/East W.M.
 and end in the S 1/2 Section 1 Township 34N North: Range 3E West/East W.M.

Fees in the amount of \$ 0.00 are paid to defray the basic administrative expense incident to the processing of this application according to WAC 468-34 and RCW 47.44 and amendments. The applicant further promises to pay additional costs incurred by the Department on the behalf of the applicant.

Checks or Money Orders are to be made payable to "Washington State Department of Transportation."

Wes Riedel

Applicant (Referred to as Utility)

2513 Francis Road

Address

Mount Vernon

WA

98273

City

State

Zip Code

360-899-5151

Telephone

Applicant Authorized Signature

Print or Type Name

Title

Dated this _____ day of _____

P127050

Applicant Reference (WO) Number

Federal Tax ID or Social Security Number

Authorization to Occupy Only if Approved Below

The Washington State Department of Transportation referred to as the "Department," hereby grants this document (Permit or Franchise as applicable) subject to the terms and conditions stated in the General Provisions, Special Provisions, and Exhibits attached hereto and by this reference made a part hereof: Construction facilities proposed under this application shall begin within one year and must be completed within three years from date of approval.

For Department Use Only

Exhibits Attached

Sheet 010 of design package.

Department Approval

By: _____

Title: _____

Date: _____

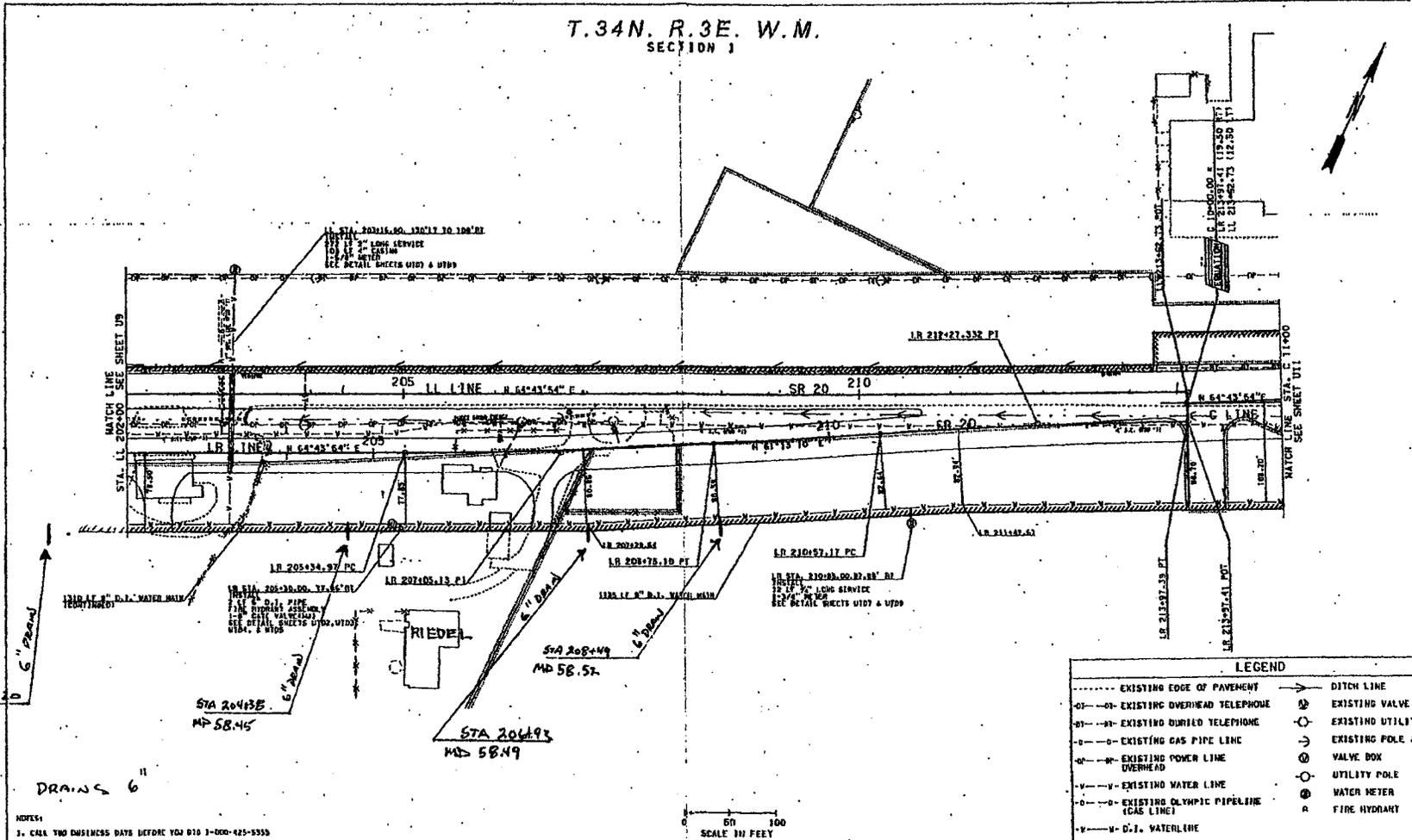
Expiration Date: _____

General Provisions

1. This document is subject to RCW 47.32, RCW 47.44 and WAC 468-34 and amendments thereto.
2. The Utility, its successors and assigns agree to indemnify, defend and hold the State of Washington, its officers and employees harmless from all claims, demands, damages, expenses or suits that: (1) arise out of or are incident to any negligence by the Utility, its agents, contractors or employees in the use of the highway right of way pursuant to this document or (2) are caused by the breach of any of the conditions of this document by the Utility, its contractors, agents or employees.
Nothing herein shall require the Utility to indemnify and hold harmless the State of Washington, and its officers and employees from claims, demands, damages, expenses or suits based solely upon the conduct or negligence of the State of Washington, its agents, or officers employees and contractors and provided further that if the claims, demands, damages, expenses or suits are caused by or result from the concurrent negligence of (the Utility, its agents, contractors or employees and or any person whomsoever, in connection with Utility's its assigns', agents', contractors' or employees of the State of Washington, its agents, officers, employees and contractors, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the Utility's negligence or the negligence of the Utility's agents, employees or contractors.
Any action for damages against the State of Washington, its agents, officers, contractors, or employees arising out of damages to a utility or other facility located on the highway right of way shall be subject to the provision of RCW 47.44.150.

The Utility, and on behalf of its assigning , agents, licensees, contractors and employees agrees to waive any claims for losses, expenses, damages or lost revenues incurred by it or its agents, contractors, licensees, employees or customers in connection with Utility's its assigns' agents', contractor's licensees' or employee's construction, installation, maintenance, operation, use or occupancy of the right of way or in the exercise of this document against the State of Washington, its agents, or employees except the reasonable costs of repair to property resulting from the negligent injury or damage to Utility's property by the State of Washington, its agents, contractors or employees.
3. Whenever necessary for the construction, repair , improvement, alteration, or relocation of all or any portion of said highway as determined by the Department, or in the event that the lands upon which said highway is presently located shall become a new highway or part of a limited access highway, or if the Department shall determine that the removal of any or all facilities from the said lands is necessary, incidental or convenient to the construction, repair, improvement, alteration, or relocation of any public road or street, the Utility shall, upon notice by the Department, relocate or remove any or all of such facilities from said highway as may be required by the Department at the sole expense of the Utility to whom this document is issued or their successors and assigns.
