

FILED

APR 16 2012

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 302865-III

COURT OF APPEALS, DIVISION III
THE STATE OF WASHINGTON

KEENE VALLEY VENTURES, INC.,

Plaintiff/Appellant/Respondent,

v.

CITY OF RICHLAND,

Defendant/Appellant/Respondent,

BRIEF OF APPELLANT KVV

Terry E. Miller
WSBA #14080
Attorney for Plaintiff/Appellant
Keene Valley Ventures, Inc.

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Suite C
Kennewick, WA 99336
(509) 783-9786

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I. INTRODUCTION

After a bench trial in May 2011, the trial court determined that the City of Richland had been negligent and had created a nuisance and a trespass by collecting and channeling stormwater, ground water and irrigation water onto Keene Valley Venture's property. The trial court found that the water level on Keene Valley Venture's property had risen by 5 feet and that the property was subject to periodic flooding. At the time of trial much of the property, which had been mostly dry with isolated man-made wetlands, was covered with standing water and cattails. The trial court wrote in its Memorandum Decision:

The City is liable under the theory of inverse condemnation. It deliberately designed a system that would discharge surface water to plaintiff's property, eschewing an alternative that could have confined the water to the Amon wasteway and Leslie drain. . . . [T]he inundation of water . . . is chronic and unreasonable.

Despite having Richland's estimated cost for nearby land, Keene Valley Venture's sale price evidence, Keene Valley Venture's estimated costs of repair by filling and Richland's estimated cost to place fill, the trial court awarded nominal damages in the amount of \$1 together with statutory attorney fees. The court denied Richland's request for a flowage easement.

II. ASSIGNMENT OF ERROR

A. ASSIGNMENT OF ERROR

1. The trial court erred in entering Finding of Fact¹ No. 75: “The court has insufficient evidence upon which to make a finding as to the value of the tract at any time nor as to any diminution of value in the tract due to the inundation of water.”

2. The trial court erred in entering Conclusion of Law No. 14, “KVV has not proven the amount of any damages sustained.”

3. The trial court erred in entering part of Finding of Fact No. 78, to wit: “Johnson provided no explanation of how he arrived at that estimate, nor any details of the area to be filled with dirt. The court rejects the estimate as not credible.”

4. The trial court erred in entering Finding of Fact No. 79, “Ron Johnson testified that the cost to acquire fill dirt would be \$10 per cubic yard, but he provided no basis for this figure. Ron Johnson lacks the expertise to opine as to the cost of fill dirt.”

5. The trial court erred in entering Conclusion of Law No. 15, “KVV is entitled to nominal damages of \$1.”

¹ Finding of Fact, CP 406, Appended at Pg. 3, will be referred to as “FF”.

6. The trial court erred in entering Judgment in favor of KVV but for only \$1.

7. The trial court erred in entering Finding of Fact No. 72, “Ron Johnson is not qualified to render a meaningful opinion as to the value of the tract. Ron Johnson lacks the expertise to render a meaningful estimate of property value.”

8. The trial court erred in entering part of Finding of Fact No. 74, to wit: “the sale has no probative value because of the lack of expert testimony comparing the twelve acres to the tract.”

9. The trial court erred in entering part of Finding of Fact No. 76, to wit: “the court has insufficient evidence to determine the extent of the impairment.”

10. The trial court erred in entering Finding of Fact No. 77, “The damage to the tract is temporary. The damage can be eliminated by blocking or removing the culverts that direct water under Keene Road and by revising the Amon wasteway to accommodate the increased flow and volume of water.”

11. The trial court erred in entering Conclusion of Law No. 17, “KVV is not entitled to an award of reasonable attorney fees and costs”.

12. The trial court erred in denying a Motion to Reconsider or Re-Open the Case.

B. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

1. When the court has determined that a City was negligent, committed a nuisance, trespass and inverse condemnation by diversion of stormwater, ground water and irrigation water onto a developable tract, and further has evidence that the tract is no longer developable, should the court award more than nominal damages when it has before it (1) the purchase price, (2) the cost to repair, (3) uncontested evidence of two sale prices and (4) the owner's testimony on value? (Assignment of Error 1, 3)

2. When a property owner has presented evidence that the costs to repair damages from a taking are approximately \$1.18 million, that the before fair market value of the property was \$575,000 and that the after value of the property is zero, has the owner proven the amount of damages sustained? (Assignment of Error 2)

3. When the Court is presented with: topographical maps; development plans; evidence that the water has risen from 5 ½ to 7 ½' in places and 2' in others; expert testimony that a reasonable option is to raise the site to deal with the water; a consultants' recommendation to raise the site 5'; testimony that the owner would fill to a certain elevation; and testimony by the owner that filling would require a certain volume of fill, has the owner

provided an explanation of the estimate and details of the area to be filled?

(Assignment of Error 3)

4. When an owner has paid for excavation, moving, placement and compaction of fill on the same site and has presented the City's projected cost for excavating, moving, placing and compacting fill on property adjacent to the owner's property for the City's purposes of handling water that is damaging the owner's property, has the owner provided a basis for the cost to excavate, move, place and compact fill on the owner's property?

(Assignment of Error 4)

5. Is \$1 just compensation under Washington State Constitution Article I § 16 for a City's taking of property that turns 21.6 acres of arid ground into a swamp? (Assignment of Error 5, 6)

6. Is an owner of property competent/qualified to testify to the value of his property? (Assignments of Error 7, 8)

7. When the Court has aerial photographs and detailed site assessments showing the ground to be dry/arid except for isolated wetlands; testimony and photographs after the inundation showing cattails, standing water and ducks; and the owner's uncontested testimony that repair costs exceed the value of the land does the Court have sufficient evidence to determine the extent of impairment to land the Court has found to have been

flooded by a City project? (Assignment of Error 9)

8. When the Court has evidence of sixteen years of City actions leading to the recurring, chronic and increasing damage to an owner's property, no plans by the City to change its course of action and no evidence that the property can be returned to its original condition, is the damage temporary? (Assignment of Error 10)

9. Is it proper for the Court to create disputed issues and decide them adversely to uncontested evidence? (Assignment of Error 1, 2, 3, 4, 7, 8, 9, 10)

10. When a property owner has established a taking without just compensation for which no "final offer" has been made, is the owner entitled to an award of reasonable attorney fees and costs pursuant to RCW 8.25.75? (Assignment of Error 11)

11. When a Court has found a taking but rejected uncontested evidence of damages should the Court allow or even require additional testimony and evidence on the issue of damages if it is satisfied as to the fact of substantial damage but is concerned about the quality of evidence before it on the quantum of such damages? (Assignment of Error 12)

III. STATEMENT OF THE CASE

A. STATEMENT OF FACTS

Ron Johnson (“Johnson”) is the sole shareholder and director of Baines Corporation (“Baines”) and President, sole shareholder and director of Keene Valley Ventures, Inc. (“KVV”). RP 41, 58, Ex. 26, 28.

Baines purchased 21.6 acres of raw land lying north and east of Keene Road at Shockley Road (the “Tract”) for \$47,500 in November 2005. Ex. 2, 4, RP 42, 116, FF 3, 4. Baines purchased the Tract to develop as a residential subdivision. RP 48, FF 3. The Tract is separated from Keene Road by an abandoned railroad right-of-way. FF 13, Ex. 6, Figure 4.

Johnson had worked with another developer on two residential subdivisions in the Tri Cities, one of which, called South Haven, is about 1 ½ miles east of the Tract. RP 40-41.

Johnson had made three other raw land purchases for residential subdivisions in addition to the Tract. One was in Pasco, Washington and the other two were in Spokane, Washington. RP 44. Johnson followed land values at the time of the purchase of the Tract. RP 45.

Johnson saw what he believed was a wetland on the Tract and dug test pits before Baines purchased the Tract. RP 47, 116. The test pits were dug to a depth of 7 or 8 feet. Water was only encountered near the wetland that

Johnson had identified. RP 120. Baines retained professional wetland scientist and certified wetland delineator, Thomas Dubendorfer to delineate the wetlands on the Tract. Ex. 6. The Dubendorfer Report issued January 2001 identified three wet lands on the Tract but concluded that all three were man-made and caused by irrigation. Ex. 6 at page 2.

Baines hired Surveyor, Rob Stratton, to help lay out a residential development and to identify fill of the site for development. RP 124. Stratton's site plan with fill areas shown as cross hatched is dated August 27, 2001. All three wetlands were to receive fill. RP 126, Ex. 2. Johnson calculated the fill required in the cross hatched areas to be 27,000 cu. yd. and projected the cost of fill at \$10 per cu. yd. RP 53, 130. Baines had a plan prepared which included streets and home sites. The plan shows 16.01 acres developed for buildings and streets. Ex. 31.

Baines obtained a fill permit to allow filling the Tract as planned including the filling of the wetlands. RP 56. In February 2003, the Tract was sold to KVV for \$189,700.00. RP 58-59. KVV obtained some donated fill starting in 2003. RP 56. KVV paid for stripping, moving, placing and compaction of the fill. RP 57.

KVV retained Shannon & Wilson to conduct a preliminary geotechnical engineering study. Ex. 7. The study, dated January 2005,

included test pits which identified groundwater levels. In three test pits, the ground water was at 5 ½, 7 ½ and over 10 feet deep respectively. At a fourth test pit, near the wetland, that was to be partially filled, groundwater was at 2 feet deep. RP 60-62. Ex. 7, Fig. A-1 to A-4. KVV retained DWR, Inc. to supervise filling of the Tract. RP 63. DWR investigated and filed a report dated November 16, 2005. In its investigations, DWR installed three bore holes in the same general area as Shannon & Wilson had tested. DWR encountered groundwater at 1.11 feet, 1.2 feet and 2.5 feet, respectively. RP 64. Ex. 5, pg. 2-4, Sheet 1. DWR recommended five feet of fill on most of the site to deal with the groundwater. Ex. 5, pg. 2, 4.

By correlating the groundwater levels from the Shannon & Wilson's January 2005 report and those from DWR's November 2005 report, Johnson could see a significant increase in groundwater level. RP 64-65.

Richland's Drainage System.

Richland constructed a drainage system (the "System") as part of the Keene Road Reconstruction Project (the "Project"). The System collects and channels water to the Tract. Ex. 13, 27. The Project began before 1994 and was continuing at the time of trial. RP 295.

The Tract lies in a 737 acre sub-basin referred to by Richland as Sub-basin 3. Ex. 8, pg. 96. Above the Tract on the hillside south of Keene Road

lies a Kennewick Irrigation District (“KID”) canal. Consultant Dubendorfer identified the KID canal and related irrigation as the source of the wetlands on the Tract. Ex. 6, pg. 2.

The Leslie drain is a KID and Bureau of Reclamation Facility adjacent to the south side of Keene Road that, since the 1950s, was intended to and did operate to convey irrigation water southeasterly from Sub-basin 3 to Amon Creek. RP 384-385, 387. There is no evidence that the Leslie Drain ever had standing water prior to approximately the year 2000. RP 386.

In 1982, Richland entered into an agreement with the Bureau of Reclamation to allow Richland to use and reconfigure the Leslie Drain. Ex. 22, RP 322, 400-406.

Starting in 1994, Richland designed and constructed the Project in three phases. Phase One which runs from a point opposite the Tract westerly was constructed in the late 1990s. RP 293. Phase Two running from a point opposite the Tract easterly was constructed in and about the year 2000. Phase Three lying west of the Tract was under construction at the time of trial. RP 295.

In 1994, Richland obtained a Wetland Delineation and Functional Value Assessment by Sheldon & Associates (“Sheldon”). Ex. 19. Sheldon identified wetlands adjacent to the Project including the large wetland on the

Tract. Ex. 19, Wetland Maps 1 and 2. Sheldon did not describe a water course on the Tract. Ex. 19.

In 1995, Richland obtained a Geotechnical Engineering Study for the Project by Shannon & Wilson and a Storm Drainage Report for the Project by JUB Engineers. Ex. 20, 21.

Shannon & Wilson identified the need for retention ponds and outfalls north of Keene Road on or near the Tract. Ex. 20, pg. 6.

JUB's Report identified existing stormwater flow at Keene and Shockley at 25 cubic feet per second ("cfs") and projected a fully developed flow of 180 cfs. Ex. 21, pg. 3, Drawing. The Report also located a 10.7 acre feet stormwater detention pond on the Tract. Ex. 21, pg. 3-4, Drawing.

Richland moved design of the Project from outside consultants to in-house staff. The System designed by Richland reconfigured the Keene Road ditches in Sub-basin 3 and eliminated the Leslie Drain as a drain from Sub-Basin 3. The Leslie Drain ditch on the south side of Keene Road was reconstructed to drain from the east and from the west to a new low point opposite the Tract. Four new 42" diameter culverts were installed that drained from the low point in the south Keene Road ditch to the north Keene Road ditch. RP 179, 330, 334. The ditches on both the north and south sides of Keene Road were widened and deepened. RP 390. Richland claims the

north ditch was designed as a retention pond but no design exists. RP 375-76, 396. The Project included regrading of the railroad grade on the north side of Keene Road and construction of an asphalt bike path on the railroad berm. RP 329.

Concurrent with construction of the Project, Richland approved the first of several new subdivisions south of Keene Road that sent stormwater to the System. RP 339-42, Ex.13, 46. Starting in the late 1990's the Vineyards, then four phases of Applewood were developed. RP 339-343. Stormwater from the new subdivisions is collected and transported to the System. RP 390.

Irrigation water that once drained from Sub-basin 3 down the Leslie Drain is now collected in Richland's System. RP 362. Groundwater from pumping and from a french drain in one of the new subdivisions is collected in the System. RP 391, Ex. 1, pg. 5-6.

Development of Sub-basin 3 is continuing and Richland does not know how much stormwater flows to the System or how much more will flow as development continues. RP 308-9, 349. No evidence was presented of any plans to stop the additional flow or to divert it elsewhere.

System Impact on KVV's Tract.

Water collected and stood in the north Keene Road ditch in part of the System as early as March 2007. Ex. 26, See Ex. 56, 57. Water has flowed and continues to flow from the north Keene Road ditch through the bike path berm and onto the Tract. RP 168-69, 226, 477. On occasion water floods over the bike path and flows directly from the System onto the Tract. Ex. 13, pg. 5, Ex. 27, pg. 2. When this happens the water carves gullies into the bike path berm and deposits silt on the Tract. Ex. 55, RP 483.

Groundwater on the Tract has risen and water stands on most of the Tract. RP 88. Where the groundwater was at 5.5 and 7.5 feet deep in January 2005 there is standing water, cattails and ducks. RP 88, Ex. 52.

Richland's Storm Water Management Plan.

In 2005, Richland adopted a Storm Water Management Plan ("SWMP"). Ex. 8. RP 235-236. The SWMP included two projects in Sub-basin 3. The first project is the Jericho Regional Infiltration and Detention Facility lying nearly adjacent to and down gradient from the Tract. Ex. 8, pg. 96. The facility is to be 3.8 acres in area and is to be created by excavating dirt from the site then moving, placing and compacting the dirt into a berm across the drainage to create a 6' deep pond. Ex. 8, pg. 96. Richland projected the cost of the land for the Facility at \$30,000 per acre. Richland

projected the cost to excavate, move, place and compact dirt to make the berm at \$9 per cu. yd. (\$4 per cu. yd. to excavate and move and \$5 per cu. yd. to place and compact). This project was scheduled for calendar year 2011 and would handle water flowing from the Tract. Ex. 8, pg. 96, Table 7-1, RP 448.

The second project is the installation of a 30" diameter pipe running down Shockley Road above the Tract to the intersection of Keene Road and Shockley just opposite the Tract. This project, which is scheduled for calendar year 2018, will deliver additional water to Richland's System and thus to the Tract. Ex. 8, pg. 98, Table 7-1.

Richland still plans to proceed with both SWMP projects. RP 239.

The SWMP included modeling of Sub-basin 3. Links and nodes in the models identify the path of water through a sub-basin. RP 388. The drainage across the Tract was not identified as an existing path for Sub-basin 3 stormwater in the SWMP model. RP 387.

When DWR surveyed the Tract in November 2005, and found groundwater at 1.11, 1.2 and 2.5' in three test holes, it recommended that five feet of fill be placed across most of the Tract. Ex. 5, pg. 2, 4. Johnson calculated the volume of fill needed to fill to the recommended level at a total of 145,000 to 150,000 cubic yards. RP 104-105. This figure included the

27,000 cubic yards of fill that had been planned before the rise in the watertable. RP 129, 130.

KVV has paid for excavating, moving, placing and compacting some of the donated fill on the Tract. RP 57. In calculating a cost to raise the site above the higher water levels, Johnson used the cost of \$10 per cubic yard for excavating, moving, placing and compacting the needed fill. Richland's costs for doing the same work on the Jericho Regional Facility in the SWMP is \$9 per cubic yard. RP 249, Ex. 8, pg. 97, Tables 7-6.

KVV entered into two Purchase and Sale Agreements for the Tract. Ex. 32, 33. The first, dated January 10, 2006 with Neighborhood, Inc. was for a sale price of \$541,500. RP 67, Ex. 32. The second, dated January 8, 2007 with Envision Homes, LLC was for a sale price of \$575,000. RP 68, Ex. 33.

Richland offered no testimony or evidence on the Tract's value, diminution of value, possible use for the Tract, method of repair or repair costs.

B. PROCEDURE BELOW

On March 26, 2007, KVV, President Ron Johnson, in a letter to Richland's City Attorney, complained of rising water table and standing water in the north Keene Road ditch adjacent to KVV property. Ex. 26.

On April 18, 2007, the City of Richland Public Works Director responded to KVV's letter and explained that Richland's routing of water to the Keene Road ditches with the possibility that the water would flow directly onto KVV's property was by design and was consistent with Richland's SWMP adopted in 2005. Ex. 27.

On August 16, 2007, attorney Brian Lawler, representing KVV, in a letter to Richland City Attorney explained the impact of Richland's water on KVV's property and proposed solutions including filling KVV's property. Ex. 30.

On June 9, 2008, KVV had its Claim for Damages served on Richland's Deputy City Clerk. Ex. 1.

On August 11, 2008, KVV filed its Complaint in this action. CP 1.

On December 19, 2008, Richland answered KVV's Complaint. CP 425.

On May 9, 2011, this matter proceeded to a four day bench trial.

On May 19, 2011, Richland moved to dismiss at the conclusion of KVV's case. CP 254. The motion was denied. CP 277.

On June 7, 2011, the trial court filed its Memorandum Decision. CP 361.

On June 10, 2011, the trial court filed an Amendment to its Memorandum Decision. CP 369.

On August 19, 2011, KVV filed a Motion to Reconsider and for a New Trial. CP 371.

On August 23, 2011, the trial court entered its Finding of Fact and Conclusions of Law and Judgment. CP 406, 418.

On August 26, 2011, the trial court denied KVV's Motion to Reconsider and for a New Trial. CP 421.

On September 20, 2011, KVV filed its Notice of Appeal. CP 431.

On September 27, 2011, Richland filed its Notice of Cross Appeal. CP 438.

IV. ARGUMENT

A. STANDARD OF REVIEW

Findings of Fact are reviewed to determine whether they are supported by substantial evidence. *Miller v City of Tacoma*, 138 Wn.2d 318, 323, 979 P.2d 429 (1999). Conclusions of law are reviewed de novo. *Bishop v Miche*, 137 Wn.2d 518, 523, 973 P.2d 465 (1999).

B. The Court had Substantial Competent Evidence of Damages.

1. The Court had Substantial, Competent Evidence of the Tract's Fair Market Value.

Richland, in its SWMP, projected the cost of purchasing four acres of land nearly adjacent to the Tract for construction of the Jericho Regional Infiltration and Detention Facility. The projected cost of the land in the SWMP as adopted in 2005 was \$30,000.00 per acre. Ex. 8., pg. 96, Table 7-6. This per acre value is Richland's candid evidence on property value. The figure was for planning purposes, was arrived at deliberately, was not for litigation and was contemporaneous with the flooding of the Tract. There was every reason for Richland to identify an accurate cost. This evidence is substantial, competent evidence of the Tracts value on a per acre basis. The Tract at \$30,000.00 per acre would have a value of \$648,000.00.

After KVV had rested, the trial court stated:

The evidence provided at this point seems to indicate that the fair market value lies somewhere between the \$179,000.00 purchase price for which Bains paid in 2000 and [\$541,500.00 and \$575,000.00] that is reflected in those purchase and sale agreements. [Referring to Ex. 32, 33].

CP 275.

Notwithstanding that comment, the court in its Memorandum Decision apparently dismissed out of hand the evidence of the two purchase and sale agreements (Ex. 32, 33) and the SWMP value then stated:

Without more information, and expert opinion, [the sale in Exhibit 24] has no probative value. Ronald Johnson lacks the expertise to make meaningful estimates of property values.

(The Court would have found his opinion to be of little probative value had he offered such an opinion.) The Court was not provided with a current appraisal. The Court cannot determine by a preponderance of the evidence that (sic) the value of the property is or what the diminution of value of the property due to the inundation of water.

Id. CP 365.

“Fair market value” means neither a panic price, auction value, speculative value, nor a value fixed by depressed or inflated prices. We have defined it as the amount of money which a purchaser willing, but not obliged, to buy the property would pay an owner willing, but not obligated, to sell it, taking into consideration all uses to which the property is adapted and might in reason be applied.

Ozette R. Co. v Grays Harbor County, 16 Wn.2d 459, 133 P.2d 983 (1943).

Mr. Johnson’s testimony was unchallenged and unrefuted. There was no evidence that the two sales were other than at fair market value. The sale agreements were clear, cogent evidence of the value that KVV put on the property as understood by the trial court. RP 275.