4. All such changes, reconstruction, or relocation by the Utility shall be done in such manner as will cause the least interference with any of the Department's performance in the operation and maintenance of the highway.
5. This document shall not be deemed or held to be an exclusive one and shall not prohibit the Department from granting rights of like or other nature or other public or private utilities, nor shall it prevent the Department from using any of its roads, streets, or public places, or affect its right to full supervision and control over all or any part of them, none of which is hereby surrendered.
6. The department may revoke, amend, or cancel this permit at any time by giving written notice to the Utility. The Utility shall immediately remove all facilities from the right of way. All facilities remaining upon the right of way 30 days after written notice of cancellation will be removed by the Department at the expense of the Utility.
7. Any breach of any of the conditions and requirements herein made, or failure on the part of the Utility of this franchise to proceed with due diligence and in good faith with construction work hereunder shall subject this franchise to cancellation after a hearing before the Department, of which said hearing the Utility shall be given at least 10 days written notice, if at that time the Utility is a resident or is doing business in the State of Washington; otherwise, by publishing a notice of said hearing once a week for two consecutive weeks in a newspaper of general circulation in Thurston County, Washington, the last publication to be at least 10 days before the date fixed for said hearing.
8. The Utility shall maintain at its sole expense the structure or object for which this document is granted in a condition satisfactory to the Department.
9. Upon failure, neglect, or refusal of the Utility to immediately do and perform any change, removal, relaying, or relocating of any facilities, or any repairs or reconstruction of said highway herein required of the Utility, the Department may undertake and perform such requirement, and the cost and expense thereof shall be immediately repaid to the Department by the Utility.
10. Upon approval of this document, the Utility shall diligently proceed with the work and comply with all provisions herein.
11. Whenever it is deemed necessary for the benefit and safety of the traveling public, the Department hereby reserves the right to attach and maintain upon any facility by the Utility under this document any required traffic control devices, such as traffic signals, luminaires, and overhead suspended signs, when the use of such devices or attachments does not interfere with the use for which the facility was constructed. The Department shall bear the costs of attachment and maintenance of such traffic control devices, including the reasonable cost of any extra construction beyond normal; such extra cost to be determined jointly by the Department and the Utility of this document. It is not to be construed that the Department is to share in the normal cost of installation, operation, or maintenance of any of the facilities installed under this document.
12. No assignment or transfer of this franchise in any manner whatsoever shall be valid nor vest any rights hereby granted until the Department consents thereto and the assignee accepts all terms of this franchise. Attempting to assign this franchise without Department consent shall be cause for cancellation as herein provided.
13. No excavation shall be made or obstacle placed within the limits of the State highway in such a manner as to interfere with the travel over said road unless authorized by the Department.
14. If the work done under this document interferes in any way with the drainage of the State highway, the Utility shall wholly and at own expense make such provisions as the Department may direct to take care of said drainage.
15. On completion of this work, all rubbish and debris shall be immediately removed and the roadway and roadside shall be left neat and presentable and satisfactory to the Department.
16. All of the work shall be done to the satisfaction of the Department, and all costs incurred by the Department shall be reimbursed by the Utility.
17. The Utility pledges that performance of routine cutting and trimming work will be accomplished in such a manner that the roadside appearance will not be disfigured. When major work is involved or damage to roadside appearance may become significant, the Utility shall secure the approval of the Department in advance of the work.
18. The Utility hereby certifies that the facilities described in this document are in compliance with the Control Zone Guidelines.

T.34N. R.3E. W.M.
SECTION 1



LEGEND			
-----	EXISTING EDGE OF PAVEMENT	↘	DITCH LINE
—○—○—	EXISTING OVERHEAD TELEPHONE	⊗	EXISTING VALVE DE
—○—○—	EXISTING BURIED TELEPHONE	⊗	EXISTING UTILITY
—○—○—	EXISTING GAS PIPE LINE	⊗	EXISTING POLE ANC
—○—○—	EXISTING POWER LINE OVERHEAD	⊗	VALVE BOX
—○—○—	EXISTING WATER LINE	⊗	UTILITY POLE
—○—○—	EXISTING OLYMPIC PIPELINE (GAS LINE)	⊗	WATER METER
—○—○—	D.S. WATERLINE	⊗	FIRE HYDRANT
—○—○—	POWER LINE OVERHEAD		

NOTES:
1. CALL TWO BUSINESS DAYS BEFORE YOU DIT 1-800-425-5355

SCALE IN FEET
0 50 100

FILE NAME	US:\work\DOT\3485102\1117\yeh1.dgn	PROJECT	STATE	FED. AID PROJ. NO.
TIME	4:22:42 PM	NO.	10	WASH
DATE	0/24/2007	JOB NUMBER		
PLOTTED BY	bbolimon	CONTRACT NO.		
DESIGNED BY	DESIGNER	LOCATION NO.		
ENTERED BY	CADD OPERATOR			
CHECKED BY	A. WILLIAMS			
DDOT EMP#	A. WILLIAMS			



SR 20
FREDONIA TO I-5 - WIDENING
STAGE 2

STA 201+00
MP 58.91

STA 204+35
MP 58.45

STA 206+93
MP 58.49

STA 208+49
MP 58.57

DRAWING 6

7. Any breach of any of the conditions and requirements herein made, or failure on the part of the utility of this franchise to proceed with due diligence and in good faith with construction work hereunder shall subject this franchise to cancellation after a hearing before the Department, of which said hearing the Utility shall be given at least 10 days written notice, if at that time the Utility is a resident or is doing business in the State of Washington; otherwise, by publishing a notice of said hearing once a week for two consecutive weeks in a newspaper of general circulation in Thurston County, Washington, the last publication to be at least 10 days before the date fixed for said hearing. The term "construction work," as used in this paragraph, does not include the initial construction and/or installation of the series of four drain line crossings at the location indicated on the first page of this Application. It does include subsequent work done to the Facility by the Utility.