Richland’s value of \$648,000.00, the sale price of \$575,000.00 or some figure in between should be accepted as the fair market value of the Tract. Ex. 33.

2. The Trial Court had Competent, Substantial and Uncontested Evidence of Repair Costs.

Keene Valley's Cost to Repair is \$1,180,000.00. RP 57, 104-06. KVV planned to filled 27,000 cu. yd. in developing the property. RP 53. In order to raise the project sufficiently to avoid the rise in water it is now necessary to fill between 145,000 cu. yd. and 150,000 cu. yd. at a cost of \$10 per cu. yd. RP 57, 104-06. The fill required by the City's water is thus at least 118,000 cu. yd. at \$10 per cu. yd. or \$1,180,000.00.

3. Johnson Explained in Great Detail the Volume of Fill Required to Respond to Flooding from Richland's System.

There is no mystery in the 118,000 cubic yards when Johnson's testimony is considered with the exhibits. Exhibit No. 2, "Stratton Surveying and Mapping" from 2001 shows two areas to be filled and quantifies those areas at 75,631 square feet and 39,713 square feet for a total of 2.65 acres to be filled. Exhibit No. 4, "Contour Map" shows the closed depression and shows the lack of fall across the entire site. Exhibit No. 31, the "Vicinity Map" details the planned development. It shows that 16.01 acres of the site will have buildings and shows the buildings as planned. Mr. Johnson testified that 27,000 cu. yds. of fill was planned as part of development. RP 53.

In the DWR Report, Exhibit 7, engineer Black, after examining the site and finding the high water levels, recommended:

[T]hat a large portion of the site be filled to an elevation of about 100 ft. on the southeast end of the project to about 95 ft. on the northwest end of the project. This amounts to about 5 ft. of fill across most of the site.

Id., at page 4.

Exhibit No. 25 shows that the water rose as much as two feet after Mr. Black's recommendation (see below).

The calculation of volume is not complicated. Volume is defined as:

The size or extent of a three-dimensional object or region of space.

The American Heritage Dictionary of the English Language - College Edition, Houghton Mifflin Co., Boston, Copyright 1980.

Cubic is defined as:

Having a volume equal to a cube whose edge is a stated length.

Id.

Thus, a cubic foot is the volume of a cube measuring one foot on each side and a cubic yard is the volume of a cube measuring one yard on each side.

The volume of a cardboard box is readily ascertained to a high level of accuracy because its sides are flat and the sides are at right angles to each other. The dimensions of the height, width and depth are simply multiplied.

The volume of a car trunk can be approximated but with a lesser level of accuracy because the sides are not flat and may not be at right angles. However, the process is the same.

Calculation of the volume of fill required on the Tract is simply a matter of calculating volume. It is noteworthy that at trial the court advised the parties that it had the skills to make a hydraulics calculation applying Manning's Equation but was unable to follow Johnson's calculation of fill volume. CP 487.

Five feet of fill over the entire site is $5 \text{ ft} \times 43560 \text{ sq. ft./acre} \times 21.6 \text{ acres} \div 27 \text{ cu. ft/cu. yd.} = 174,240 \text{ cu. yd.}$

Five feet of fill over the 16 acres to be covered by buildings is $5 \text{ ft} \times 4350 \text{ sq. ft/acre} \times 16 \text{ acres} \div 27 \text{ cu ft/cu. yd.} = 129,066 \text{ cu. yd.}$

When these figures are reduced by the planned fill of 27,000 cubic yards they are 147,240 cu. yd. and 102,066 cu. yd., respectively. The average of these figures is 124,653 cu. yd. Increased water levels after November 2005 would require yet more fill.

Mr. Johnson's testimony of 118,000 cu. yd. of fill needed to offset the increased water level was unchallenged and unrefuted.

4. KVV has Provided a Solid Basis for its Estimated Cost of \$10 per cubic yard to Excavate, Move, Place and Compact Fill on the Property.

Johnson testified that KVV had projected and has paid to excavate, move, place and compact some of the fill on the site. RP 53, 57. This gives Johnson personal knowledge of the cost to do the work and a basis for his estimated cost of \$10 per cu. yd. Johnson testified that Richland's planned excavating, moving, placing and compacting of material on its adjacent property for the Jericho Facility are the same activities required to place fill to deal with the rising groundwater on the Tract. The City's projected cost of \$9 per cu. yd. is comparable to Johnson's estimated cost of \$10 per cu. yd.

5. Richland's Storm Water Management Plan Evidence Should have been Accepted and Used by the Court in Determining Damages.

The cost of fill at \$9 per cu. yd. and the value of property at \$30,000 per acre is not only sufficient evidence, it is ample evidence of damages. Ex. 8, Table 7-6. The evidence is timely in that the SWMP was adopted the same year that the damage of rising water was first recognized. RP 235-36. The evidence is relevant in that the study focuses not just in Sub-basin 3 but on properties on either side of the Tract. Ex. 8, pg. 96, 98.

The evidence is competent because it was not prepared for litigation purposes but instead for planning and budgeting purposes for the City. It is competent because it describes the exact kind of activity involved in this case. That being the moving and handling of material on the site and the

purchase of property needed for drainage facilities. It has probative value in that Richland's cost of fill at \$9 per cu. yd. is close to the \$10 per cu. yd. figure used by Johnson and the \$30,000 per acre value of land is close to the \$25,069.00 and \$26,620.00 per acre values in the two purchase and sale agreements. Ex. 32, 33.

C. KVV Proved that Damages are the Fair Market Value of the Tract because Repair Costs Exceed Fair Market Value and the Tract has No Value after the Damages.

1. The Determination of Just Compensation for a Taking is not Limited to a General Rule.

Just compensation for a complete taking can be the value at the time of the taking rather than the value at the time of trial. *Lange v State*, 86 Wn.2d 585, 547 P.2d 282 (1976). Just compensation can also be the cost to repair or modify even for a complete, permanent taking. *Highline School District v Port of Seattle*, 87 Wn.2d 6, 548 P.2d 1085 (1976); *Harkoff, Jr. v Whatcom Co.*, 40 Wn.2d 147, 241 P.2d 932 (1952).

In *Lange, supra*, a developer had just started development of raw land when the State published a map showing that most of the land would be required for highway construction. Publication of the plans drove property values down. In determining just compensation, the court considered the

undeveloped land as the developer's inventory and valued the property at the time that the taking became clear. The court stated:

The constitutional requirement of just compensation derives as much content from the basic equitable principles of fairness . . . as its does from technical concepts of property law. . . .

It is well established that the condemnee is entitled to be put in the same position monetarily as he would have occupied had his property not been taken. . . . "While the owner is forced to sell, he is not to receive by reason of that fact a lesser amount than the property would fairly bring upon the market".

...

Determining just compensation is the ultimate objective of condemnation proceedings [J]ust compensation is to be determined by equitable principles and . . . its measure varies with the facts.

...

The undisputed evidence indicates that after November 1969 appellants could not effectively sell the property as building sites, could not proceed with development of the property, and could not borrow money on the property. The property had no income potential, yet appellants were obligated to pay property taxes.

Such a result was clearly foreseeable in this situation because the property was vacant and in the process of being developed.

...

Under these circumstances the loss suffered is so closely connected to the condemnation itself that our constitutional concern for truly just compensation requires valuation in eminent domain proceedings at a time earlier than the date of trial. This conclusion is necessary if the condemnee is to be placed in the same position monetarily as he would have occupied had his property not been taken. . . . The facts of this case establish the elements of the rule. For the time of valuation to be advanced, marketability must be substantially impaired and the condemning authority must have evidenced an unequivocal intention to take the specific parcel of land. The special use of the land by the owner must be acquired and holding the property for subsequent development and sale. Further, the owner must have taken active steps to accomplish this purpose.

86 Wn.2d at 589-595. (Citations omitted).

Richland's taking of KVV's inventory of development property became clear in late 2005 when damage became apparent and the City's plan for Sub-basin 3 was published in the Storm Water Management Plan document. The SWMP and the configuration of the Keene Road ditch System made it apparent that all or most of KVV's property was being taken.

Although the trial court distinguished *Highline, supra*, in ruling on Richland's Motion to Dismiss at trial, (RP 276), the court in *Highline* cited *Lange, supra*, in explaining the principle of just compensation and making it clear that the principle extends to other than a public-upon-public taking.

87 Wn.2d 13-14.

In *Harkoff, Jr., supra*, the court in making just compensation awarded both repair costs and diminution of value damages for the same taking. In doing so the court stated:

In determining what is the applicable rule for measuring damages in cases like the one before us, one of the first questions is whether the damage to the property is permanent, or whether the property may be restored to its original condition. If the injury is permanent, the general rule applicable is the difference between the market value of the property immediately before the damage and its market value immediately thereafter. If, however, the property may be restored to its original condition the measure of damages is the reasonable expense of such restoration, and in a proper case the loss of use or of income therefrom for a reasonable time pending such restoration.

...

In some situations, the cost of repairing the injury may be greater than the diminution in its market value, in which event the courts are inclined to use the latter measure of damages.

...

However, when we consider the nature and character of the damage done to the respective properties of respondent, we find that in those situations where the court used the restoration measure of damages, repairs and replacements could readily be made. In the case of respondent Harkoff, the court properly adopted the difference in value measures as to the 2.3 acres of land, because the flooding removed top soil therefrom and deposited sand thereon, thus depreciating its value. The field of strawberry plants was not operated for the raising of strawberries, but for the growth and sale of certified strawberry plants. The court treated the plans as an annual crop, and upon the evidence submitted was able to find the

market value of the plants as such. We think that was the proper measure of damages rather than either cost of restoration or difference in market value of the land upon which they were grown.

40 Wn.2d at 152-154.

2. Richland's Damaging is Permanent because the Property Can Not be Restored to its Original Condition.

Richland plans to continue use of the sub-basin to collect and channel water to the Tract. RP 239. More water will be channeled to the Tract as development continues. The planned installation of a culvert through the bike path berm will accelerate the delivery of water to the Tract. RP175-77. All of this makes it impossible to restore the Tract to its original condition. There was no evidence to the contrary.

3. The Cost to Repair is Greater than the Tract's Value before the Damage.

Johnson's estimated cost to fill, \$1,180,000.00, exceeded both the value based on Richland's SWMP price per acre, \$648,000.00, and the \$575,00.00 sale price in the purchase and sale agreement between KVV and Envision Homes, LLC. Ex. 33.

4. The Tract has No Value After the Damage from Water.

Johnson testified that it was uneconomical to fill the Tract because it

would require an added 118,000 cu. yds. of fill to offset the increased water table and flooding. RP 104.

As the trial judge in *Colella v King Co.*, 72 Wn.2d 386, 433 P.2d 154 (1967) said: “this condition that I have described has rendered the plaintiff’s property useless for anything but duck hunting, and I presume there is a county ordinance against that.” *Id.*, at 390.

The court in *Pruitt v Douglas Co.*, 116 Wash.App. 547, 66 P.3d 1111 (2003) found that property damaged by flooding from a county road project had zero market value after the flood due to its potential for future flooding and because if the road were not changed the property would continue to be a dumping ground for neighborhood water. *Id.*, at 560.

KVV’s property exhibits evidence of both high ground water and repeated flooding. RP 88, Ex. 52, 55. It too will continue to be a dumping ground for neighborhood water. The only certainty is that the flow of water to the KVV property will continue to increase as development continues. Ex. 8, RP 308-9, 399.

D. Johnson was Qualified to Testify to the Value of his Property and to Explain his Valuation.

In *State v Wilson*, 6 Wn.App. 443, 493 P.2d 1252 (1972), the court stated in pertinent part:

The owner of real property has a right to testify as to the value of his property. The rationale behind this right is that one who has owned property is presumed to be sufficiently acquainted with its value and the value of surrounding lands to give an intelligent estimate of the value of his property. Because of this rationale no inquiry into knowledge is required to qualify the owner, although knowledge will affect the weight to be accorded his opinion. *Wicklund v Allraum*, 122 Wash. 546, 211 P. 760 (1922);

Id. at 451.

The decisional law leaves no room for doubt that the owner may testify as to the value of his property because he is familiar enough with it to know its worth.

Cunningham v Tieton, 60 Wn.2d 434, 374 P.2d 375 (1962).

In giving his opinion the owner is entitled to explain his valuation by relevant and competent methods of ascertaining value.

Port of Seattle v Equitable Capital, 127 Wn.2d 202, 211, 898 P.2d 275 (1995).

E. When the Uncontested Evidence is that the Tract went from Dry with Water from 2 to 10 feet below the Surface to Standing Water, Cattails and Ducks, the Court has Sufficient Evidence of Impairment/Taking.

In *Cunningham v Tieton*, 60 Wn.2d 434, 374 P.2d 375 (1962), plaintiffs sued the Town of Tieton to recover for a taking by the City's construction of a sewage lagoon. The property owners testified to the extent of the damage. The verdicts were from \$1,500 to \$5,000. The Town

appealed challenging jury instructions including those related to hypothetical impacts on market value of the property. In affirming the trial court, the court stated:

For present purposes, we must assume that a fully informed purchaser would have a true picture of the conditions disclosed by this evidence. The trial court sagaciously summarized the entire matter in these words:

. . . it is a matter of common knowledge, which the jury may know, farm homes with offensive odors and/or contaminated or polluted water will be depreciated in value.

60 Wn.2d at 440.

In this case, the trial court was presented with uncontested evidence that standing water and cattails now exist on a large part of the property where the water table was formerly at 2 to 10 foot depths. The trial court found that the water level had risen 5 feet and the Tract was subject to repeated flooding. FF 34, 49. The trial court found that the “inundation is chronic and unreasonable”. CP 369. Despite all of this, the court said it “cannot determine the extent of the impairment”. Like the court in *Cunningham, supra*, the court should have relied upon common sense and common knowledge that land with cattails and standing water has a very limited potential for productive use. It certainly cannot be used to build houses. There was no evidence or testimony that there is any productive use

for land subject to rising water levels and flooding.

Likewise, the trial court should have applied common sense and common knowledge in finding that the Tract, being subject to continually rising ground water and flooding, is further damaged by both.

F. The Court Should Have Found that Substantial Damage Had Been Done to KVV's Property.

In a case involving strikingly similar facts, the court found substantial damage when, as the result of the county's reworking of a drainage, a "seepage" became an "inundation". *Buxel v King Co.*, 60 Wn.2d 404, 374 P.2d 250 (1962). The cost to repair, which was the cost to install some drain pipe, was \$2,350.66. *Id.* at 406. This amount would be \$17,569.39 in today's dollars. Affidavit of Terry E. Miller. CP 384, 387.

In *Gilmartin, supra*, the diminution in value testimony ranged from \$3,888 to \$9,000. The court found substantial damage but awarded only nominal damages. According to the *United States Bureau of Labor Statistics* \$3,888 in 1953 has the same buying power as \$32,869.18 today. See, Affidavit of Terry Miller. CP 384, 386.

If the \$9 per cu. yd. figure is used for fill from Richland's SWMP, \$32,869 would only pay for 3,652 cu. yd. of material. If this material were applied evenly over the 16 acres to be developed for buildings, it would only

fill to a depth of .141 ft. or just over 1 ¾ inches. This would be meaningless with a rise in the water table of 5 feet on approximately half of the development area. Even the \$9,000 figure in *Gilmartin, supra* would translate to a fill of approximately 3 ¾ inches.

Obviously, substantial damage has been done to KVV if the dollar amount of damages is considered.

G. The Trial Court's Finding that the Damage to the Tract is Temporary is not Supported by Evidence but is Instead Contrary to Substantial, Competent and Uncontested Evidence.

The trial court reasoned that if the four 42" diameter culverts were removed or blocked and if the Amon Wasteway were reconstructed to accept all of the water in the Sub-basin then damage to the Tract can be eliminated. The trial court's venture into speculation and conjecture brings to mind the saying "if ifs and buts were candies and nuts then we'd all have a Merry Christmas"¹. There was no evidence or testimony that either of these changes had ever even been considered must less that they could or would be implemented. The court's finding also ignores its finding that some of the water reaching the Tract flows below the surface of the ground but above

¹ Attributed to Don Meredith.

groundwater and as a result would be unaffected by the two speculative changes raised by the trial court. FF 40, CP 363, RP 477.

The court's finding that the damage is temporary ignores and is countered by at least 16 years of coordinated, progressive action by Richland that not only has resulted in the damaging but assures the permanency of the taking. Richland obtained the Bureau of Reclamation's permission to modify and use the Leslie Drain in 1982. RP 400-06. In 1995, Richland learned that the Project and future development in the Sub-basin would increase the flow of water from 25 cfs to 187 cfs on the Tract. Ex. 21. In construction of the Project, Richland implemented design and constructed the main components of the System, redirecting the KID water from the Leslie Drain to the Tract. The City has approved development in the Sub-basin since the late 1990's that has resulted in increasing flows of stormwater to the Tract. RP 339, 44. In 2005, the City adopted its SWMP which formalizes the use of the Tract for all water in the Sub-basin through at least the year 2018. Richland still plans to implement the two SWMP projects. RP 239, Ex. 8. One that delivers additional water to the Tract on one side. The other that collects and holds the water from the Tract on the other side. Ex. 8. Richland plans to deliver additional water to the Tract as development continues. Richland plans to install a culvert beneath the bike path which will reduce the capacity of the

System to infiltrate and which will accelerate the delivery of water directly to the Tract. Ex. 27, 61, RP 175-77.

By the trial court's analysis the taking of land for a freeway could be characterized as temporary because the pavement could always be removed and the roadway could be returned to pre-existing natural contours.

A taking that is recurring, chronic and unreasonable is a permanent taking. *See, Bodin v Stanwood*, 79 Wn.App. 313, 320, 901 P.2d 1065 (1995).

Damage to the Tract has been recurring. CP 369. Water levels have increased over time. FF 34, 35, 53. The damage of standing water on most of the Tract is unreasonable. CP 369. Richland has no plans to change the system as it impacts the Tract other than to increase flows as development continues. Ex. 8, RP 309-09, 399.

H. The Court Should Review the Evidence of Damages and Reverse Findings and Conclusions Regarding Damages.

1. Once the Fact of Damage has been Proven, the Precise Amount of Damages Need Not be Shown.

In its Memorandum Decision the court stated:

The Court does conclude that the value of the property has been adversely affected. It would defy common sense to conclude otherwise, as the water table has risen five feet in some areas. There has been some impairment of plaintiff's ability to use the property. But, the Court cannot determine

the extent of the impairment based upon the evidence presented.

Plaintiff's (sic) claims as damages the increased cost of bringing fill materials onto the site to cover land upon which standing waters have emerged since plaintiff purchased the property. Plaintiff claims about \$1.18 million. For the acquisition and placement of about 145,000 to 150,000 cubic yards of material. No explanation was given of how that estimate was made. No detail was provided regarding the areas to be filled. Plaintiff estimated that the cost to acquire and place the fill would be \$10 per yard. That estimate is unreliable, as Ron Johnson lacks the expertise to make a meaningful estimate. The Court is left to speculate as to the basis and accuracy of the figures provided.

CP 365-66.

In *Jacquelines v Mercantile*, 80 Wn.2d 784, 498 P.2d 870 (1972), the court in reversing the court of appeals in an action for damages from a fire loss, stated:

Although the fact of substantial damage has been established, the amount is difficult of proof. The value of the merchandise after the damage is almost exclusively a matter of opinion. We have often observed that in such circumstances, where there is no uncertainty as to the existence of substantial damages or as to causation, recovery of substantial damages is not to be denied merely because the extent or amount thereof cannot be ascertained with mathematical precision, provided the evidence is sufficient to afford a reasonable basis for estimating loss. (Citations omitted).

The determination of whether evidence is "sufficient to afford reasonable basis for estimating loss" must depend upon the particular circumstances. Important considerations are, first, that courts should be exceedingly reluctant to immunize

defendants and dismiss plaintiffs for such reason; and, second, that the purpose of the requirement is to spare the trier of fact the onus of an attempt to assess damages solely by speculation and conjecture and without the benefit of probative evidence on the issue.

In *Gilmartin v Stevens*, 42 Wn.2d 289, 261 P.2d 73 (1953) the trial court after hearing conflicting testimony from five witnesses had entered findings “[T]he plaintiffs have suffered some substantial damages [and] . . . [T]he amount of damages . . . is incapable of determination under the evidence presented in the trial of this case”. The court then entered judgment for \$25 nominal damages.

The Supreme Court in setting aside the judgment and remanding for a new trial on damages stated:

Nominal damages never purport to be real damages. They are awarded where, from the nature of the case, some injury has been done, the amount of which the proofs fail entirely to show.

The core of respondent’s argument is that damages must be proved with reasonable certainty, and that the court should not overturn the trial court’s “finding” that appellants failed to meet that standard of proof.

What is “reasonable” certainty depends largely on the extent to which the particular damage in issue is susceptible of accurate proof. Where, for example, a plaintiff, in attempting to prove loss of profits, fails to produce available records relevant to that question, he fails to meet this standard of reasonable certainty. *National School Studios v Superior School Photo Service*, 40 Wn.2d 263, 242 P.2d 756. On the

other hand, the precise amount of damages need not be shown where the circumstances do not permit of careful measurement. (Citations omitted).

The agreed measure of damages in the instant case - difference in the market value of the tract with and without the promised water - is obviously not susceptible of exacting proof. It can be proved only by opinion testimony as to the values, given by witnesses competent to express an opinion on the subject.

It should further be observed that the standard of “reasonable certainty” is concerned more with the *fact* of damage than with the *extent* or amount of damage. (Citations omitted).