10. Upon approval of this document, the Utility shall diligently proceed with the work and comply with all provisions herein. The term "work," as used in this paragraph, does not include the initial construction and/or installation of the series of four drain line crossings at the location indicated on the first page of this Application. It does include subsequent work done to the Facility by the Utility.

14. If the work done under this document interferes in any way with the drainage of the State highway, the Utility shall wholly and at own expense make provisions as the Department may direct to take care of said drainage. The term "work," as used in this paragraph, does not include the initial construction and/or installation of the series of four drain line crossings at the location indicated on the first page of this Application. It does include subsequent work done to the Facility by the Utility.

15. On completion of the work, all rubbish and debris shall immediately be removed and the roadway and roadside shall be left neat and presentable and satisfactory to the Department. The term "work," as used in this paragraph, does not include the initial construction and/or installation of the series of four drain line crossings at the location indicated on the first page of this Application. It does include subsequent work done to the Facility by the Utility.

16. All of the work shall be done to the satisfaction of the Department, and all costs incurred by the Department shall be reimbursed by the Utility. The term "work," as used in this paragraph, does not include the initial construction and/or installation of the series of four drain line crossings at the location indicated on the first page of this Application. It does include subsequent work done to the Facility by the Utility.

18. ~~The Utility hereby certifies that the facilities described in this document are in compliance with Control Zone Guidelines.~~

SPECIAL PROVISIONS TO THE UTILITY PERMIT/FRANCHISE ISSUED TO WESLEY F. RIEDEL

1. The Department assumes no responsibility or liability in any manner for any effect its highway drainage system may have on the Utilities system.
2. The Utility agrees to assume all liability and responsibility, including fines and taxes, for the water quality related to their runoff collection system and for any damages caused by increased flows (that portion of the total rate of flow that is in excess of the natural rate of surface runoff in the undeveloped state).
3. The Utility agrees to assume all liability and responsibility associated with design, construction, maintenance and operation of their drainage system. The words "design" and "construction" do not apply to the design and construction by WSDOT to reconstruct the damaged utility facility and install four drain line crossings. The words "design" and "construction" do apply to any design and construction done by the Utility to change, reconstruct or relocate the facility after WSDOT reconstructs the damaged drainage facility and installs four drain line crossings.
4. The Utility is responsible for compliance with all applicable federal, state, and local laws, rule, and other requirements pertaining to the discharge from the property served by the facility.
5. The Utility is responsible for securing all other federal, state, and local permissions pertaining to the discharge received by the department under this permit.
6. The Utility agrees to accept the liability for the augmented flows added to the department system.
7. The word "work," as used in General Provision No. 7, does not apply to the work done by WSDOT to reconstruct the damaged drainage facility and install four drain line crossings. The word "work" does apply to any and all changes, reconstruction, relocation, maintenance and operation work done by the Utility after WSDOT reconstructs the damaged drainage facility and installs four drain line crossings.
8. The word "work," as used in General Provision No. 10, does not apply to the work done by WSDOT to reconstruct the damaged drainage facility and install four drain line crossings. The word "work" does apply to any and all changes, reconstruction, relocation, maintenance and operation work done by the Utility after WSDOT reconstructs the damaged drainage facility and installs four drain line crossings.
9. The word "work," as used in General Provision No. 14, does not apply to the work done by WSDOT to reconstruct the damaged drainage facility and install four drain line crossings. The word "work" does apply to any and all changes, reconstruction, relocation, maintenance and operation work done by the Utility after WSDOT reconstructs the damaged drainage facility and installs four drain line crossings.

10. The word “work,” as used in General Provision No. 15, does not apply to the work done by WSDOT to reconstruct the damaged drainage facility and install four drain line crossings. The word “work” does apply to any and all changes, reconstruction, relocation, maintenance and operation work done by the Utility after WSDOT reconstructs the damaged drainage facility and installs four drain line crossings.
11. The word “work,” as used in General Provision No. 16, does not apply to the work done by WSDOT to reconstruct the damaged drainage facility and install four drain line crossings. The word “work” does apply to any and all changes, reconstruction, relocation, maintenance and operation work done by the Utility after WSDOT reconstructs the damaged drainage facility and installs four drain line crossings.
12. The requirement set forth in General Provision No. 18 does not apply to the facility that was constructed and/or installed by WSDOT. The requirement applies to any changes, reconstruction or relocation work done by Utility after WSDOT reconstructs the damaged drainage facility and installs four drain line crossings.

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12/19/08

1934 The Deed of 1934 gives us drainage rights.

2004 Public hearings on proposed project

2005 State appraiser valued the property as if tiles were to be functional after the take.

2006-07, 08 Discussed with Dawn Yaunkauskas, John Jensen, Cindy Worrell, Bob Knudsen, WSDOT Project inspector, our former attorney, our former appraiser, Paula Ferrira, Paul Gould, Francis Cal, Diana Nausley and numerous other State employees.

Spring 2008 When the State put in the water main the Construction firm and State inspector saw the tiles and said they would fix them. Now they dead-end into a water main 10' to 15' from the ditch.

November 5, 2008 Amanda Phily sent a letter to our attorney in which she stated John Jensen authorized WSDOT facilities to repair the damage.

November 10, 2008 Amanda Phily agreed to fix the tiles in 30 days. After approximately 3 weeks, the State said we needed a utility permit, that could be revoked at anytime and does not go with the property in case of a future sale. We would also have no right to service or repair the tiles in the future on State land. Amanda said they would pay for the permit, no mention of the cost to do the work. Amanda offered us \$10,000 to do the work at the November 10, 2008 hearing but we said no, you do the work and repair the tiles. Shawn Riley was supposed to call us he didn't we got a permit to sign instead.

December 11, 2008 Discussed with John Milnor of Guardian Title Company. He stated we clearly have drainage rights.

Appendix D - Ex 7

Witness my hand and official seal this 22nd day of May, 1934,

(SEAL) H.A. Moldstad, Notary Public
STATE OF WASHINGTON
Commission expires Nov. 15, 1934

H. A. Moldstad, Notary Public in and for
said state, residing at Mount Vernon,
Washington.

I.R. \$1.50 Paid

Filed for record at the request of Verne Branigin, May 22, 1934, at 3:41 o'clock, P.M.

F. E. Bertrand, County Auditor

By *Alvina Croystad* Deputy

#262396

STATUTORY QUIT CLAIM DEED
(Corporate Form)

THE GRANTOR, Conner Land Company, a Washington Corporation, for and in consideration of One Dollar (\$1.00), in hand paid, conveys and quit claims to County of Skagit, for road purposes all interest in the following described real estate, situated in the County of Skagit, State of Washington:

A strip of land 55 feet wide, in S.E. 1/4 of S.E. 1/4 of Sec. 2, Twp. 34 N.R. 3 E.W.M., the S.W. 1/4 and N.W. 1/4 of S.E. 1/4 of Section 1 Twp. 34 N.R. 3 E.W.M. being 25 feet on northerly side, and 30 feet on southerly side of the following described center line: Beginning on the easterly right-of-way line of Main St., Map of North Avon, 25 feet southerly from the right-of-way line of Great Northern Railway; thence easterly, parallel to said railway, 464.9 feet; thence on a curve to the left, having a radius of 5730 feet, a distance of 496.7 feet; thence tangent N. 58°36' E., 80.5 feet; thence on a curve to the right, having a radius of 5730 feet, a distance of 496.7 feet; thence tangent, N. 63°34' E., parallel to and 75 feet distant from right-of-way line of Great Northern Railway, 3066.5 feet; thence on a curve to the left, having a radius of 5730 feet, a distance of 286.7 feet; thence tangent N. 60°42' E., 200 feet, more or less to the east line of northwest 1/4 of southeast 1/4 of Section 1, Excluding such portion of this description as encroaches on the right-of-way of Great Northern Railway the area thus to be conveyed contains in Section 1, 0-90/100 Acres, and in Section 2, 5-52/100 Acres.

SUBJECT to coal, oil, gases, ores, minerals and fossils of every nature and kind and the right to remove same. Also reserving the right to extend ditches for drainage across the same.

SUBJECT to right of grantor to construct and maintain ditches across said right-of-way for purposes of draining adjoining land now owned by said grantor.

IN WITNESS WHEREOF, said corporation has caused this instrument to be executed by its proper officers and its corporate seal to be hereunto affixed this 27th day of April, 1934.

(SEAL) CONNER LAND COMPANY
La Conner, Wash.
Incorporated Jan. 4, 1909
SEAL

Conner Land Company
By H. S. Conner, Vice President
By W. W. Conner, Secretary

STATE OF WASHINGTON }
County of King } ss.