The case before us does not involve any question as to the fact of damage, but only as to its amount.

But there is also a serious question as to whether the standard of reasonable certainty has any application in a case of this kind. This standard is usually applied only in cases where the measure of damages is the amount of profits or losses.

The basic question before us, then, is whether the trial court, upon exercising its undoubted right to reject the dollar figures submitted in connection with this opinion evidence, was, under the circumstances of this case, thereby relieved of the duty to make a substantial award of damages.

...

[I]t should be clear that we do not here hold that the trial court was obliged to accept the testimony of any witnesses.

We do hold, however, that, since competent and undisputed opinion evidence was submitted as to the values comprising the agreed measure of damages, and the court did find that substantial damage had been sustained, the court had the duty either to make an award of substantial damages or to give

appellants an opportunity to submit additional proof as to damages. Had the latter course been followed, the court was entitled, but not required, to appoint an appraiser or other expert to present additional testimony as to value.

2. The “Circumstances” in this Case Include the Fact that there has been a Taking and KVV is Entitled to Just Compensation.

This case differs from *Jacquelines, supra*, and *Gilmartin, supra*, in that neither involved a constitutional taking. The Constitution in requiring just compensation is not conditioned. By the constitutions clear meaning, this matter cannot be concluded and Richland can acquire no interest in the property until KVV has been justly compensated.

3. The Circumstances in this Case Include the Fact that Richland Controls the Situation.

Richland does not have a design for the System. Richland does not know what water comes into the System. Richland has projected a run-off based on full development but does not know the progress or percent - complete of that full development. Richland plans the two projects on either side of KVV’s property which will directly impact the property. All of these factors affect both the repair methods and use of the property which, in turn, affects repair cost and present value which, in turn, affects all aspects of damages approach and proof.

4. Any Uncertainty as to Damage Should be Resolved in Keene Valley's Favor.

The City presented no evidence on the issue of damages. The City created the uncertainty as to the nature of damage, permanent or temporary, partial or complete, by its failure to identify its needs and to follow the condemnation process.

Uncertainty as to the dollar amount of damage does not immunize a party responsible for that damage. *Wenzler v Sellen*, 53 Wn.2d 96, 330 P.2d 1068 (1958). The court in *Wenzler, supra*, quoted approvingly the United States Supreme Court from its decision in *Bigelow v RKO Radio Pictures*, 327, U.S. 251, 90 L.Ed 652, 66 S. Ct. 574:

the most elementary conceptions of justice and public policy require that the wrongdoer shall bear the risk of the uncertainty which his own wrong has created
The constant tendency of the courts is to find some way in which damages can be awarded where a wrong has been done difficulty of ascertainment is no longer confused with right of recovery for proven invasion of the plaintiff's rights

Wenzler, 53 Wn.2d 99.

I. The Trial Court Created Issues Where None Existed then Decided Those Issues in Contravention of Uncontested Evidence.

In our adversary system . . . we follow the principle of party presentation. That is, we rely on the parties to frame the issues for decision and assign to the courts the role of neutral

arbiter of matters that parties present.

Greenlaw v United States, 128 S.Ct. 2559, 2564, 554 US 237 (2008).

[Courts] do not, or should not, sally forth each day looking for wrongs to right. We wait for cases to come to us, and when they do we normally decide only questions presented by the parties.

United States v Samuels, 808 F.2d 1298, 1301 (8th Cir. 1987). (Alteration in original).

Issues are presented by the parties by introducing competing or countervailing evidence and testimony. Issues are also presented by cross-examination.

Under our adversary system, witness credibility is tested by cross-examination and is the subject of fair comment in final argument.

State v Favro, 5 Wn.App. 311, 313, 487 P.2d 261 (1971).

The trial court created an issue where none existed on the calculation of the amount of fill required. Richland presented no evidence or testimony on the quantity of fill that would repair the property that it had flooded. Richland's cross-examination of Johnson was limited to establishing that the 27,000 cu. yds., which KVV originally planned to fill, should be subtracted from the total of 145,000 to 150,000 cu. yds. needed after the flooding. RP 129-130.

The trial court created an issue where none existed on the unit cost to excavate, move, place and compact fill. Richland presented no evidence or testimony on the cost to fill. This was so even after Johnson made it clear that Richland's costs of fill from the SWMP were for the same activities required to place fill on the Tract. Ex. 8, RP 749-50. Richland's only cross-examination related to the cost to fill was to have Johnson concede that grubbing (which is a separate line item and price in the SWMP) would be required regardless of how much fill were placed. RP 253.

The trial court created an issue where none existed on whether the damage or taking was temporary or permanent. FF 77, CP 365. Richland did not identify the permanency as an issue in its Answer. CP 425. Richland did not identify permanency as an issue in the trial management report. CP 298. Richland presented no evidence or testimony that the taking was anything other than permanent. In fact, Richland "heartily disagree[d]" that the taking was temporary. RP 435.

Contrary to the trial court's finding that the taking was temporary, both the testimony and evidence was that Richland plans to continue delivering water to its system in an ever increasing amount. Ex. 8, RP 308-9.

J. The Washington State Constitution Requires Just Compensation Before a Taking.

The trial court held: “Richland has inversely condemned the tract.”

CL 13, CP 416.

The Constitution at Article 1, Section 16 provides in pertinent part:

No private property shall be taken or damaged for public or private use without just compensation having been first made, or paid into court for the owner

Id.

Nominal damages are not real damages. *Gilmartin, supra.*

Because just compensation must be paid before a taking, a taking can never be complete until actual damages are determined and paid. If this court does not determine actual damages then the case must be returned to the trial court to determine actual damages.

K. If the Trial Court does not Reconsider and Award Substantial Damages on Remand then it Should Re-Open the Case for Additional Evidence of Damages.

The Constitution requires just compensation. Nominal damages are not real damages. *Gilmartin, supra.* Plaintiff has provided more than sufficient, competent proof of damages, much from Richland’s SWMP and most of which was not challenged or refuted. If the Court believes that more

proof is required then it should re-open the case and take additional evidence.

Gilmartin, supra.

L. Keene Valley is Entitled to Interest on its Award.

Interest is due from the time of the taking until just compensation is paid. *Sintra v Seattle*, 131 Wn.2d, 640, 935 P.2d 555 (1997). *See, Lange, supra.* The court in *Sintra, supra*, stated:

Just compensation requires that the property owner be put in the same position monetarily as he or she would have occupied had the property not been taken. It consists of a full equivalent of the value of the property paid contemporaneously with the taking.

...

[W]e have held that interest is necessary to compensate the property owner for the loss of the use of the monetary value of the taking or damage from the time of the taking until just compensation is paid. (Citations Omitted)

Id., at 655-656.

M. Keene Valley is Entitled to its Costs Including Reasonable Attorney Fees and Reasonable Expert Witness Fees.

RCW 8.25.075(3) provides for such an award. The statute has been held to allow the award of attorney fees in an inverse condemnation action. *B&W Construction v Lacey*, 19 Wn.App. 220, 577 P.2d, 583 (1978).

In post trial briefing, KVV argued that RCW 8.25.075(2) provided an award of reasonable attorney fees to KVV. In doing so KVV cited *B&W Construction, supra*. CP 355. In *B&W* the section of the statute now found at subsection (3) was there codified at subsection (2). 19 Wn.App. at 230.

The trial court in its Memorandum Decision stated:

Plaintiff's request for attorney fees is based on RCW 8.25.075(2). That statute does not apply. Plaintiff's request for attorney fees is denied.

CP 38.

RCW 8.25.075(3) does apply when a taking occurs. KVV is entitled to its attorney fees and costs under the statute.

V. CONCLUSION

This Court should reverse the trial court or remand on the issue of the competence of Ron Johnson's testimony of fill volumes, fill cost and property value.

This Court should reverse the trial court or remand on the sufficiency of repair damages.

This Court should reverse the trial court or remand on the sufficiency of before and after value of the Tract.

This Court should remand the case to the trial court on any damage issue not reversed by this Court. The trial court should be directed to re-open

the case if the trial court is unable to determine and award actual damages based on the record.

This Court should reverse the trial court on Keene Valley Ventures' right to attorney fees and witness fees pursuant to RCW 8.25.75.

Until actual damages are determined and paid there is no justice. The Constitution demands justice in the form of "just compensation".

RESPECTFULLY SUBMITTED this 13th day of April 2012.



Terry E. Miller, WSBA #14080
Attorney for Appellant

Washington State Constitution

We, the people of the State of Washington, grateful to the Supreme Ruler of the Universe for our liberties, do ordain this constitution.

ARTICLE I
DECLARATION OF RIGHTS

SECTION 16 EMINENT DOMAIN. Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes, or ditches on or across the lands of others for agricultural, domestic, or sanitary purposes. No private property shall be taken or damaged for public or private use without just compensation having been first made, or paid into court for the owner, and no right-of-way shall be appropriated to the use of any corporation other than municipal until full compensation therefor be first made in money, or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases in courts of record, in the manner prescribed by law. Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such, without regard to any legislative assertion that the use is public: *Provided*, That the taking of private property by the state for land reclamation and settlement purposes is hereby declared to be for public use.

[**AMENDMENT 9**, 1919 p 385 Section 1. Approved November, 1920.]

RCW 8.25.075

Costs — Award to condemnee or plaintiff — Conditions.

(1) A superior court having jurisdiction of a proceeding instituted by a condemnor to acquire real property shall award the condemnee costs including reasonable attorney fees and reasonable expert witness fees if:

(a) There is a final adjudication that the condemnor cannot acquire the real property by condemnation; or

(b) The proceeding is abandoned by the condemnor.

(2) In effecting a settlement of any claim or proceeding in which a claimant seeks an award from an acquiring agency for the payment of compensation for the taking or damaging of real property for public use without just compensation having first been made to the owner, the attorney general or other attorney representing the acquiring agency may include in the settlement amount, when appropriate, costs incurred by the claimant, including reasonable attorneys' fees and reasonable expert witness fees.

(3) A superior court rendering a judgment for the plaintiff awarding compensation for the taking or damaging of real property for public use without just compensation having first been made to the owner shall award or allow to such plaintiff costs including reasonable attorney fees and reasonable expert witness fees, but only if the judgment awarded to the plaintiff as a result of trial exceeds by ten percent or more the highest written offer of settlement submitted by the acquiring agency to the plaintiff at least thirty days prior to trial.

(4) Reasonable attorney fees and expert witness fees as authorized in this section shall be subject to the provisions of subsection (4) of RCW 8.25.070 as now or hereafter amended.

[1977 ex.s. c 72 § 1; 1971 ex.s. c 240 § 21.]

Notes:

Severability -- 1971 ex.s. c 240: See RCW 8.26.900.

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JOSIE DELVIN
BENTON COUNTY CLERK

AUG 23 2011

FILED

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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF BENTON
9

10 KEENE VALLEY VENTURES, INC., a)
11 Washington corporation,)
12 Plaintiff,)

13 v.)

14 CITY OF RICHLAND, a municipal)
15 corporation; APPLEWOOD ESTATES)
16 HOMEOWNERS ASSOCIATION, a non-)
17 profit Washington corporation; CHERRY)
18 WOOD ESTATES HOMEOWNER)
19 ASSOCIATION, a nonprofit Washington)
20 corporation; and GREGORY)
21 CARPENTER and LAREINA)
22 CARPENTER, husband and wife, and)
23 the marital community thereof,)

24 Defendants)

CAUSE NO. 08-2-02072-7

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

25 The court conducted a trial from May 9 to 12, 2011, during which the court heard
26 testimony from the parties and the parties' witnesses, reviewed exhibits admitted into evidence,
27 and entertained argument of counsel. Based upon the evidence submitted, the court enters the
28 following:

Findings and Conclusions - 1

Leavy, Schultz, Davis & Fearing, P.S.
2415 W. Falls
Kennewick, WA 99336
(509) 736-1330
Fax: (509) 736-1580

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0-000000406
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1 FINDINGS OF FACT

2 1. Defendant City of Richland is municipal corporation and first class city situated in
3 Benton County, Washington.

4 2. Keene Valley Ventures, Inc. (KVV), is a Washington corporation.

5 3. KVV is the owner of a 22-acre tract of undeveloped land (the tract) located within the
6 City of Richland, which KVV seeks to develop as a residential subdivision. The tract is located
7 on the north side of Keene Road, at Shockley Road. The legal description of the tract is :
8

9 That Portion of the Northeast Quarter of the Southeast Quarter of the
10 Southwest Quarter and the Northwest Quarter of the Southwest Quarter of
11 the Southeast Quarter and the South Half of the Southwest Quarter of the
12 Southeast Quarter of Section 22, Township 9 North, Range 28 E.W.M.,
lying northerly of the Union Pacific Railroad Right-of Way.

13 4. KVV's property lies north and east of Keene Road at Shockley Road.

14 5. KVV's property lies within what the city designates as Sub-basin No. 3.

15 6. Aerial photographs of the tract taken in 1971 show no wetland on the land. In 1971,
16 there was some limited agricultural activity, but no residential subdivisions in the area.
17

18 7. There is no watercourse on KVV's property meaning there is no channel having a bed,
19 banks or sides and there is no evidence of water flowing with regularity.

20 8. Keene Road generally bisects a region in Benton County known as the Keene Valley.
21 Keene Road is the approximate low point in the valley. At the time Keene Road was built,
22 Keene Road was outside the jurisdiction limits of Richland.

23 9. By 1994, Keene Road lay within the boundaries of the City of Richland. In 1994,
24 Richland developed a plan to widen Keene Road into a four-lane street (the Keene Road
25

1 Reconstruction Project). The Keene Road project has proceeded in three stages. Phase I of
2 Richland's Keene Road project ran from Queensgate to Shockley Road and along the tract.
3 Phase II of the Keene Road project ran from Shockley Road to Gage Boulevard. Phase III is now
4 underway and lies to the west of the tract.
5

6 10. In 1995, Richland engineering reports contemplated that storm water runoff,
7 irrigation runoff, and irrigation canal leaks from the south side of Keene Road would be
8 discharged to the tract in volumes that would be a several fold increase with development in Sub-
9 basin 3. The city then designed a system to do that.
10

11 11. As part of the Keene Road Reconstruction Project Phase I, Richland installed
12 culverts to artificially channel water from the south side of Keene Road and underneath Keene
13 Road to ditches on the north side of Keene Road that serve as retention ponds. The ditches were
14 designed to capture and hold water until the water could percolate into the ground and into the
15 tract.
16

17 12. The City of Richland owns and operates a drainage system comprised of the north
18 and south Keene Road ditches together with four 42" diameter culverts that connect the south
19 and north ditches ("the System"). The north Keene Road ditch is lower and water in the System
20 drains to the north Keene Road ditch.
21

22 13. The north Keene Road ditch is separated from KVV property only by the City of
23 Richland's right-of-way, which includes the abandoned Union Pacific Railroad rail bed and a
24 bike path on top of the rail bed berm.
25

26 14. The System is located on City property or property controlled by the Bureau of

1 Reclamation.

2 15. The System was constructed by and for the City of Richland.

3 16. The City of Richland claims that the System was designed by personnel. The City's
4 design was based in large part upon engineering reports prepared by outside professionals. No
5 design can be located.
6

7 17. The System was constructed as part of the Keene Road Improvement Project ("the
8 Project").
9

10 18. The Leslie Drain is a 40' wide drainage easement owned by the Kennewick Irrigation
11 District and the Bureau of Reclamation lying south of the Keene Road right-of-way from near
12 Shockley Road to Amon Wasteway.

13 19. Prior to the project, almost all of the water that now collects in the System would
14 have flowed east on the south side of Keene Road to the Amon Wasteway.
15

16 20. In preparation for the Project, consultants identified KVV's property as the site of a
17 retention/detention facility or the location of a pipeline to transport the water across the tract.

18 21. The City's System delivers stormwater from subdivisions, The Vineyards,
19 Applewood Estates, and Bordeaux Grove, to the north Keene Road ditch in both greater volumes
20 and faster runoff than natural flow.
21

22 22. In addition to storm water from sub-basin 3, the System collects irrigation run-off,
23 groundwater and storm water from adjacent sub-basin 5. These additional sources of water were
24 not included in the projected flows. The volume of these three sources of water are unknown.
25

26 23. Surface water that enters the city ditches along Keene Road percolates into the

1 ground and resurfaces on the tract.

2 24. Keene Road Reconstruction Project Phase II was completed before November 2000.

3 25. In November 2000, Baines Corporation purchased the tract for \$175,000.00.

4 26. Baines Corporation's sole shareholder is Ron Johnson.

5 27. At the time of the 2000 purchase, Ron Johnson observed a large, approximately two-
6 acre wetland area on the northwest corner of the parcel. The wetland was man-made.

7 28. Until completion of Phase II of the Keene Road Reconstruction Project, surface water
8 on the south side of Keene Road that did not infiltrate into the groundwater, including storm
9 water runoff, irrigation runoff, and irrigation canal leaks, but flowed to the Yakima River via the
10 Bureau of Reclamation's Leslie Drain.

11 29. Until completion of Phase II of the Keene Road Reconstruction Project, the waters
12 stayed on the south side of Keene Road and flowed to the Yakima River via the Leslie Drain and
13 Amon wasteway.

14 30. Development of Applewood Estates, a residential subdivision also lying south of
15 Keene Road, commenced around 2002. Thereafter, residential subdivisions Cherrywood Estates,
16 Vineyards, and Bordeaux Grove were also begun. Cherrywood Estates lies north of Keene Road
17 and the latter two subdivisions lie south of Keene Road.

18 31. In 2003, Baines Corporation transferred the tract to KVV. Ron Johnson is the sole
19 shareholder of KVV.

20 32. At the time of the transfer from Baines Corporation to KVV, KVV's accountant
21 assigned a value of the tract of \$189,170.00. No testimony was provided as to why the

1 accountant assigned this value.

2 33. The tract was not appraised in 2003.

3 34. As expected by Richland, the elevation of the groundwater on the tract has risen by
4 approximately five feet in some locations after the development of Vineyards, Applewood
5 Estates, Cherrywood Estates, Bordeaux Estates.
6

7 35. The rise in the water table occurred a few years after 2003.

8 36. The inflow to the tract exceeds the capacity of the soils to accommodate the surface
9 water.
10

11 37. The tract contains a closed depression on the east half of the property.

12 38. But for the culverts, the storm water runoff, irrigation runoff, and irrigation canal
13 leaks from the south side of Keene Road would have flowed east to the Yakima River via the
14 Leslie Drain. Very little, if any, of the storm water runoff, irrigation runoff and irrigation canal
15 leaks from the south side of Keene Road reached the north side of Keene Road, before
16 installation of the culverts.
17

18 39. Water that reaches the tract is not, for the most part, groundwater.

19 40. Water that reaches the tract, for the most part, is water that percolates into the
20 ground, remains near the surface, travels laterally, and reaches the tract before mixing with any
21 underground aquifer.
22

23 41. The tract is not part of any natural drainage. No natural watercourse can drain the
24 tract unless the tract is first flooded. Richland's diversion of water onto the tract does not take
25 advantage of a natural course or waterway.
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42. The tract is one of the lowest parts in the Keene Valley.

43. The city made no measurements of the volume or flow rates of water that ends on the tract.

44. The City of Richland does not know inflow quantities to the System.

45. The City of Richland does not know the capacity of the System.

46. The City does not know the percolation rate of the System.

47. Richland created a system without consideration of the consequences upon the tract.

48. Water from the north Keene Road ditch seeps onto KVV property as interflow which is storm water, not groundwater.

49. Water has flowed directly - remained on the surface of the ground - onto the tract on more than one occasion, when the volume of water in the north ditch was so high that the ditch could not contain the water and the water flowed onto the tract. This was referred to in the case as "overtopping the bike path."

50. There was no testimony upon which to determine the number or frequency of such direct flows onto the tract.

51. There was no testimony upon which to determine the volume of water that directly flowed or flows onto the tract, as discussed in paragraph 49.

52. There is insufficient evidence upon which the court could conclude that the overtopping incidents materially contributed to the rise in the water table.

53. Starting in 2005, a rise in the groundwater on KVV property was documented.

54. The closed depression on KVV property now has cattails and standing water.

1 55. The City of Richland adopted and finalized a Stormwater Management Plan (SWMP)
2 in 2005.

3
4 56. The SWMP contemplates construction of a regional storm water facility located in
5 sub-basin 3 in the same drainage as KVV property and just down slope from KVV property.

6 57. The SWMP also contemplates a new 30" diameter storm drain up slope from KVV
7 property that would terminate and deliver additional water to the City System.

8 58. The City recognizes two options of either piping or constructing an open channel
9 across KVV property to link its System to the planned regional facility in the SWMP.
10

11 59. The City has made no design of a facility or conveyance across KVV property.

12 60. The City has designed a culvert to be installed beneath the bike path which will
13 channel water directly from the System onto KVV property. Installation of a culvert is intended
14 to prevent overtopping of the bike path.
15

16 61. The City has disclosed no plan for further development of a drainage system across
17 KVV property or that would stop the flow of water from the System to KVV property.

18 62. Damage to KVV property from the flow of water from the System has occurred and
19 is continuing.
20

21 63. Damage to KVV property from rising groundwater caused by the flow of water from
22 the System has occurred and is continuing.

23 64. Damage to KVV property from standing water caused by the City's System has
24 occurred and is continuing.
25

26 65. Richland has not compensated KVV for any interest in KVV property.

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66. Richland has not instituted a formal condemnation proceeding.

67. Richland's System is for public use and its operation constitutes a public use.

68. Damage to KVV property from Richland's System was reasonably foreseeable.

69. The tract has never been appraised by an appraiser.

70. KVV presented no expert testimony as to the value of the tract at any point in time.

71. KVV presented no appraisal of the tract.

72. Ron Johnson is not qualified to render a meaningful opinion as to the value of the tract. Ron Johnson lacks the expertise to render a meaningful estimate of property value.

73. KVV entered into two agreements to sell the tract, once in January 2006 for \$541,500, and again in January 2007 for \$575,000. Neither sale closed for reasons unknown.

74. Twelve acres of land in the general vicinity sold for \$545,000 in May 2010, but the sale has no probative value because of the lack of expert testimony comparing the twelve acres to the tract.

75. The value of the tract has been adversely impacted by the inundation of water. The court has insufficient evidence upon which to make a finding as to the value of the tract at any time nor as to any diminution of value in the tract due to the inundation of water.

76. KVV's use of the tract has been impaired by the rise in the water table, but the court has insufficient evidence to determine the extent of the impairment.

77. The damage to the tract is temporary. The damage can be eliminated by blocking or removing the culverts that direct water under Keene Road and by revising the Amon wasteway to accommodate the increased flow and volume of water.

1 78. Ron Johnson testified that KVV will need to place 145,000 to 150,000 cubic yards of
2 fill dirt on the tract, but Johnson provided no explanation of how he arrived at that estimate, nor
3 any details of the area to be filled with dirt. The court rejects the estimate as not credible.
4

5 79. Ron Johnson testified that the cost to acquire fill dirt would be \$10 per cubic yard,
6 but he provided no basis for this figure. Ron Johnson lacks the expertise to opine as to the cost
7 of fill dirt.

8 80. In its complaint, KVV sought relief in the form of an injunction.

9
10 81. In the trial management report, KVV wrote that it sought damages at trial. It did not
11 mention that it requested an injunction. KVV's trial brief made no mention of seeking an
12 injunction.

13 82. At trial, KVV expressly abandoned any request for an injunction.
14

15 **CONCLUSIONS OF LAW**

16 1. The court has jurisdiction over the parties and subject matter jurisdiction.

17 2. KVV abandoned any request for an injunction and thus the court will not entertain any
18 request for an injunction.

19 3. Richland's collection and channeling of storm water to the north Keene Road ditch
20 whence its seep and flows onto KVV property falls within the "collect-and-channel" exception to
21 the Common Enemy Doctrine meaning that there is no defense to Richland's actions.

22 4. Richland's drainage system, as designed and constructed, falls within the "failure-to-
23 exercise-due-care exception to the Common Enemy Doctrine.
24

25 5. Storm water from sub-basin 5, which is delivered to Richland's system, falls outside
26

1 the protection of the Common Enemy Doctrine, but the water's impact upon the tract is
2 unknown.

3
4 6. Groundwater delivered to Richland's system falls outside the protection of the
5 Common Enemy Doctrine.

6 7. Irrigation water delivered to Richland's system falls outside the protection of the
7 Common Enemy Doctrine.

8 8. Richland was negligent when designing the storm water system.

9
10 9. *Borden v. City of Olympia* does not control this case since the storm water system does
11 not take advantage of a natural course or waterway and has artificially collected surface water,
12 resulting in a substantial increase of flow to the tract in both volume and in kind, and because the
13 city's design intentionally caused the water to reach the tract.

14 10. Richland created a nuisance.

15
16 11. Because the invasion of water has substantially increased since KVV acquired the
17 tract, the court rejects the "coming to the nuisance" defense.

18 12. Richland has intentionally trespassed onto the tract.

19 13. Richland has inversely condemned the tract.

20 14. KVV has not proven the amount of any damages sustained.

21 15. KVV is entitled to nominal damages of \$1.

22 16. KVV is not entitled to an injunction.

23
24 17. KVV is not entitled to an award of reasonable attorneys fees and costs, but is entitled
25 to statutory costs.

26
27 Findings and Conclusions - 11

Leavy, Schultz, Davis & Fearing, P.S.
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Kennewick, WA 99336
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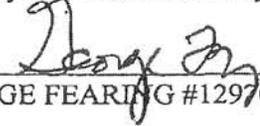
DATED this 23 day of August, 2011.



JUDGE BRUCE A. SPANNER

APPROVED AS TO FORM ONLY:

LEAVY, SCHULTZ, DAVIS & FEARING, P.S.
Attorneys for Defendant City of Richland



GEORGE FEARING #12970

APPROVED AS TO FORM ONLY:

TERRY E. MILLER
Attorney for Plaintiff Keene Valley Ventures, Inc.



TERRY E. MILLER #14080

Findings and Conclusions - 12

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JOSIE DELVIN
BENTON COUNTY CLERK

AUG 23 2011

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF BENTON

KEENE VALLEY VENTURES, INC., a)
Washington corporation,)
Plaintiff,)
v.)
CITY OF RICHLAND, a municipal)
corporation; APPLEWOOD ESTATES)
HOMEOWNERS ASSOCIATION, a non-)
profit Washington corporation; CHERRY)
WOOD ESTATES HOMEOWNER)
ASSOCIATION, a nonprofit Washington)
corporation; and GREGORY)
CARPENTER and LAREINA)
CARPENTER, husband and wife, and)
the marital community thereof,)
Defendants)

CAUSE NO. 08-2-02072-7

JUDGMENT AND DECREE

JUDGMENT DOCKET
NO 11-9-02409-4

JUDGMENT SUMMARY

JUDGMENT CREDITOR: KEENE VALLEY VENTURES, INC.
ATTORNEY FOR
JUDGMENT CREDITOR: Terry E. Miller

Judgment and Decree - 1

Leavy, Schultz, Davis & Fearing, P.S.
2415 W. Falls
Kennewick, WA 99336
(509) 736-1330
Fax: (509) 736-1580

0-000000418

A000015

4/4

1 JUDGMENT DEBTOR: CITY OF RICHLAND
2 ATTORNEY FOR
3 JUDGMENT DEBTORS: George Fearing of Leavy, Schultz, Davis & Fearing,
4 P.S.
5 PRINCIPAL AMOUNT OF JUDGMENT: \$ 1
6 PRE-JUDGMENT INTEREST: \$ -
7 ATTORNEYS FEES AND
8 COSTS AWARDED: \$ 450
9 TOTAL JUDGMENT: \$ 451

10
11 **JUDGMENT**

12 This court previously entered findings of fact and conclusions of law. Based upon the
13 foregoing,

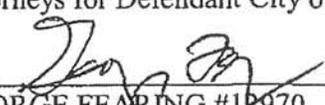
14 IT IS ADJUDGED that plaintiff Keene Valley Ventures, Inc., is granted judgment against
15 defendant City of Richland, for the sum of \$1, plus statutory attorneys fees and costs of \$450.
16

17 DATED this 23 day of August, 2011.

18
19 
20 JUDGE BRUCE A. SPANNER

21 APPROVED AS TO FORM ONLY:

22 LEAVY, SCHULTZ, DAVIS & FEARING, P.S.
23 Attorneys for Defendant City of Richland

24 
25 GEORGE FEARING #12970

26
27 Judgment and Decree - 2

28
Leavy, Schultz, Davis & Fearing, P.S.
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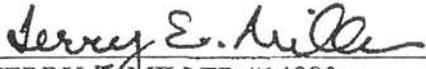
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1 APPROVED AS TO FORM ONLY:

2 TERRY E. MILLER

3 Attorney for Plaintiff Keene Valley Ventures, Inc.

4 
5 TERRY E. MILLER #14080

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27 Judgment and Decree - 3

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Leavy, Schmitz, Davis & Fearing, P.S.

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Kennewick, WA 99336
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Fax: (509) 736-1580

0-000000420

A000017

RETURN OF SERVICE

IN THE COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF BENTON

Case Number: -

Plaintiff:
**KEENE VALLEY VENTURES, INC. RON
B. JOHNSON, President,**

Service Documents:
CLAIM FOR DAMAGES

vs.

Defendant:
CITY OF RICHLAND,

For:
NW LEGAL SUPPORT
102 Prefontaine PI S
Seattle, WA 98104

Received by NW LEGAL SUPPORT to be served on CITY OF RICHLAND/ CITY CLERK, 975 GEORGE WASHINGTON WAY, RICHLAND,, WA 99352.

I, M OWENS, do hereby affirm that on the 9th day of June, 2008 at 1:00 pm, I:

SUBSTITUTE served by delivering ONE true copie(s) of the CLAIM FOR DAMAGES , to: **DEBBY BARHAM** as **DEPUTY CITY CLERK** at the address of: **975 GEORGE WASHINGTON WAY, RICHLAND,, WA 99352**, the within named person's usual place of abode, who resides therein, who is fourteen (14) years of age or older and informed said person of the contents therein, in compliance with state statutes.

The undersigned, being first duly sworn on oath, deposes and says; That he/she is now and at all times herein mentioned was a citizen of the United States and resident of the State of Washington, over to age of eighteen years, not a party to or interested in the above action and competent to be a witness therein.



M OWENS
PS 004

NW LEGAL SUPPORT
102 Prefontaine PI S
Seattle, WA 98104
(206) 223-9426

Our Job Serial Number: 2008007585

Service Fee: _____



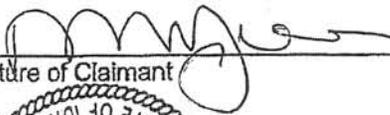
CITY OF RICHLAND CLAIM FOR DAMAGES

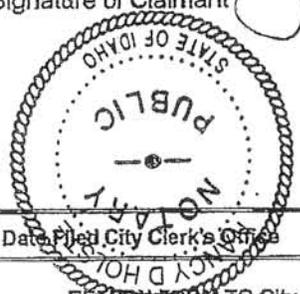
ALL ITEMS OF INFORMATION MUST BE COMPLETED IN FULL IN ORDER TO ASSURE PROMPT REVIEW OF YOUR CLAIM. NOTE: ITEMIZE THE PROPERTY DAMAGE OR COST OF RESTORATION AND COMPLETE AUTOMOBILE CLAIM INFORMATION ON REVERSE SIDE OF THIS FORM.

Name: Keene Valley ventures, Inc. Ron Johnson, president contact: Karen Willie		Work Phone: (206) 228-1060 Home Phone:
Address:		
Mailing Address (If Different): Law offices of Karen A. Willie 11 W. McGraw St., Seattle, WA 98119		
Amount Claimed: Please see attached.	Incident Date: September 2006, continuing to present	
Describe Occurrence Causing The Damages As Follows: (State Accurately And Fully The Time, Place And Manner In Which Incident Occurred; If Automobile Claim, Show Direction, Speed, Point Of Impact, Names Of Witnesses, Weather, Etc.) please see attached.		

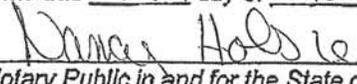
IDAHO
STATE OF WASHINGTON)
COUNTY OF BENTON ADA) ss

I, Ron Johnson for Keene Valley Ventures Inc., being duly sworn and on oath depose and say that the above claim is true and correct; that I am the sole owner or person entitled to reimbursement for damages and that I executed the same as my free act and deed.

Signature of Claimant 



SUBSCRIBED AND SWORN to before me this 27 day of May, 2008.


Notary Public in and for the State of Washington, Idaho

Date Filed City Clerk's Office	Date to WCIA/Department
--------------------------------	-------------------------

RETURN FORM TO City Clerk / P.O. Box 190, MS-05 / 975 George Washington Way / Richland, WA 99352 / 942-7388 1/08

COPY

A000019

FILL IN ALL APPLICABLE SECTION OF THIS FORM. BILLS (OR TWO ESTIMATES, WHERE APPROPRIATE) ARE REQUIRED IN SUPPORT OF CLAIM.

PROPERTY DAMAGE			
ITEM	DATE ACQUIRED	COST OF REPAIR OR CLEANING	AMOUNT CLAIMED
1)			
2)			
3)			
4)			
5)			
6)			
7)			
8)			

ADDITIONAL INFORMATION REQUIRED FOR AUTOMOBILE CLAIMS ONLY:

License Plate No.:		Driver License No.:	
Type of Auto:	(Year)	(Make)	(Model)
Driver:		Owner:	
Address:		Address:	
Phone No.:		Phone No.:	

Passengers

Name:	Name:
Address:	Address:

Owners Insurance Co. & Policy No.:

Have you submitted a claim for damages to your insurance company? Yes No

05-05-08:04:40PM

1 800-942-7379

2 / 2

CITY OF RICHLAND CLAIM FOR DAMAGES

Claimants:

Keene Valley Ventures, Inc.
Ron B. Johnson, President

Address & Telephone:

Please direct all communications to my attorney
Law Offices of Karen A. Willie
11 W. McGraw St.
Seattle, WA 98119
(206) 223-1060
(206) 223-0168 – fax

Incident Date:

September 2006, and continuing to present.

Amount Claimed:

The amount of damages incurred by Keene Valley Ventures (KVV) is as yet undetermined.

Occurrences Giving Rise to Claim:

- Subject Property
 - The property at issue is approximately 22 acres of undeveloped land on the north side of Keene Road at Shockley Road in the City of Richland.
 - Legal description: Township 9 North, Range 28 East, southwest quarter of southeast quarter of Section 22
 - The property is bounded on the west by Queensgate Shopping Village.
 - The Cherrywood residential development lies to the east.
 - The Applewood Estates residential development lies to the south.
- Ownership
 - Keene Valley Ventures, Inc. is a corporation with Ron B. Johnson acting as its President at all pertinent times.
 - KVV purchased the 22-acre tract in November 2000 for the purpose of residential development.
 - KVV continues to own the 22-acre tract.
- Site Conditions

- A wetland delineation study in January 2001 determined that 6.77 acres of the tract were wetlands formed as the result of irrigation and other man-made causes and were not jurisdictional.
 - Preliminary geotechnical studies of the property determined the presence of groundwater perched on top of caliche, an impermeable layer which prevents the vertical migration of water.
 - Preliminary studies, including fill and grading requirements, indicated the feasibility of 84 single-family residential lots with wetland buffer areas on the site.
- Adjacent Development
 - Subsequent to the purchase of the 22-acre tract by KVV, Cherrywood Estates was developed. This residential development drains its stormwater into a retention pond on the west side of Cherrywood abutting the KVV property. Under natural conditions, a significant portion of the stormwater from Cherrywood would drain to a sub-basin to the east, away from the KVV property.
 - Subsequent to the purchase of the 22-acre tract by KVV, Applewood Estates was developed. The City of Richland imposed Plat Conditions for Applewood. It is not known whether the stormwater conditions were complied with. A significant portion of the stormwater from the Applewood development would naturally drain to the east, away from the KVV property. As developed, the Applewood development diverts this water to the west where it runs in a ditch system along Keene Road, abutting the KVV property.
- Additional Drainage Considerations
 - During the summer of 2006, a household at 1261 Jonagold Drive in the Applewood development began experiencing significant groundwater problems on their property, including water in the crawl space and subsidence. These problems spread to adjacent properties and affected city streets, sidewalks, utility vaults, and residences.
 - RMC 18.16.020 states: It shall be the duty of each customer to eliminate waste or water supply by repairing, or causing to be repaired, any defective or leaking pipes or plumbing fixtures, and to take all reasonable measures to prevent application of water to impervious surfaces in the public rights of way. No person shall use more water for irrigation, culinary purposes, or other uses than is reasonably necessary.
 - The City failed to enforce this code section against the owners of the property at 1261 Jonagold Drive. The City allowed the owners of the property at 1261 Jonagold Drive to pump water out of their property and into the City street where it flows into the City stormwater system.
 - The Applewood development increased in size by ten lots with the development of phase 3. High groundwater in the area of that phase of development required that an under drain system be installed and connected to the City's hard-piped storm drainage system.

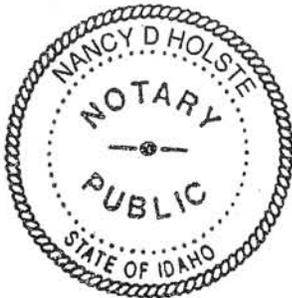
- Surface water in the KVV sub-basin historically flowed to the Yakima River. There are no longer any culverts underneath Columbia Park Trail allowing drainage of that water to the Yakima.
- Water Table
 - The above-listed developments caused a substantial rise in the groundwater level on the KVV property. In a two-year period, groundwater depths rose from .55 to 1.50 feet.
 - This escalation of the ground water table has made development of the KVV property infeasible.
- Notice to the City of Richland
 - By letter of August 16, 2007, and by other means, KVV put the City of Richland on notice of the problems with groundwater on its property.
 - The City of Richland stated that the additional waters infiltrating into the groundwater near the KVV property do not significantly change the pre-existing drainage boundaries.
 - The City of Richland failed to take any steps to mitigate the problems caused by excessive groundwater on the KVV property.
- Claims
 - The City of Richland has artificially collected, concentrated, channeled, and diverted stormwater onto the KVV property and/or the property immediately adjacent to the KVV property without providing for a proper outflow.
 - The City of Richland has failed to enforce its municipal code.
 - The City of Richland has taken the KVV property for public use, making it a part of its stormwater drainage system.
 - The acts and omissions of the City of Richland have deprived Claimants of a clear legal or equitable right, have created in them a well-grounded fear of immediate invasion of that right, and caused them actual and substantial injury for which they have no plain, complete, speedy, and adequate remedy available at law. Based on this, Claimants may seek injunctive relief.
- Damages
 - KVV purchased the 22-acre tract with the intention of developing the property. The acts and omissions above described have made such development infeasible. KVV is entitled to recover for the loss of this lost investment opportunity.
 - The taking of the KVV property for public use without formal eminent domain proceedings entitles KVV to the diminution in value of its property, as well as the costs and attorneys' fees incurred in the pursuit of this claim.

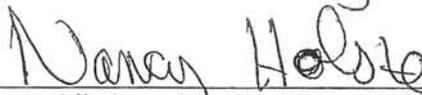
- o KVV has incurred, and continues to incur, damages related to the subject property which are as yet undetermined.


Ron B. Johnson

Dated: 5-27-08

SUBSCRIBED AND SWORN to before me this 27 day of May, 2008.

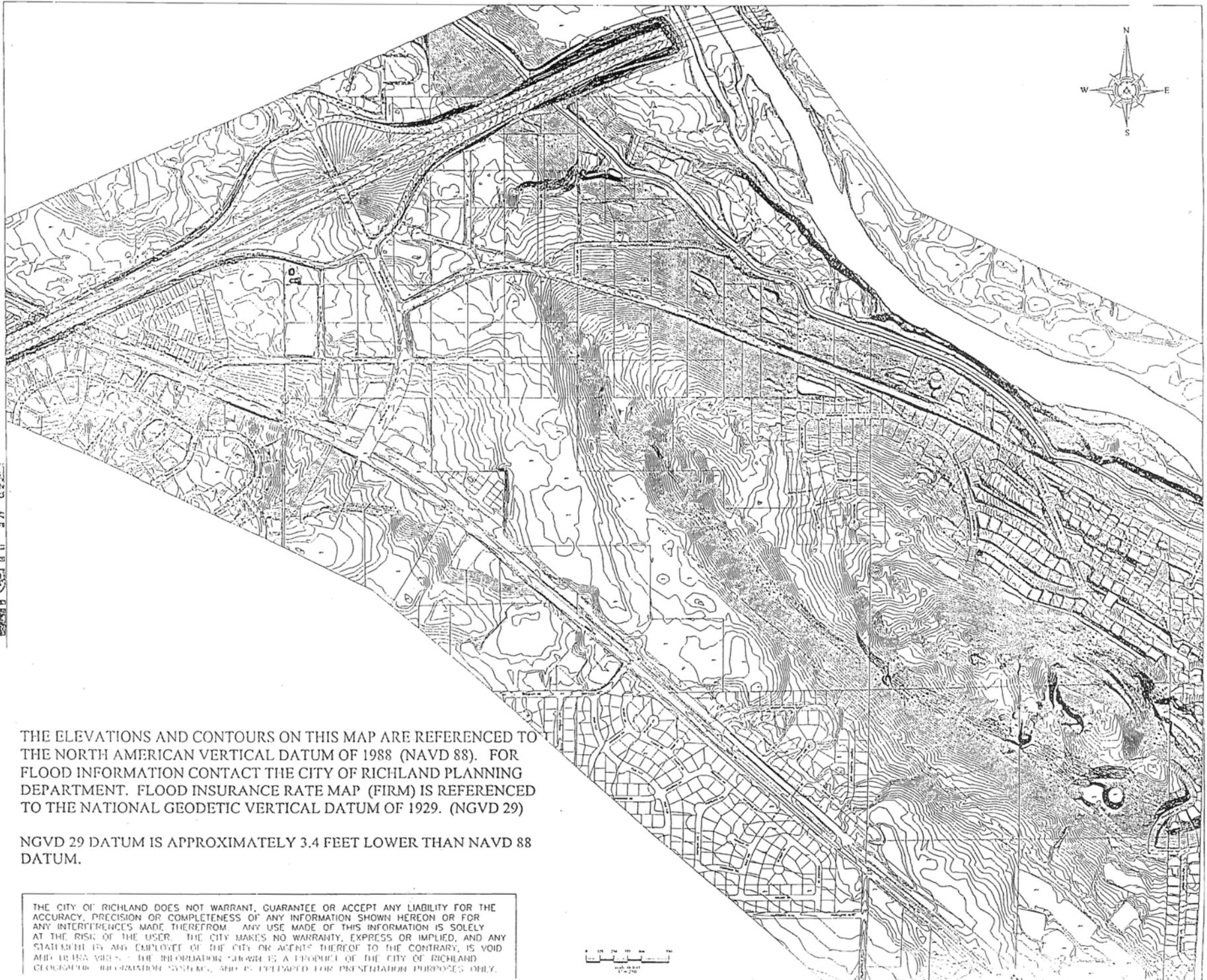



Notary Public in and for the State of ~~Washington~~
IDAHO

A 000024

EXHIBIT

A 000026



THE ELEVATIONS AND CONTOURS ON THIS MAP ARE REFERENCED TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 88). FOR FLOOD INFORMATION CONTACT THE CITY OF RICHLAND PLANNING DEPARTMENT. FLOOD INSURANCE RATE MAP (FIRM) IS REFERENCED TO THE NATIONAL GEODETIC VERTICAL DATUM OF 1929. (NGVD 29)

NGVD 29 DATUM IS APPROXIMATELY 3.4 FEET LOWER THAN NAVD 88 DATUM.