On this 27th day of April, 1934, before me, the undersigned, a Notary Public, in and for the State of Washington, duly commissioned and sworn, personally appeared H.S. Conner and W.W. Conner, to me known to be the Vice President and Secretary, respectively, of Conner Land Company, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Appendix D - Ex 8

Witness my hand and official seal hereto affixed the day and year in this certificate above written.

(SEAL) G. McWilliams, Notary Public
STATE OF WASHINGTON
Commission expires Aug. 10, 1934

G. McWilliams, Notary Public in and
for the State of Washington, resid-
ing at Seattle.

Filed for record at the request of Engineer's Office, May 27, 1934, at 8:30 o'clock

A. L.

F. B. Bertrand, County Auditor
By *Alvina Croystad* Deputy

#262400

QUIT CLAIM DEED - STATUTORY FORM

THE GRANTEE Josephine Pierson, a widow of _ in the County of Skagit and State of Washington, for the consideration of One Dollar and love and affection DOLLARS, in hand paid, convey and quit-claim to Winnifred Lockhart of the County of Skagit in the State of Washington, all interest in the following described real estate:

The West Half of Lot 7 and Lot 8, Block 4, Bayton's Addition to Mt. Vernon, Wash., according to the recorded plat thereof in the office of the Auditor of Skagit County, Washington.

situated in the County of Skagit, State of Washington.

Dated this 19th day of May, 1934.

Josephine Pierson (SEAL)
(SEAL)
(SEAL)
(SEAL)

STATE OF WASHINGTON }
County of Skagit } ss.

I, Warren J. Gilbert, a Notary Public do hereby certify that on this 19th day of May, 1934, personally appeared before me Josephine Pierson, a widow, to me known to be the individual described in and who executed the within instrument, and acknowledged that she signed and sealed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 19th day of May, A. D. 1934.

(SEAL) Warren J. Gilbert, Notary Public
STATE OF WASHINGTON
Commission expires Aug. 25, 1937.

Warren J. Gilbert, Notary Public in
and for the State of Washington,
residing at Mount Vernon.

Filed for record at the request of W.J. Gilbert, May 23, 1934, at 9:28 o'clock, A. M.

F. B. Bertrand, County Auditor
By *Alvina Croystad* Deputy

#262401

QUIT CLAIM DEED - STATUTORY FORM

THE GRANTEE, Josephine Pierson, a widow, of _ in the County of Skagit, and State of Washington, for the consideration of One Dollar and love DOLLARS, in hand paid, convey and quit-claim to Ina C. Carlson of the County of King in the State of Washington, all interest in the following described real estate:

Lot 6 and the East Half of Lot 7, Block 4, Bayton's Addition to Mt. Vernon, Wash., according to the recorded plat thereof in the office of the Auditor of Skagit County.

Appellate Court No. 63121-7
Skagit County Superior Court No. 07-2-00173-8

IN THE COURT OF APPEALS - STATE OF WASHINGTON
DIVISION ONE

WESLEY F. RIEDEL and LANA L. RIEDEL, husband and wife,

Appellants,

v.

STATE OF WASHINGTON,

Respondent.

PROOF OF SERVICE

**K. GARL LONG, WSBA #13569
Attorney for Appellants
1215 S. Second Street, Suite A
Mount Vernon, WA 98273
(360) 336-3322**

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2009 SEP 16 AM 10:35

ORIGINAL

I certify that I served in the manner indicated below, a true and correct copy of **Appellants' Brief**

TO THE FOLLOWING PARTIES:

Clerk of the Court Court of Appeals, Division 1 600 University Street One Union Square Seattle, WA 98101	<input checked="" type="checkbox"/> U. S. Regular Mail, Postage Prepaid <input type="checkbox"/> Legal Messenger <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivered by _____ <input type="checkbox"/> Electronic Mail
Amanda G. Phily Assistant Attorney General P.O. Box 40113 Olympia, WA 98504-0113	<input checked="" type="checkbox"/> U. S. Regular Mail, Postage Prepaid <input type="checkbox"/> Legal Messenger <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivered by _____ <input type="checkbox"/> Electronic Mail

Under penalty of perjury of the laws of the State of Washington I declare the above to be a true, accurate and correct statement to the best of my knowledge and belief.

DATED this 14th day of September, 2009.

By:  _____