THE CITY OF RICHLAND DOES NOT WARRANT, GUARANTEE OR ACCEPT ANY LIABILITY FOR THE ACCURACY, PRECISION OR COMPLETENESS OF ANY INFORMATION SHOWN HEREON OR FOR ANY INTERFERENCES MADE THEREFROM. ANY USE MADE OF THIS INFORMATION IS SOLELY AT THE RISK OF THE USER. THE CITY MAKES NO WARRANTY, EXPRESS OR IMPLIED, AND ANY STATEMENT BY ANY EMPLOYEE OF THE CITY OR AGENTS THEREOF TO THE CONTRARY, IS VOID AND UNLESS VOID - THE INFORMATION SHOWN IS A PRODUCT OF THE CITY OF RICHLAND CLOUDSHELL INFORMATION SYSTEMS, AND IS PREPARED FOR PRESENTATION PURPOSES ONLY.



Introduction

This report provides our findings and recommendations for a proposed residential development. The attached Delorme topographic map shows the location of the proposed development and its location within Richland, WA. We read and relied on previous geotechnical work on this site as well¹.

Scope of Work

Our Scope-of-work provides a Geotechnical Investigation. This Geotechnical Investigation consists of site exploration, soil classification, determining maximum and differential settlement, and allowable soil bearing pressure. As the project developed, we expanded our Work to include an assessment of stormwater management and potential effects on the local groundwater tables.

Summary Conclusions

This site presents a complex mixture of impermeable and permeable soil layers that provide challenges for stormwater management and foundation stability. To meet the challenges of a residential development, with expectations of normal homeowner behavior, we recommend that the "low" areas receive about 5ft. of engineered fill. This raises the minimum site elevation to about 100 ft. on the southeast end of the site, and 95 ft. on the northwest end of the site. These elevations will provide for drainage and foundation, road, and driveway stability. Even after the site is filled, stormwater will present a challenge meeting Washington State Department of Ecology guidelines for treatment².

¹ Burie, D.J., Shannon and Wilson, Inc., Preliminary geotechnical engineering study; Keene Valley Residential Development, Richland, WA, January 12, 2005

² Washington State Department of Ecology (Water Quality Program). 2004. Eastern Washington Stormwater Manual Subcommittee. In *Stormwater Management Manual for Eastern Washington in 04-10-076*. Olympia, WA.

- Fourth layer-Olive brown, SILT WITH FINE SAND (ML) with very slow groundwater at about 12 ft. deep. *This water bearing formation is below the upper aquifer in layers one and two.*
- Fifth layer- an impermeable, light olive brown, indurated, cemented layer of SILT (ML).

The southeast side of the intersection contains roughly the same soil layers as above *except* layer one is thicker and layer two does not exist.

For our seismic work, we performed five percussion surveys and one shear survey. Higher velocities indicate more competent soil. The velocity for percussion surveys can be misleading as groundwater provides increased velocity. The shear survey (A6) showed a shear velocity of about 265 ft/sec. This is an extremely low velocity that indicates the soil will not perform well in a seismic event.

For the percussive surveys, the data show a weak layer (~1,200 ft/sec) in the upper 2-8 ft. and a more competent layer below (~2,500 ft/sec). Smearing all the surveys together shows a weak layer down to about 4 ft. deep and a more competent layer below. However, the shear velocity is low enough that seismic response of structures, in saturated soil may be highly susceptible to liquefaction and vibration.

Conclusions and Recommendations

Overall, we recommend that a large portion of the site be filled to an elevation of about 100 ft. on the southeast end of the project to about 95 ft. on the northwest end of the project. This amounts to about 5 ft. of fill across most of the site. This will serve to provide for some level of stormwater management in the sub-division, improve the seismic response of the native soil, provide uninterrupted feed to the down gradient wetland area, and better foundation settlement characteristics.

We recommend using the following fill procedure:

1. Clear and grub the site to receive fill. We expect the duff and vegetation to be about 8 inches thick.
Import 3-12 inch coarse gravel and cobble and place to about 15 inches deep. Using a medium sized (say 10,000 lb.) vibratory

Geologist: Michael Black, P.E.

Elevation: 95.0 (est.)

east side of Shockley turnout

Date Drilled: 10/24/05

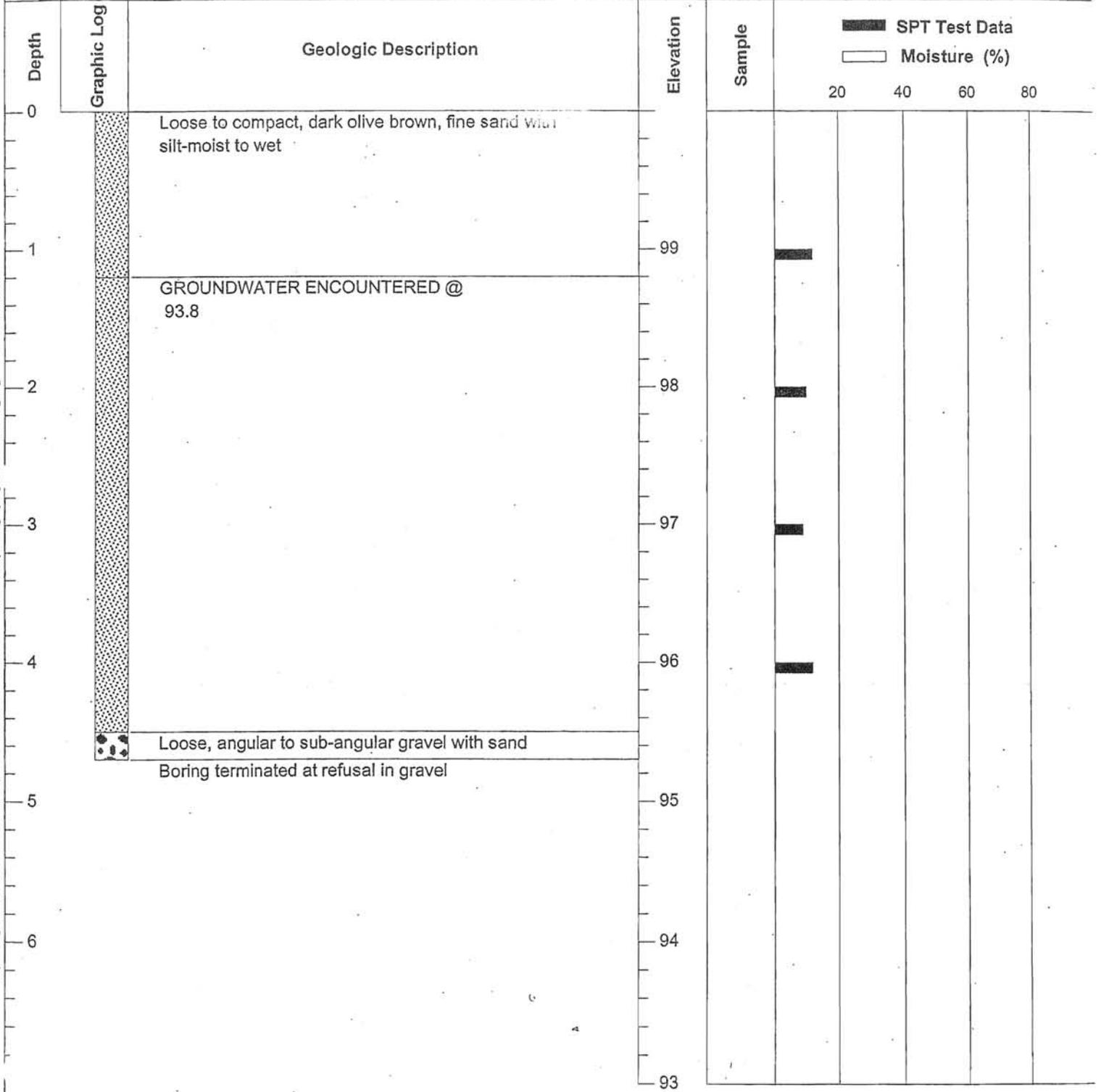
Boring Depth: 4.7

Driller:

Water Level: -1.2

Drilling Method: 4-inch diam. auger

SuperLog V3.0A CivilTech Software, USA www.civiltech.com File: C:\SuperLog3\project\EudorBHlog.log Date: 11/15/2005



logist: Michael Black, P.E.

Elevation: 94.0 (est)

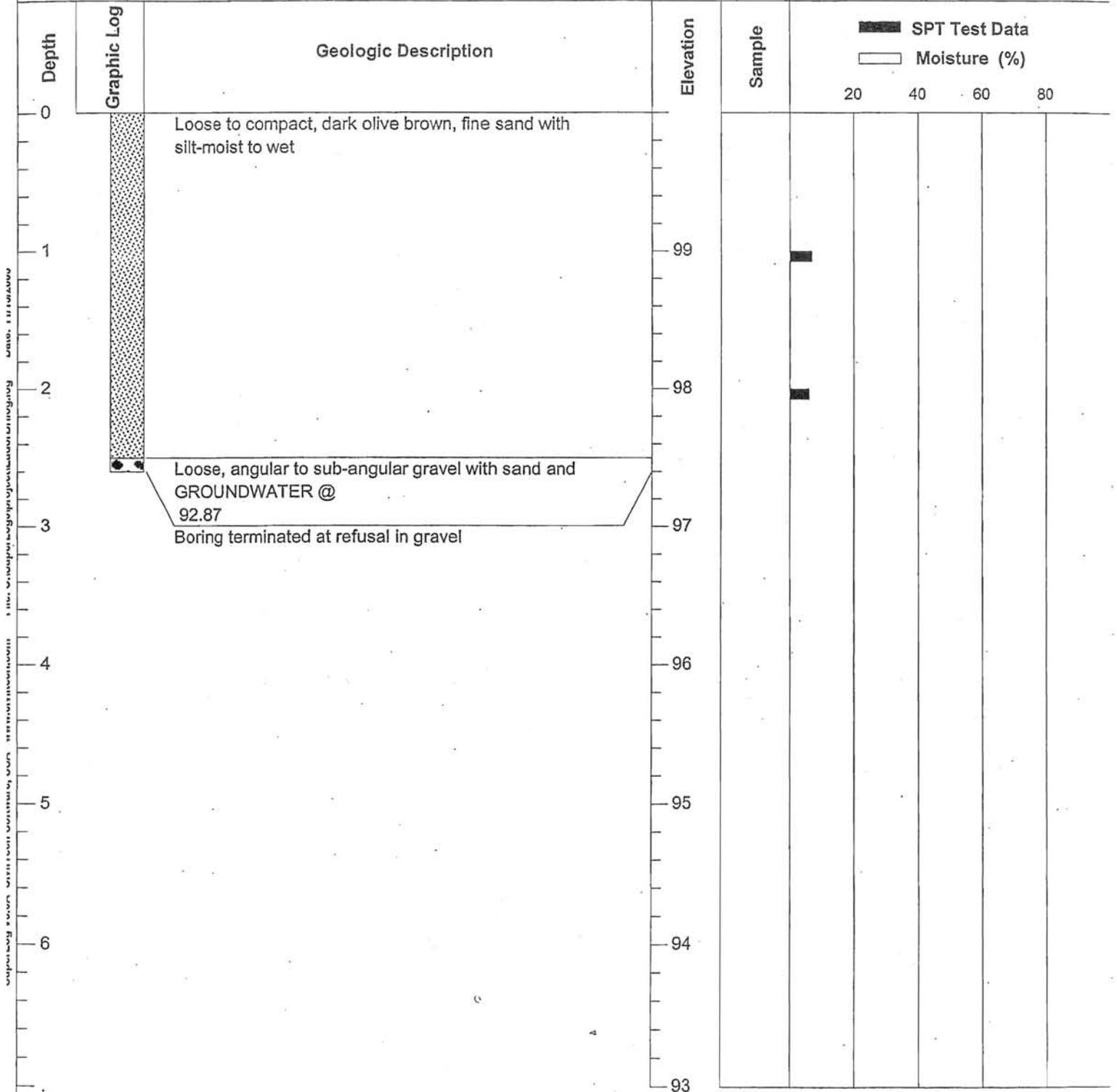
Date Drilled: 10/24/05

Boring Depth: 2.6

Driller:

Water Level: -2.5

Drilling Method: 4-inch diam. auger



ologist: Michael Black, P.E.

Elevation: 94.0(est.)

Date Drilled: 10/24/05

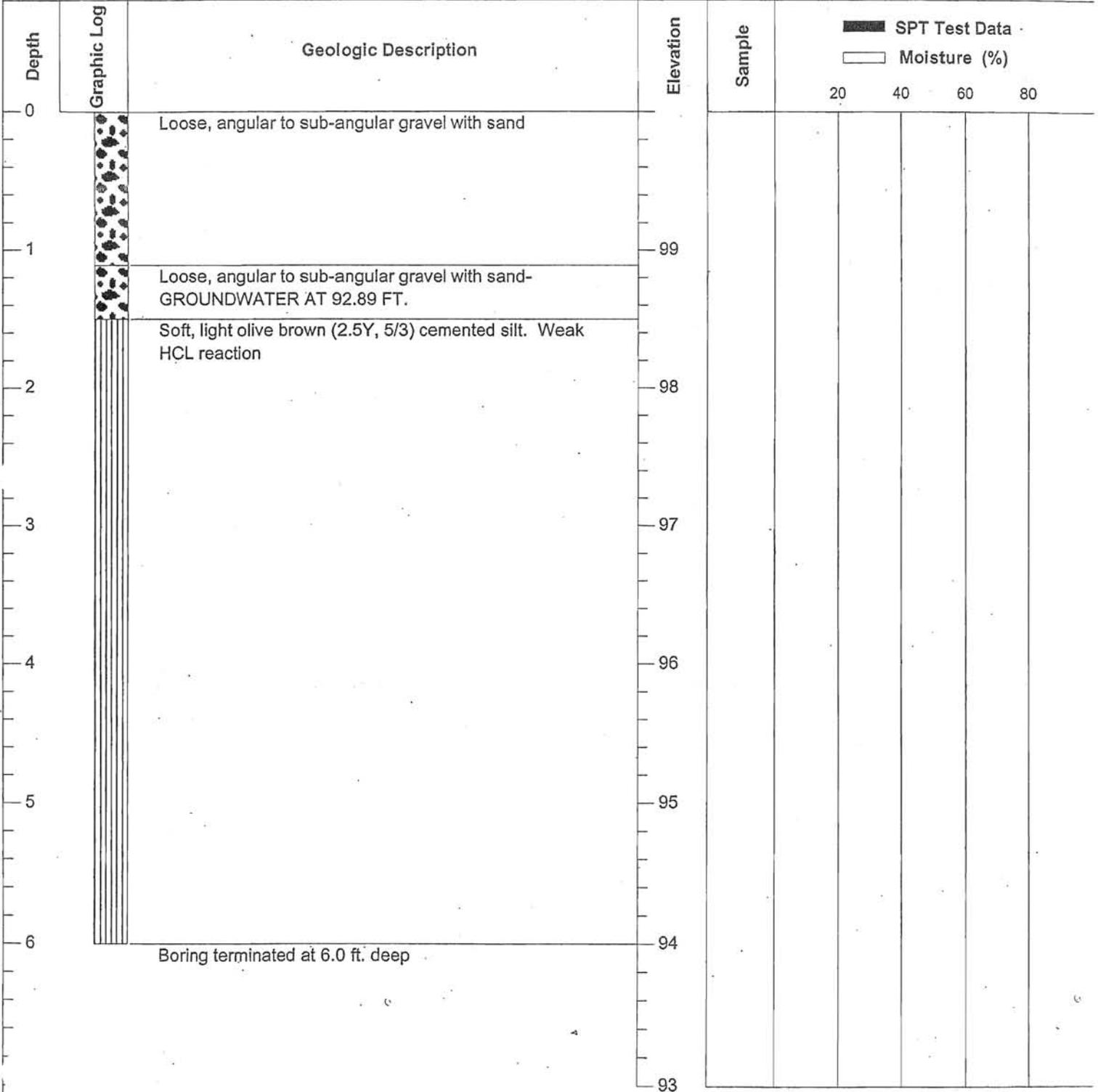
Boring Depth: 6

Driller:

Water Level: -1.11

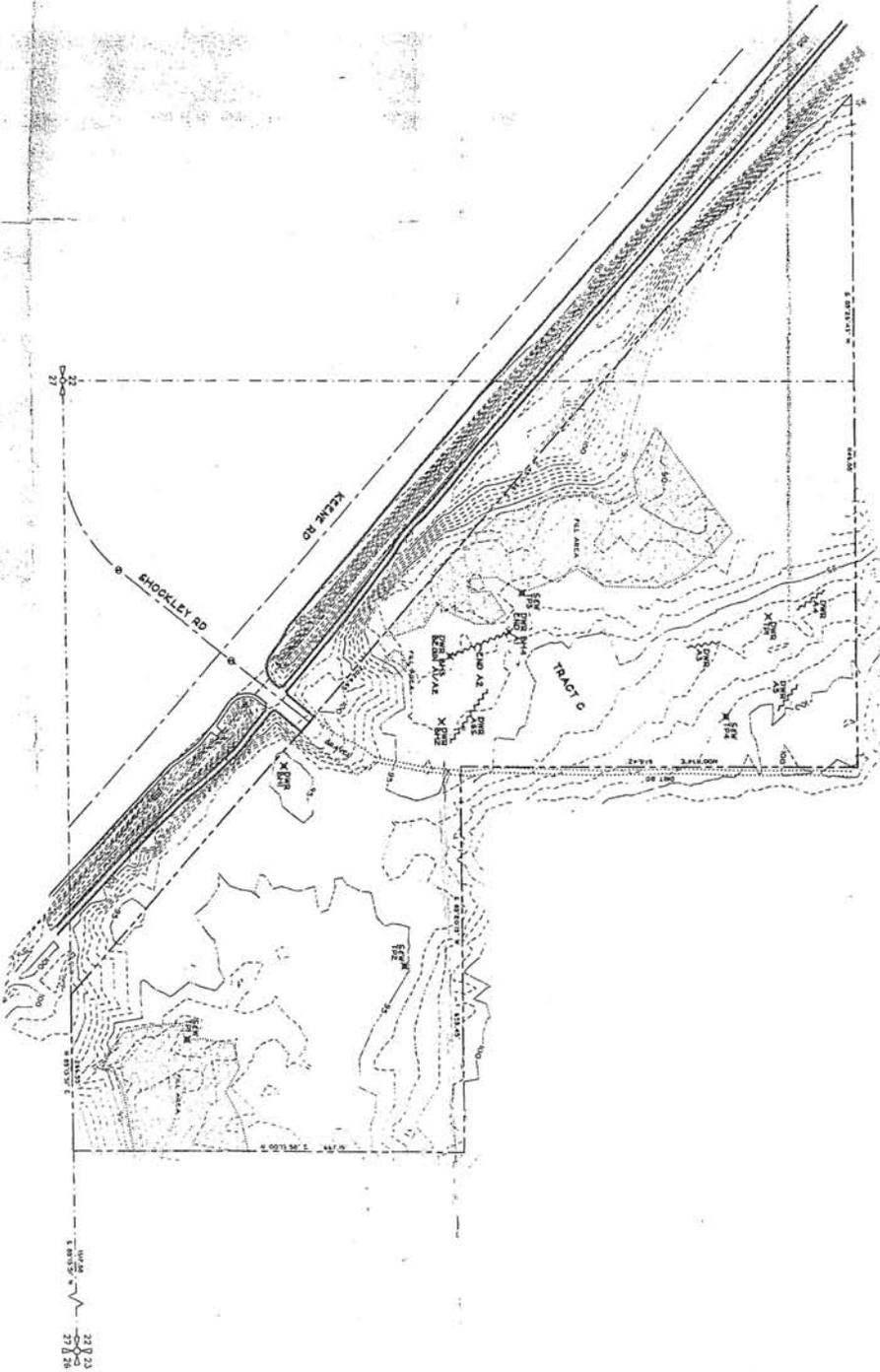
Drilling Method: 4-inch diam. auger

SuperLog V3.0A CivilTech Software, USA www.civiltech.com File: C:\SuperLog\project\Eudor\BHlog.log Date: 11/15/2005





A 000032



GEOTECHNICAL TEST LOCATIONS

REF DWGS
1. SITE AND EXHIBITION PLAN
PROJECT 227-02-00000
SHEETS 1-10
SHANNON & WILSON, INC.
RICHLAND, WASHINGTON
2. TOPOGRAFC SURVEY
PROJECT 204

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A STAKE MARKER
B BENCH MARK

CALL 2 DAYS
BEFORE YOU DIG
1-800-424-5555

SHEET
1

GEOTECHNICAL TEST LOCATIONS
JOHNSON SITE - SEC 22, T9N, R28E, WM
CITY OF RICHLAND, BENTON COUNTY, WASHINGTON

DWR CONSULTANTS, INC. P.O. BOX 2188 PASCO, WASHINGTON	
REVISIONS:	SIGNATURE BLOCK:
No. EXPLANATION:	CITY ENGINEER: PUBLIC UTILITIES:
	PUBLIC WORKS: RR DISTRICT:
	GAS COMPANY: RR DISTRICT:
	CABLE COMPANY: PHONE COMPANY:
	11/1/05 \JOHNSON0105\geotest.dwg DWN BY: Y BRION

The Baines property was investigated for jurisdictional wetlands on November 29 and 30, 2000. Eight formal data plots were taken and the results documented and analyzed for wetland characteristics including soil, vegetation, and hydrologic information. These three criteria must be simultaneously present for an area to be considered a jurisdictional wetland. Where the three criteria cannot simultaneously be observed, *indicators* of the criteria are used.

Based on observed physical and biological characteristics, three areas that have wetland characteristics were flagged, surveyed, and classified per US Fish and Wildlife Service Classification. Present extent of these wetland areas was compared with historical data. Prior to installation/construction of the Badger East Lateral Canal for regional irrigation, the area was clearly a sagebrush steppe habitat type on coarse-textured sands and sandy loams. The Natural Resources Conservation Service maps the area as non-hydric, very well-drained soils formed in lacustrine sediments. The National Wetlands Inventory does not indicate wetlands occurring on or near the subject property.

The unlined canal was built between 1948 and 1957, and past, recent, and on-going irrigation practices have increased regional groundwater levels. As a result of excess irrigation upslope from the Baines property, some topographic low spots now have observable seasonal surface hydrology. The 1971 Soil Conservation Service aerial photograph does not indicate the presence of on-site wet areas—thus it is likely that the “breaks” that have occurred in the canals over the past 25 or 30 years have caused temporary raised regional groundwater levels. Other than short to long duration inundation, the soils have not yet acquired hydric indicators. Hydrophytic vegetation has successfully outcompeted the native sagebrush vegetation in these low areas. By the mid-1990’s, aerial photographs show the colonization by native emergent species (cattail and bulrush), and the widespread invasion of the non-native Russian olive.

Based on (1) historical data of the genesis of the wet areas, (2) confirmation by Benton County that the wetland (as it extends northeast of the Baines property) is irrigation-induced, (3) man-induced elevated groundwater levels, and (4) the likelihood that in the absence of continued irrigation, the site would revert to upland, *the wetland as delineated on the Baines property would not be considered jurisdictional* according to the City of Richland Ordinance.

At the request of Ron Johnson of the Baines Corporation, Spokane, Washington, I completed a wetland delineation and determination report for his property in the City of Richland, Benton County, Washington. I used the US Army Corps of Engineers Triple Parameter Methodology (Environmental Laboratory 1987), the Washington State Wetlands Identification and Delineation Manual (WDOE 1997), and the Federal Manual for Identifying Jurisdictional Wetlands (FICWD 1989). The approximately 22-acre site is located north of Keene Road, in the City of Richland. It is bounded by undeveloped property to the north and east, a small commercial development to the west, and Keene Road to the south (Township 9 North, Range 28 East, southwest quarter of southeast quarter of Section 22) (Figure 1). The existing site condition includes open undeveloped sagebrush and emergent herbaceous vegetation with few patches of shrubs. The terrain is gently rolling to relatively flat with a few topographic low spots. Elevation ranges from 500 to 512 feet. Precipitation in the vicinity averages around 6 to 9 inches per year.

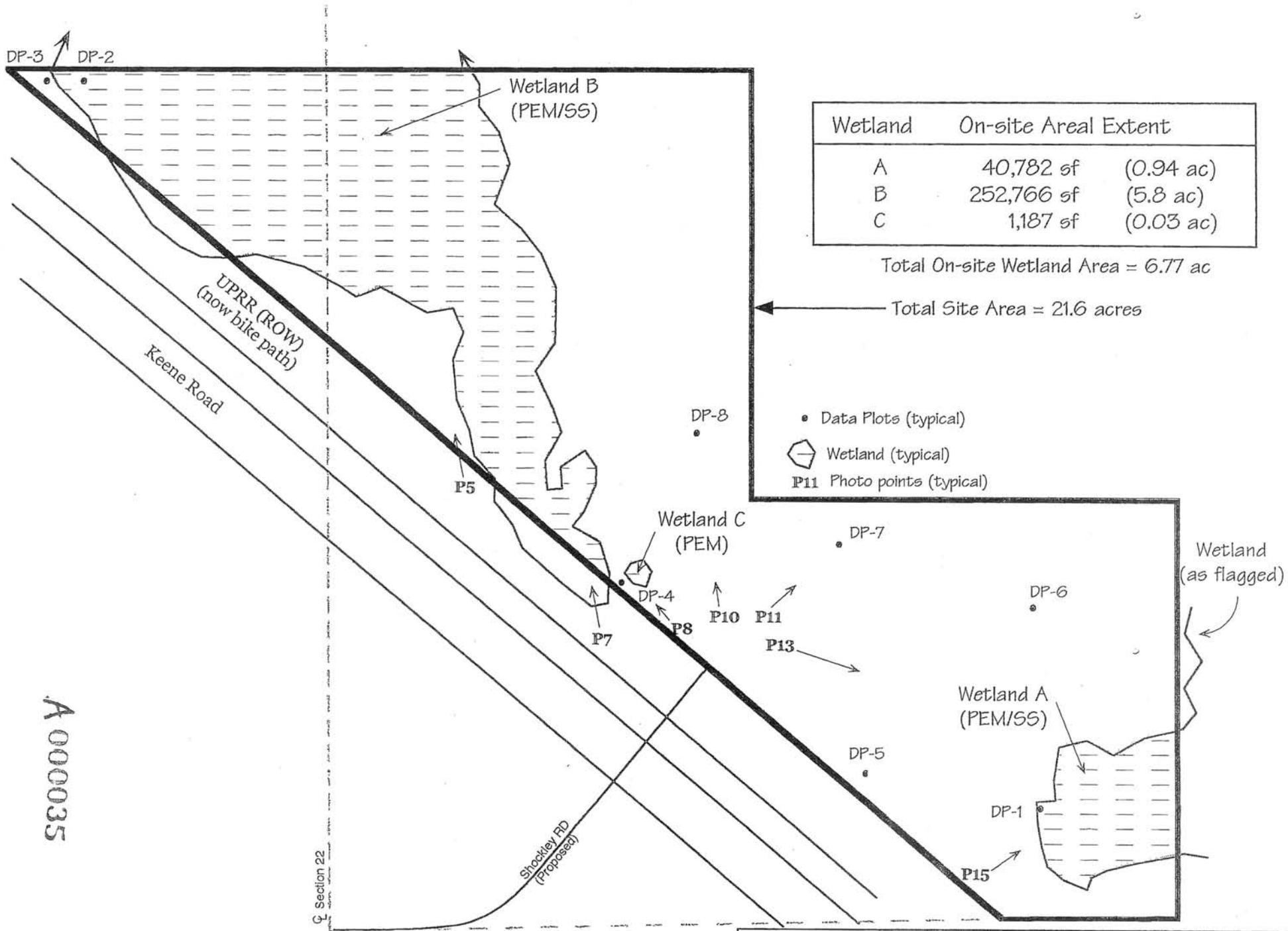
Project and Site Description

As platted, the project involves a proposal to subdivide the property for single family residences. Preliminary plans include some wetland fill for access and required turn-arounds. The majority of the on-site wetlands will be preserved. Specific fill locations are not yet finalized.

Past adjacent land practices have resulted in alteration of historical native sagebrush "desert" to irrigated agricultural uses including orchards. Adjacent properties to the west, south, and north are ungrazed sagebrush or orchards. The site is underlain by mostly sandy loams to sands.

Purpose

The purpose of this study was to review existing documents and data pertaining to the site and delineate, describe, and map the presence and extent of wetlands existing on the subject property. Details of these methodologies and site-specific methods used are given in Appendices A and B. This report, once verified by the appropriate agencies, may be used by the project proponent to determine any permit requirements associated with construction plans.



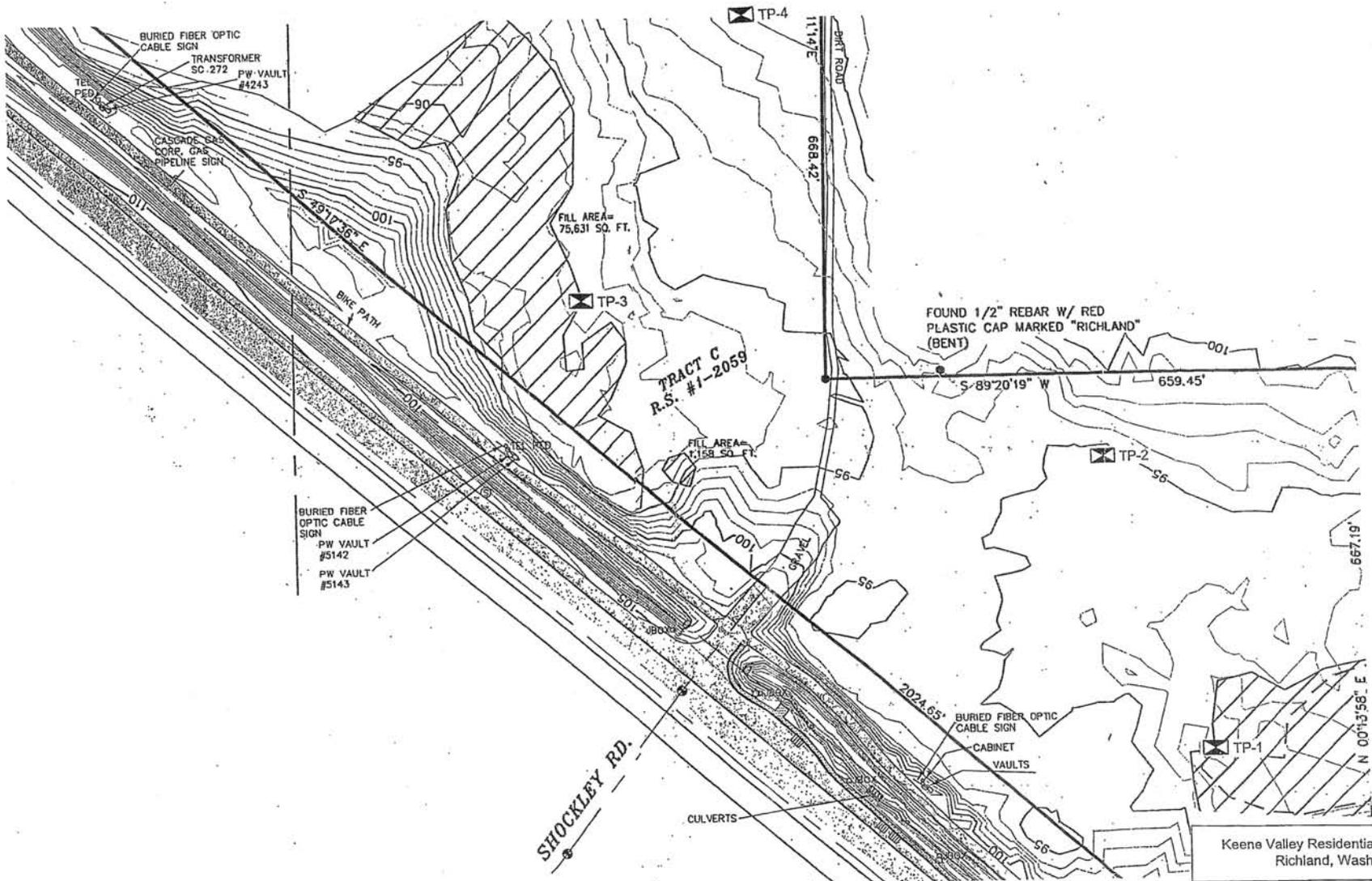
A 000035

scale: 1" = 200'

Common Section Line 22/27

Figure 4.
Wetland Delineation and Data Plot Location Map

A 000036



LEGEND

☒ TP-1 Approximate Test Pit Location

Keene Valley Residential Development
Richland, Washington

SITE AND EXPLORATION PLAN

January 2005

22-1-02186-001

SHANNON & WILSON, INC.
Geotechnical and Environmental Consultants

FIG. 2

SOIL PROFILE DESCRIPTION Ft.	Average Depth (ft)	Symbol	Samples	Water Content (%)	Ground Water	NOTES	Depth (ft)	SKETCH OF EAST TEST PIT SIDE WALL Horizontal Distance in Feet				
								0	3	6	9	12
1: Weeds, roots, organic-laden TOPSOIL.	0.8						0					
2: Brown, silty SAND (SM), loose, damp, fine grained sand, non-plastic fines.												
3: Brown, SAND with silt (SW), loose to medium dense, wet to saturated, fine to coarse grained sand, non-plastic fines.	5.0				▽	Caving	3					
4: Brown, sandy, silty GRAVEL/COBBLE/BOULDERS (GW/GM), medium dense, saturated, rounded to subrounded gravel/cobble/boulders (up to 2.5 diameter, avg. size 5-in.), fine to coarse grained sand, non-plastic fines.	7.5											
Bottom of Test Pit 11.0 ft. Groundwater Encountered at 5.5 ft. Test Pit loosely backfilled upon completion of work on 12/07/2004.	11.0						6					
							9					
							12					
							15					

NOTES

1. The description in the text of this report is necessary for a proper understanding of the nature of the subsurface materials.
2. Refer to Soil Classification and Log Key for explanation of "Symbols" and Definitions.
3. USCS designation is based on visual-manual classification.
4. Where possible, a 1/2-inch-diameter, steel T-bar probe was used to estimate the density of soil.

LEGEND

- Roots
- Seepage
- Cobble or Boulder
- Log

Keene Valley Residential Development
Richland, Washington

LOG OF TEST PIT TP-1

January 2005

22-1-02186-001

SHANNON & WILSON, INC.
Geotechnical and Environmental Consultants

FIG. A-1

FIG. A-1

A0000037

SOIL PROFILE DESCRIPTION		Average Depth (ft)	Symbol	Samples	Water Content (%)	Ground Water	NOTES	Depth (ft)	SKETCH OF NORTH TEST PIT SIDE WALL Horizontal Distance in Feet					
Ft.									0	3	6	9	12	15
1: Sagebrush, weeds, roots, organic-laden TOPSOIL.		0.8										①		
2: Tan, silty SAND (SM) loose to medium dense, dry to wet, fine grained sand, non-plastic fines.								3				②		
Damp at 4 ft., caving.		4.0						6						
Wet at 6 ft., medium dense, slight caving.		6.0		S-1				9						
No caving at 8.5 ft., medium dense.		8.5						12						
Bottom of Test Pit 12.0 ft. Groundwater Encountered 7.5 ft. Test Pit loosely backfilled upon completion of work on 12/07/2004.		12.0						15						

NOTES

1. The description in the text of this report is necessary for a proper understanding of the nature of the subsurface materials.
2. Refer to Soil Classification and Log Key for explanation of "Symbols" and Definitions.
3. USCS designation is based on visual-manual classification.
4. Where possible, a 1/2-inch-diameter, steel T-bar probe was used to estimate the density of soil.

LEGEND

- Roots
- Seepage
- Cobble or Boulder
- Log

Keene Valley Residential Development
Richland, Washington

LOG OF TEST PIT TP-2

January 2005

22-1-02186-001

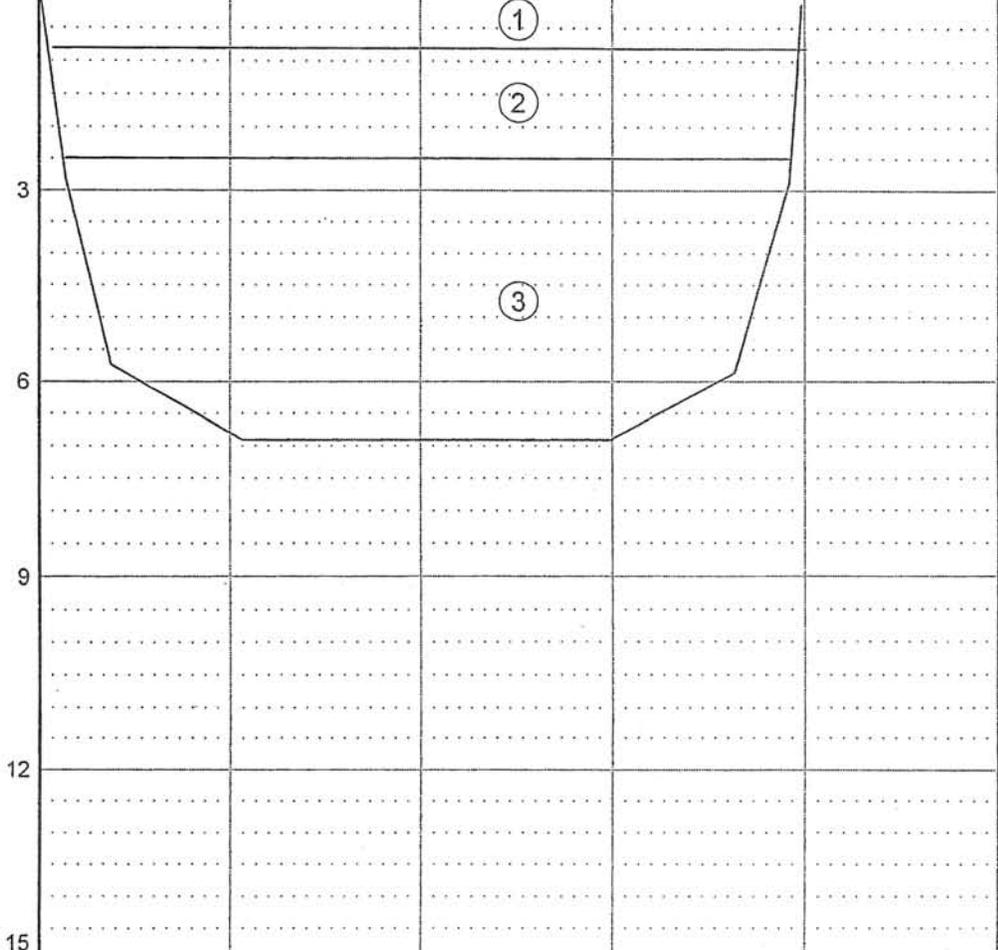
SHANNON & WILSON, INC.
Geotechnical and Environmental Consultants

FIG. A-2

FIG. A-2

A000038

SOIL PROFILE DESCRIPTION		Average Depth (ft)	Symbol	Samples	Water Content (%)	Ground Water	NOTES	SKETCH OF NORTH TEST PIT SIDE WALL Horizontal Distance in Feet						
Ft.								Depth (ft)	0	3	6	9	12	15
1: Weeds, roots, organic-laden TOPSOIL.		0.8												
2: Brown, silty SAND (SM), very loose to loose, damp to wet, fine grained sand, non-plastic fines, (water slowly seeping in).		2.5				▽								
3: White/tan, sandy SILT (SM/ML), dense to very dense, damp, fine grained sand, non-plastic fines.		7.0		S-1										
Bottom of Test Pit 7.0 ft. Groundwater Encountered at 2 ft. Test Pit loosely backfilled upon completion of work on 12/07/2004.														



NOTES

1. The description in the text of this report is necessary for a proper understanding of the nature of the subsurface materials.
2. Refer to Soil Classification and Log Key for explanation of "Symbols" and Definitions.
3. USCS designation is based on visual-manual classification.
4. Where possible, a 1/2-inch-diameter, steel T-bar probe was used to estimate the density of soil.

LEGEND

- Roots
- Seepage
- Cobble or Boulder
- Log

Keene Valley Residential Development
Richland, Washington

LOG OF TEST PIT TP-3

January 2005

22-1-02186-001

SHANNON & WILSON, INC.
Geotechnical and Environmental Consultants

FIG. A-3

FIG. A-3

A0000039

SOIL PROFILE DESCRIPTION					SKETCH OF NORTH TEST PIT SIDE WALL							
Ft.	Average Depth (ft)	Symbol	Samples	Water Content (%)	Ground Water	NOTES	Depth (ft)	Horizontal Distance in Feet				
							0	3	6	9	12	15
1: Weeds, roots, organic-laden TOPSOIL.	0.5									①		
2: Tan, silty SAND (SM), loose, dry, fine grained sand, non-plastic fines.										②		
3: Tan, sandy, silty GRAVEL/COBBLES with occasional boulders (GW), loose to medium dense, dry to damp, round to angular gravel/cobble/boulders (rounded flood deposits or angular basalt), fine to coarse grained sand, non-plastic fines.	2.0 3.5						3			③		
4: Brown, sandy SILT (SM/ML), medium dense to dense, damp, fine grained sand, non-plastic fines.					Not Encountered					④		
Bottom of Test Pit 10.0 ft. No Groundwater Encountered. Test Pit loosely backfilled upon completion of work on 12/07/2004.	10.0											

NOTES

- The description in the text of this report is necessary for a proper understanding of the nature of the subsurface materials.
- Refer to Soil Classification and Log Key for explanation of "Symbols" and Definitions.
- USCS designation is based on visual-manual classification.
- Where possible, a 1/2-inch-diameter, steel T-bar probe was used to estimate the density of soil.

LEGEND

- Roots
- Seepage
- Cobble or Boulder
- Log

Keene Valley Residential Development
Richland, Washington

LOG OF TEST PIT TP-4

January 2005

22-1-02186-001

SHANNON & WILSON, INC.
Geotechnical and Environmental Consultants

FIG. A-4

FIG. A-4

A0000040

7.2.5 Jericho Rd. Regional Facility

Basin 3 consists of a largely undeveloped and under-developed residential area south of Keene Road on the hill side. This basin is approximately 737 acres. It is expected that the developed areas would be approximately 25% impervious due to zoning and steep slopes. The proposed facility is approximately 3.8 acres in plan area, 6 feet deep, and designed as an infiltration (2in/hr) and detention facility. The facility is intended to use the natural terrain as the facility with simply berming the downstream end. As an alternative, the City could simply construct a facility alongside Keene Rd. as suggested for the Keene Rd. facility in Section 7.2.7, however, the facility would only collect 60% of the basin for control and treatment.

The proposed facility would be located upstream of a natural drainage channel that conveys stormwater through the vineyards located north of Columbia Park trail and along the Yakima River. This existing channel is deeply incised and will need to be repaired. The proposed facility would detain and infiltrate the 25-year runoff volume. The facility would have a slow release to the downstream channel and an emergency overflow to the downstream channel. The cost estimate for the facility included a flow control manhole and repair of the existing channel.

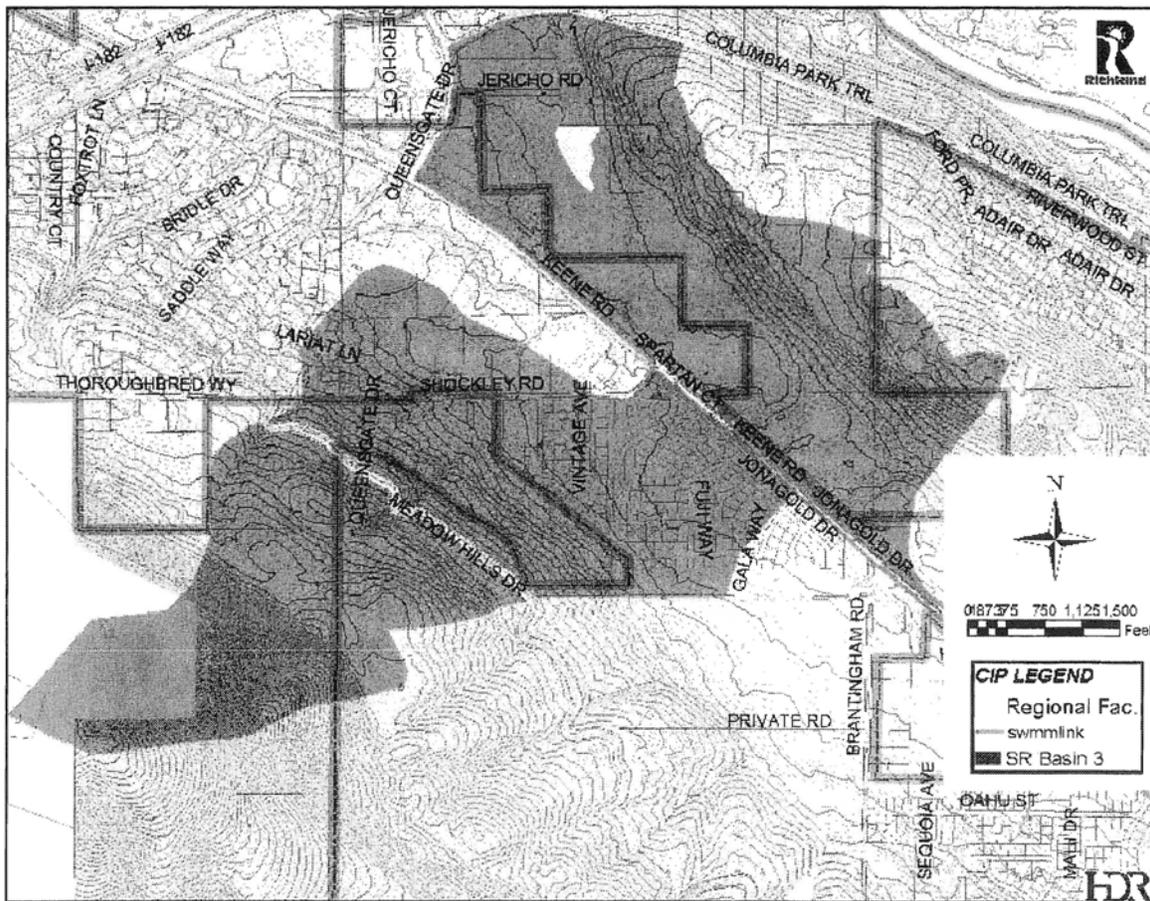


Figure 7-8 Jericho Rd. Regional Improvements and Benefitted Basin

A000041

Table 7-6

Jericho Rd



ONE COMPANY | Many Solutions™

ENGINEER'S OPINION OF PROBABLE COST

PROJECT DESCRIPTION: JERICHO RD REGIONAL FACILITY				DATE:	2/25/2005
3.8 ACRE REGIONAL R/D FACILITY					
ITEM NO.	QUANTITY	UNIT	ITEM DESCRIPTION	UNIT PRICE	TOTAL COST
1	1	L.S.	MOBILIZATION	\$ 22,813	\$ 22,812.50
2	1	L.S.	TEMPORARY POLLUTION CONTROL	\$ 3,500	\$ 3,500.00
3	1	L.S.	TRAFFIC CONTROL	\$ 5,000	\$ 5,000.00
4	1	L.S.	CLEARING AND GRUBBING	\$ 3,000	\$ 3,000.00
5	8,000	C.Y.	BERM EXCAVATION INCL. HAUL	\$ 4	\$ 32,000.00
6	4000	C.Y.	EMBANKMENT COMPACTION	\$ 5	\$ 20,000.00
7	2000	L.F.	DRAINAGE DITCH	\$ 40	\$ 80,000.00
8	50	CY	QUARRY SPALLS	\$ 50	\$ 2,500.00
9	1	EA.	TRASH RACK	\$ 500	\$ 500.00
10	2500	L.F.	RECONSTRUCT/ REPAIR EX CHANNEL	\$ 35	\$ 87,500.00
11	1	EA.	54" STD STORM FLOW CONTROL MANHOLE	\$ 4,500	\$ 4,500.00
12	150	L.F.	18" STORM DRAIN PIPE	\$ 35	\$ 5,250.00
13	7	ACRES	HYDROSEED	\$ 3,000	\$ 21,000.00
14	5000	SY	FINE GRADING	\$ 15	\$ 75,000.00
15	4	ACRES	LAND ACQUISTION	\$ 30,000	\$ 120,000.00

NOTE: 1. Not a revenue producing project, no sales tax.

SUBTOTAL	\$	482,563
CONTINGENCY 30%	\$	144,769
WSST (8.3%)	\$	-

ENG/ ADMIN 20%	\$	125,466
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TOTAL	\$	752,798
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A 000042

7.2.6 Shockley Storm Mainline Conveyance

In order to convey the stormwater for this fully developed basin, the City is concerned with the sizing of the storm mainline for runoff. Using the build-out assumptions for sizing the regional facility, a conceptual storm mainline was routed down from the hillside sub-basins south of the KID irrigation canal. It is expected that the City will intercept all stormwater to treat and detain it in a regional facility without discharge to the canal.

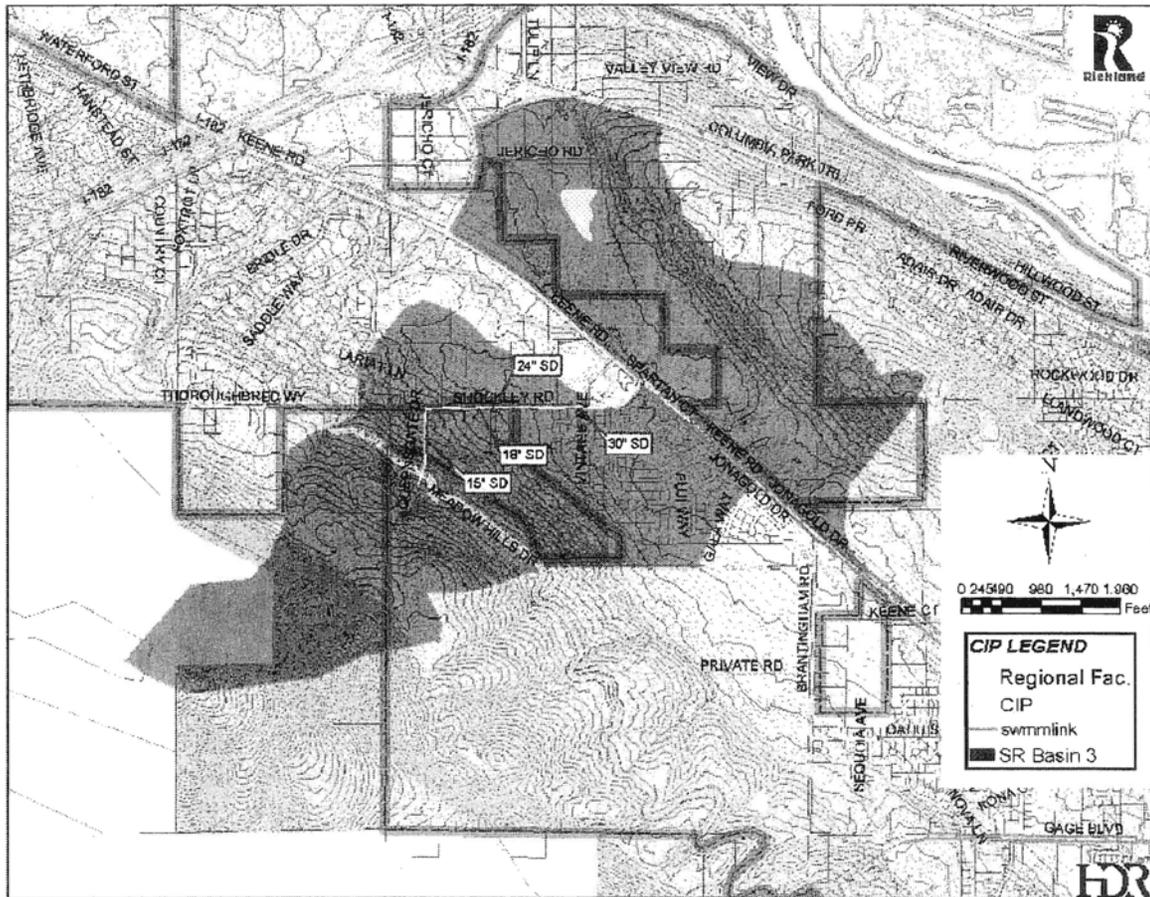


Figure 7-9 Shockley Storm Mainline Conveyance and Benefitted Basin

The cost estimate for this conveyance system is included in Table 7-7. Only part of the cost for constructing the conveyance system is included in the budget schedule for the CIP Table 7-1. It is anticipated that the majority of the mainline would be constructed through the development of the region. Both Shockley Rd and Queensgate Dr have been improved or partially improved as a result of recent development in the basin. Therefore, the cost estimate of the proposed storm drainage conveyance accounts for the repair and reconstruction of the road. Because the basin south of the KID canal has already been approved for development and infrastructure is already being constructed, sizing for the Shockley Rd conveyance anticipates that developed flows from the area south of the canal are equal to pre-developed conditions.

A 000043

Table 7-7

HDR		ONE COMPANY <i>Many Solutions™</i>			
ENGINEER'S OPINION OF PROBABLE COST					
PROJECT DESCRIPTION: SHOCKLEY STORM MAINLINE CONVEYANCE				DATE:	2/25/2005
SHOCKLEY STORM CONVEYANCE IMPROVEMENTS					
ITEM NO.	QUANTITY	UNIT	ITEM DESCRIPTION	UNIT PRICE	TOTAL COST
1	1	L.S.	MOBILIZATION	\$ 16,140	\$ 16,140.00
2	1	L.S.	TEMPORARY POLLUTION CONTROL	\$ 5,000	\$ 5,000.00
3	1	L.S.	TRAFFIC CONTROL	\$ 10,000	\$ 10,000.00
4	12	EA.	48" STD STORM MANHOLE	\$ 2,500	\$ 30,000.00
5	5	EA.	54" STD STORM MANHOLE	\$ 3,500	\$ 17,500.00
6	335	C.Y.	ROADWAY EXCAVATION INCL. HAUL	\$ 10	\$ 3,350.00
7	335	C.Y.	EMBANKMENT COMPACTION	\$ 4	\$ 1,340.00
8	2046	TON	CRUSHED SURFACING BASE COURSE	\$ 11	\$ 22,506.00
9	767	TON	CRUSHED SURFACING TOP COURSE	\$ 12	\$ 9,204.00
10	850	TON	HMA CL B PG-64-28	\$ 40	\$ 34,000.00
11	4500	S.Y.	SOIL RESIDUAL HERBICIDE	\$ 2	\$ 9,000.00
12	7600	L.F.	SAWCUT EXISTING AC PAVEMENT	\$ 2	\$ 15,200.00
13	1750	L.F.	15" STORM DRAIN PIPE	\$ 40	\$ 70,000.00
14	700	L.F.	18" STORM DRAIN PIPE	\$ 45	\$ 31,500.00
15	400	L.F.	24" STORM DRAIN PIPE	\$ 55	\$ 22,000.00
16	880	L.F.	30" STORM DRAIN PIPE	\$ 65	\$ 57,200.00

NOTE: 1. Not a revenue producing project, no sales tax.

SUBTOTAL	\$	353,940
CONTINGENCY 30%	\$	106,182
WSST (8.3%)	\$	-
ENG/ ADMIN 20%	\$	92,024
TOTAL	\$	552,146

A 000044

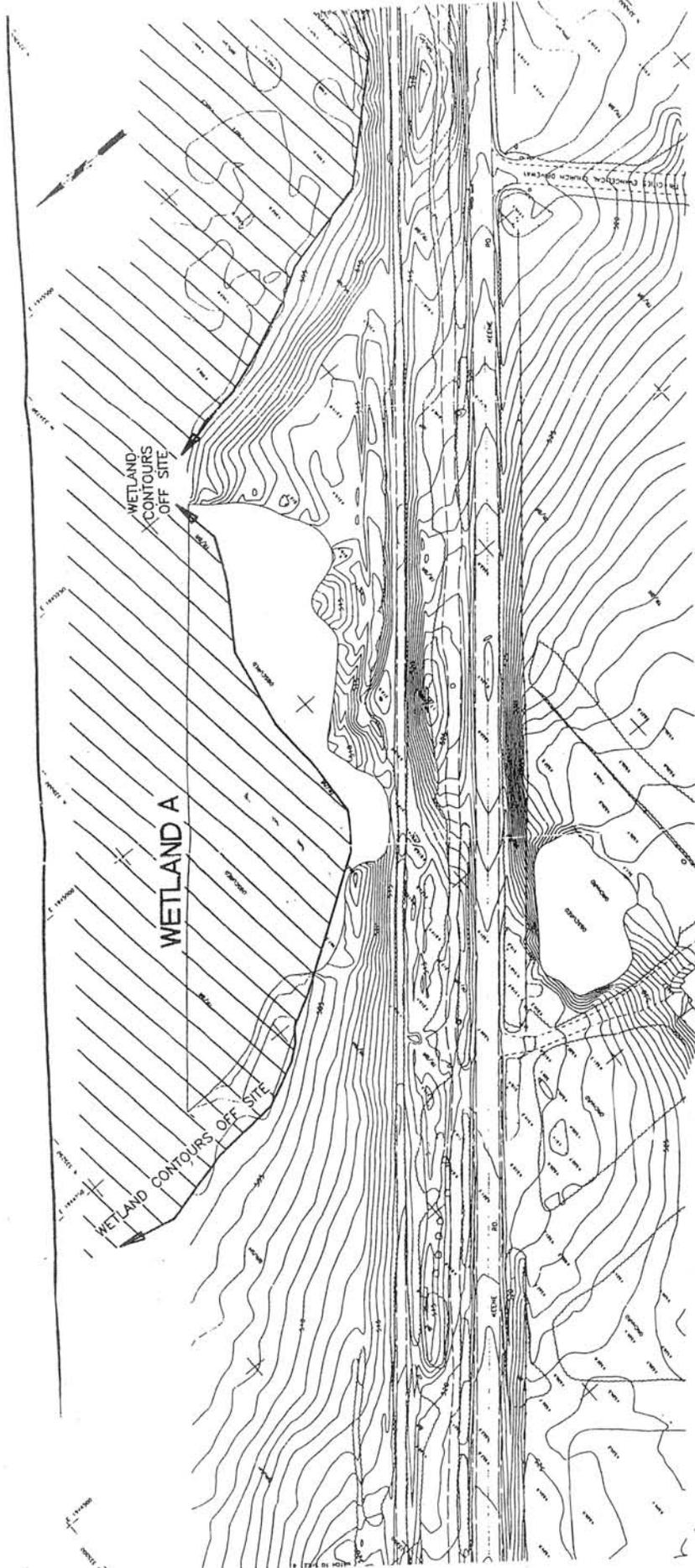
Table 7-1
 City of Richland Storm Drainage System
 Improvement Program - Budget and Schedule
 2005 - 2024 (\$ million)

Project Code	Improvement	Project Type ¹	Benefitted Area	Funding Source 2005-2010		Estimated Cost in 2004 dollars (millions)		2005 - 2024 (\$ million)																								
				Dev	Rates	Amount	Unit	Cost	Notes	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024			
Capital Improvements																																
<i>North Richland (North of Yakima River)</i>																																
N1	Carralge Ave. Pump Station Basin	DC	Carriage Sub-Basin	100%	1,200	LF	0.283	[1,2]	0.294																							
N2	Franklin St. Drainage Basin - Phase 1	DC	Franklin Sub-Basin	100%	0.25	Acres	0.098	[1,2]		0.106																						
N3	Franklin St. Drainage Basin - Phase 2	DC	Franklin Sub-Basin	100%	3,230	LF	0.661	[1,2]						0.870																		
N4	Craighill Ave. Improvements	DC	Craighill Sub-Basin	100%	1	LF	1.124	[1,2]						0.206	0.306	0.320	0.553	0.346														
N5	Hill Deep Creek Drainage	RF	Welsh Sub-Basin	100%	1	LF	1.929	[1,2]												3.088												
<i>South Richland (South of Yakima River)</i>																																
S1	Leslie/Cage Basin Improvements (Alt B.)	DC/RF	SR Sub-Basin 1	100%	1	LF	0.732	[1,2]	0.761																							
S2	Leslie/Cage Basin Improvements (Alt C.)	DC	SR Sub-Basin 1	100%	3,020	LF	0.565	[1,2]							0.773																	
S3	Mountain View Lane	DC	SR Sub-Basin 7	100%	840	LF	0.185	[1,2]		0.201																						
S4	Duportail St.	DC/RF	SR Sub-Basin 4a	50%	2	Acres	0.133	[1,2]			0.156																					
S5	Columbia Park Trail - Phase 1	DC	SR Sub-Basin 6	100%	5,250	LF	0.122	[1,2]		0.132																						
S6	Columbia Park Trail - Phase 2	DC	SR Sub-Basin 6	100%	5,250	LF	0.441	[1,2]						0.560																		
S7	Jarcke Rd. Regional Facility	RF	SR Sub-Basin 3	50%	2.5	Acres	0.753	[1,2]						0.981																		
S8	Shackley Storm Mainline Conveyance	RF	SR Sub-Basin 3	75%	3,000	LF	0.552	[1,2]										0.786									0.956					
S9	Keena Rd. Regional Facility	RF	SR Sub-Basin 5	100%	2.6	Acres	0.552	[1,2]																								
S10	Brentingham Rd. Storm Mainline Conveyance	RF	SR Sub-Basin 5	100%	4,750	LF	0.715	[1,2]																								
S11	Staptes Regional Facility (Bored pipe, facility, and overflow)	RF	SR Sub-Basin 2	100%	1	Acres	0.460	[1,2,3]			0.076			0.756														1.238				
S12	Keena/Duportail Facility	RF	SR Sub-Basin 4b	50%	2	Acres	0.593	[1,2]										1.026														
Total Capital Improvement Projects:																																
								1.055	0.438	0.075	0.156	0.000	0.000	3.483	1.050	1.106	1.859	0.346	3.065	0.000	2.194	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000		

Notes: Project costs are escalated from 2004 at 4 percent per year. See Tables 7-2A through 7-16 in Chapter 7 for individual cost estimate breakdowns.
 [1] Costs are planning level estimates and conceptual in nature. Costs generated by using 2004 unit project cost factors and applying a 30% contingency.
 [2] Asphalt, Pipe, and Mobilization Costs developed by City staff.
 [3] \$76,000 to be spent in 2007 for discharge pipe and outfall across Columbia Park Trail during the Staptes Interchange construction. The remainder of the improvement to be constructed depending on terms specified for the development of the Gravel Pit site.

* Project Type Codes:
 RF Regional Facility
 DC Deficiency Correction

A000045



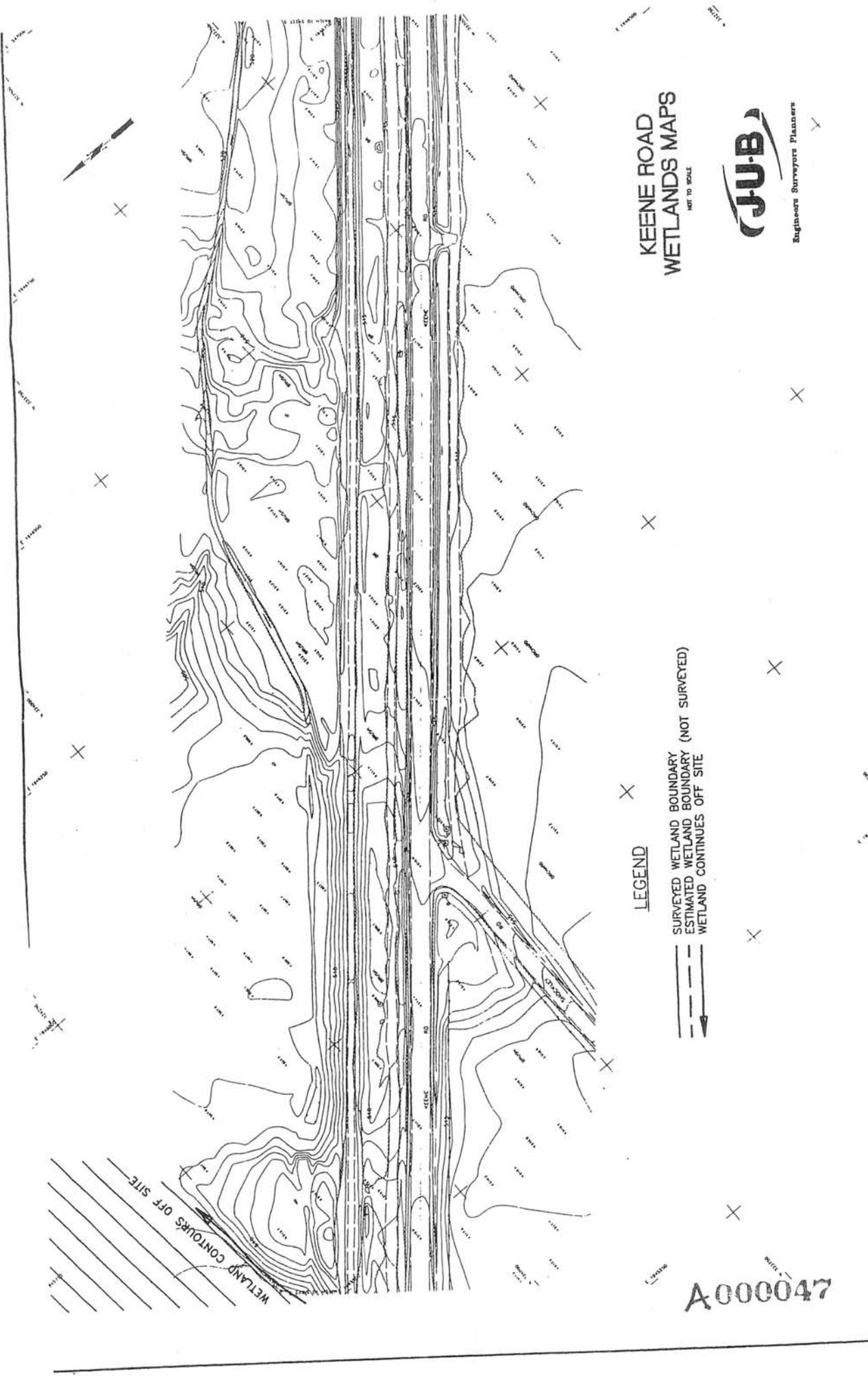
**KEENE ROAD
WETLANDS MAPS**
NOT TO SCALE



LEGEND

- SURVEYED WETLAND BOUNDARY
- - - ESTIMATED WETLAND BOUNDARY (NOT SURVEYED)
- WETLAND CONTINUES OFF SITE

A000046



KEENE ROAD
WETLANDS MAPS
NOT TO SCALE



- LEGEND
- SURVEYED WETLAND BOUNDARY
 - ESTIMATED WETLAND BOUNDARY (NOT SURVEYED)
 - WETLAND CONTIGUES OFF SITE

WETLAND CONTIGUES OFF SITE

A000047

All fill should be placed in layers not exceeding 8 inches in loose thickness, except for the first layer of fill above any geotextile separating layer, where the first lift of soil should be 12 to 14 inches in loose thickness. All fill should be compacted to a minimum of 98 percent of the maximum dry density as determined by ASTM D 698.

8.0 PAVEMENT THICKNESS DESIGN

We evaluated the required pavement thickness for the alignment based on the maximum current traffic loads of 5,973 Average Daily Traffic (ADT), our assumed breakdown of traffic loads, the results of the CBR laboratory tests, and the current American Association of State Highway and Transportation Officials (AASHTO) pavement thickness design procedures. Based on our observations, we assumed that the design traffic load would consist of 95 percent passenger vehicles and 5 percent trucks. The daily truck loads were assumed to consist of 100 H-10 truck loads, 30 H-20 trucks, and 15 HS-20 trucks. Based on our experience with the local soils, we assumed that the laboratory CBR value of 4 percent would control the thickness design. The results of our analysis are shown below in Table 3.

TABLE 3

RECOMMENDED KEENE ROAD PAVEMENT SECTION

Pavement Component	Thickness, Inches
WSDOT Class B Pavement	3
WSDOT 5/8" Top Course	3
WSDOT 1-1/4" Ballast	6
Compacted Natural Subgrade	12

9.0 STORM WATER DETENTION PONDS

Currently, storm water detention ponds will be located north of the proposed alignment near Stations 24+00, 34+00, and 90+00. The ponds will not be designed as infiltration basins, although J-U-B Engineers, Inc. estimates that much of the retained storm water will infiltrate into the subsurface through the bottom of the pond before the flow is dissipated through the

pond outlet. Therefore, the infiltration rate of the subsurface soils is required for estimation of infiltration losses from the ponds.

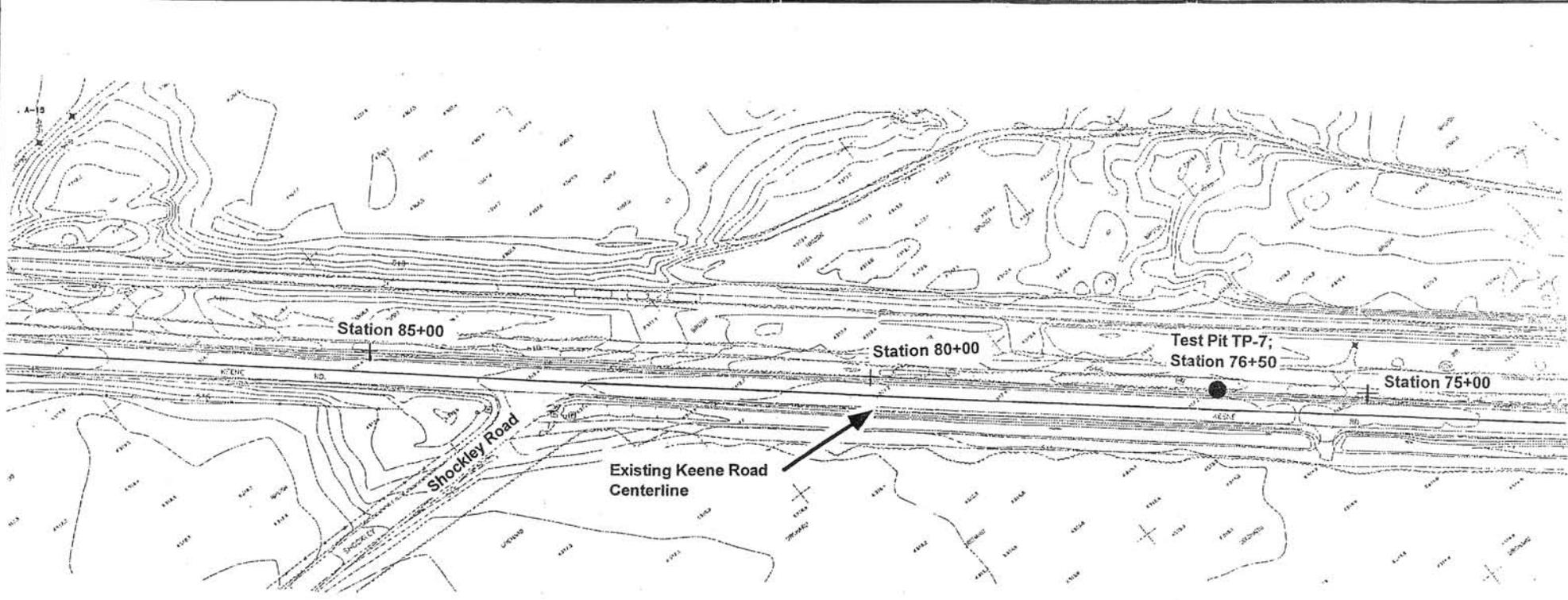
The subsurface soils at the proposed detention pond locations consist of either the silt or sand soils (grouped together for infiltration characterization purposes), or gravel soils. The gravel soils are further subdivided into partially cemented gravel soils or uncemented gravel soils.

Our previous experience with similar soils within one mile of the site indicate that the upper silty sand and silt have infiltration rates varying from about 1 to 4 minutes per inch. For conservancy, we recommend that an infiltration rate of 4 minutes per inch be used to characterize both the silt and sand soils encountered at the site. The partially cemented gravel has an in-place infiltration rate of about 10 minutes per inch, while the uncemented gravels generally have infiltration rates of about 1 minute per inch. All of these values represent field test results, and have not been adjusted for any safety factor.

The subsurface profile for the detention pond near Station 20+00 can be characterized by Test Pit TP-1, located at Station 19+25. The subsurface soils at the location of Test Pit TP-1 consist of about 2 feet of silty sand over about 2 feet of partially cemented gravel, which in turn overlays at least 4 feet of uncemented gravel. It is our opinion that infiltration at this location will be controlled by the partially cemented gravel soils.

The subsurface profile of the proposed detention pond near Station 34+00 is characterized by Test Pit TP-3 at Station 34+00. At Test Pit TP-3, the subsurface consists of about 1.7 feet of silty sand overlaying gravel soils. At this location, infiltration rate will depend upon the bottom depth of the pond. If the silt/sand soils are excavated to expose the gravel soils, the faster gravel infiltration rate will control infiltration. Otherwise, the somewhat slower silt/sand infiltration rates will be more applicable.

The third proposed pond location near Station 90+00 can be characterized by the subsurface profile observed in Test Pit TP-8 at Station 91+50. At Test Pit TP-8, the subsurface profile consists of silty sand to a depth of about 8 feet. At this location, the infiltration rate can be estimated using the silt/sand infiltration rate of 4 minutes per inch.



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Project North 

Scale: 1" = 100'

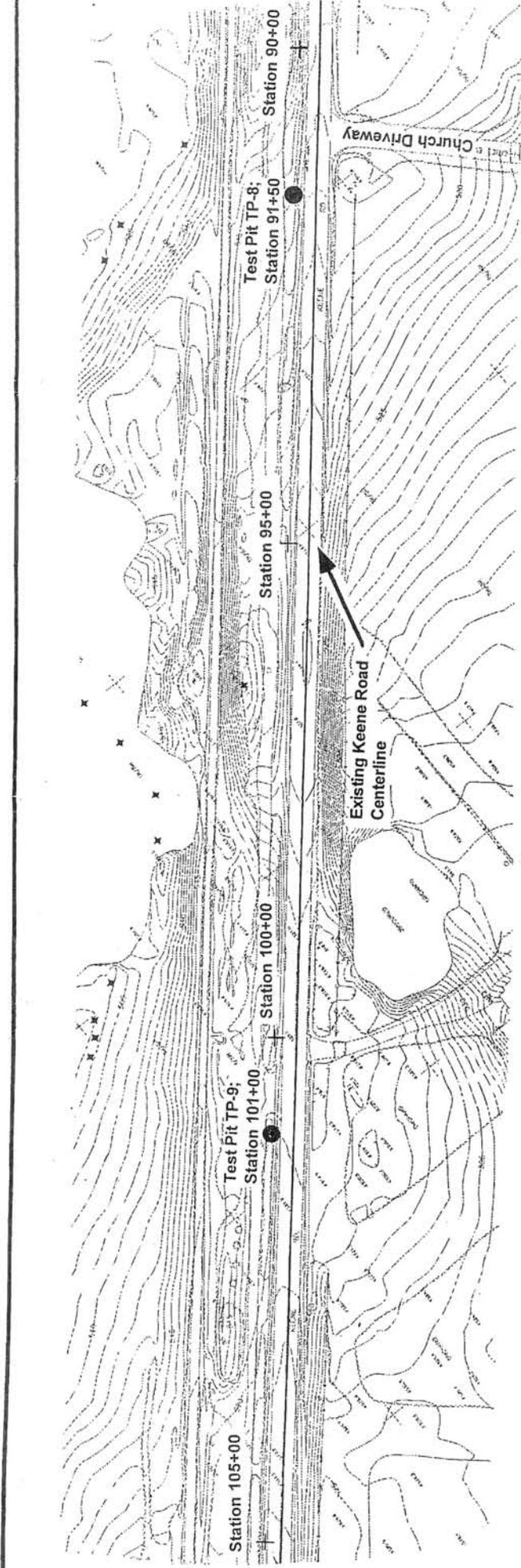
Base Map Provided by: J-U-B Engineers, Inc.

Keene Road Reconstruction
Richland, Washington

Plan, Station 72+00 to 88+70

January 1995 H-1124-01

Shannon & Wilson, Inc.
Geotechnical and Environmental Consultants Fig. 6



Project North

Scale: 1" = 100'

Base Map Provided by: J-U-B Engineers, Inc.

Keene Road Reconstruction
Richland, Washington

Plan, Station 88+70 to 105+20

January 1995 H-1124-01

Shannon & Wilson, Inc.
Geotechnical and Environmental Consultants

Fig. 7

A 000051

It appears from topographic information that runoff, generated from the Shockley area will generally enter an existing wetland, located north of Keene Road, and follow contour lines northwest towards the Yakima River. Runoff generated from the areas east of Shockley will generally flow west into the Amon Wasteway and then north to the Yakima River. The Bureau of Reclamation was contacted regarding the possibility of using the Amon Wasteway as the receiving body for stormwater generated from this area. The Bureau recognizes that their ditches and wasteways were generally built in natural drainage ways and therefore they will allow their ditch to convey stormwater. The Bureau is developing a permitting procedure for these types of uses. Generally, the Bureau will allow the undeveloped runoff rate to enter their ditch. Runoff generated from development will need to be detained/retained and treated prior to discharge into the wasteway.

PHASE 1

The ultimate construction of Keene Road will be done in phases. Phase 1 will construct a 4-lane roadway beginning west of the intersection of Gage Road and extending west past Kennedy Road.

It was assumed that as development occurs within the overall drainage basin, storm drainage will be piped down to Keene Road, where it will enter the Keene Road storm drainage system at an intersection. The three major intersections along Keene Road will be Shockley Road, Brantingham Road, and Silverwood Drive. Storm drainage crossings will be built at each of these intersections to transport stormwater from the south side of the road to the north side. The crossings will initially be sized to handle the 25 year storm for an undeveloped area. Ultimate construction of Keene Road will require installation of additional culverts to handle the runoff from a 25 year storm for a fully developed area. The table below shows the crossing sizes required for each intersection.

TABLE 1

INTERSECTION	Undeveloped Flowrate For Crossing	Developed Flowrate For Crossing
Shockley Road	25 CFS	187 CFS
Brantingham Road	25 CFS	250 CFS
Silverwood Drive	25 CFS	215 CFS

Storm drainage entering the Keene Road system at the Shockley intersection will initially flow into the existing wetlands located on the north side of the roadway. Storm drainage entering at the Brantingham and Silverwood intersections will flow east to the Amon Wasteway via a ditch located along the north side of the road. The existing Leslie Drain will be incorporated into the Keene Road ditch. Currently, the Leslie Drain passes under

A000052

the Albertson's parking lot through two 24" diameter pipes, which can carry approximately 31 cfs. Increased flowrates from future developments will require relocating the ditch and up-sizing it to accommodate the larger flows. The ditch relocation will also require a future 50 cfs crossing under Leslie Boulevard.

PHASE 2

It is assumed Phase 2 of the Keene Road Reconstruction project will include design of a storm drainage system for the portion of Keene Road located west of the end of the Phase 1 construction project. Roadside ditches and detention facilities will also be needed for these areas.

FUTURE DEVELOPMENT PHASES

Future Development Phases will consist of designing and constructing storm drainage detention facilities at each of the intersections and at the outfall to the Amon Wasteway. In addition, the storm drainage crossings will also have to be up-sized to accommodate the larger flowrates from the developed areas. The drainage detention facilities will need to be sized as shown below in Table 2.

TABLE 2

LOCATION	RESERVOIR SIZE	MAXIMUM OUTFLOW
Shockley Road	10.7 Acre-Ft	25 CFS
Brantingham Road	12.1 Acre-Ft	25 CFS
Silverwood Drive	14.6 Acre-Ft	50 CFS
Amon Wasteway	7.8 Acre-Ft	75 CFS

The storm drainage detention facilities have been tentatively located near existing wetlands located on the north side of Keene Road. Wetland mitigation may be required as a part of the design and construction of these future facilities. Design of these facilities should take into account the shallow ground water table in these areas. Approximate ground water locations in these areas can be found in the "Geotechnical Study for Keene Road Reconstruction, Richland, Washington", February 1995 by Shannon and Wilson. Additional investigations should be done at the time of design for the stormwater detention facilities.

A 000053

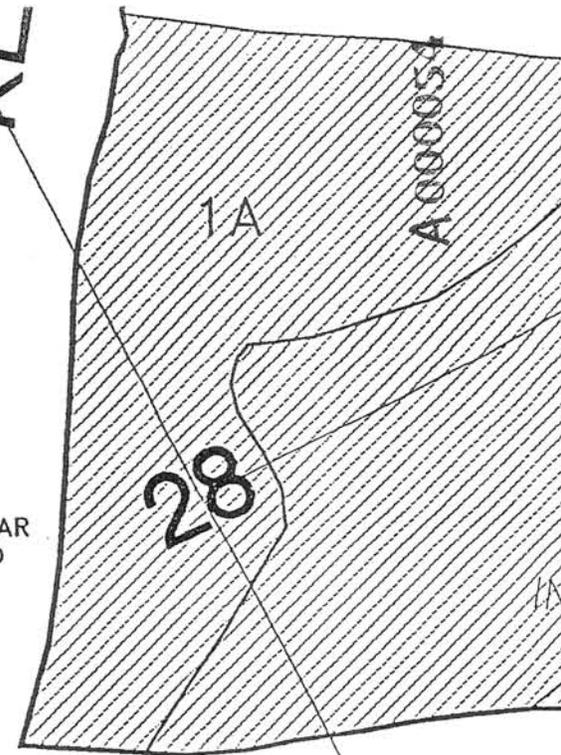
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NOTES

1. FUTURE STORM DRAINAGE DETENTION FACILITIES HAVE BEEN SIZED TO ACCEPT THE DEVELOPED STATE RUNOFF FROM A 25 YEAR STORM EVENT WITH A CONTROLLED OUTFLOW RATE. NO DETAILED DESIGN OF FACILITIES HAS BEEN DONE AT THE PRESENT TIME.
2. PROPOSED DETENTION FACILITIES WILL BE LOCATED AT OR NEAR EXISTING WETLANDS. WETLAND MITIGATION MAY BE REQUIRED ONCE FACILITIES ARE DESIGNED.
3. STEEPER SLOPED AREAS (SHOWN SHADED) WERE ASSUMED TO REMAIN UNDEVELOPED FOR THE ULTIMATE DESIGN OF THE STORMWATER SYSTEM.
4. ULTIMATE KEENE ROAD STORM DRAINAGE CROSSINGS AT SHOCKLEY ROAD, BRANTINGHAM ROAD, AND SILVERWOOD DRIVE HAVE BEEN INCLUDED AS A BID ALTERNATE WITH PHASE ONE CONSTRUCTION. THE ULTIMATE KEENE ROAD STORM DRAINAGE CROSSINGS SHALL BE CONSTRUCTED PRIOR TO FULL DEVELOPMENT ON THE SOUTH SIDE OF KEENE ROAD.
5. STORM DRAINAGE RUNOFF FROM PHASE ONE WILL INITIALLY DISCHARGE TO THE LESLIE DRAIN, WHICH FLOWS THROUGH CULVERTS UNDER THE ALBERTSON'S PARKING LOT. THESE CULVERTS ARE UNDERSIZED TO HANDLE FUTURE DEVELOPMENT. THEREFORE THE DITCH SHOULD BE RELOCATED IN THE FUTURE FROM STATION 10+00 TO THE AMON WASTEWAY TO ACCOMODATE RUNOFF FROM FUTURE DEVELOPMENT.
6. CULVERTS AT EXISTING ACCESSSES OR FUTURE ACCESSSES MAY NEED TO BE UP-SIZED WHEN FUTURE DEVELOPMENT OCCURS.



KE



22

2E

2G

4A

6A

FUTURE STORM DRAIN DETENTION FACILITY.
VOLUME REQUIRED 10.7 ACRE-FT WITH
MAXIMUM OVERFLOW OF 25 CFS OUT OF POND.

2D

FUTURE STORM DRAIN DETEN
VOLUME REQUIRED 12.1 ACR
MAXIMUM OVERFLOW OF 25

2F

4B

6B

KEENE RD.

APPROVED
PLAT OF
COUNTRY MEADOWS
SHOCKLEY RD

8CFS

31.59CFS

25CFS

186.57CFS

25.88CFS

250CFS

1.23CFS

1.23CFS

25CFS

153.75CFS

8.63CFS

67.34CFS

25CFS

25CFS

3C

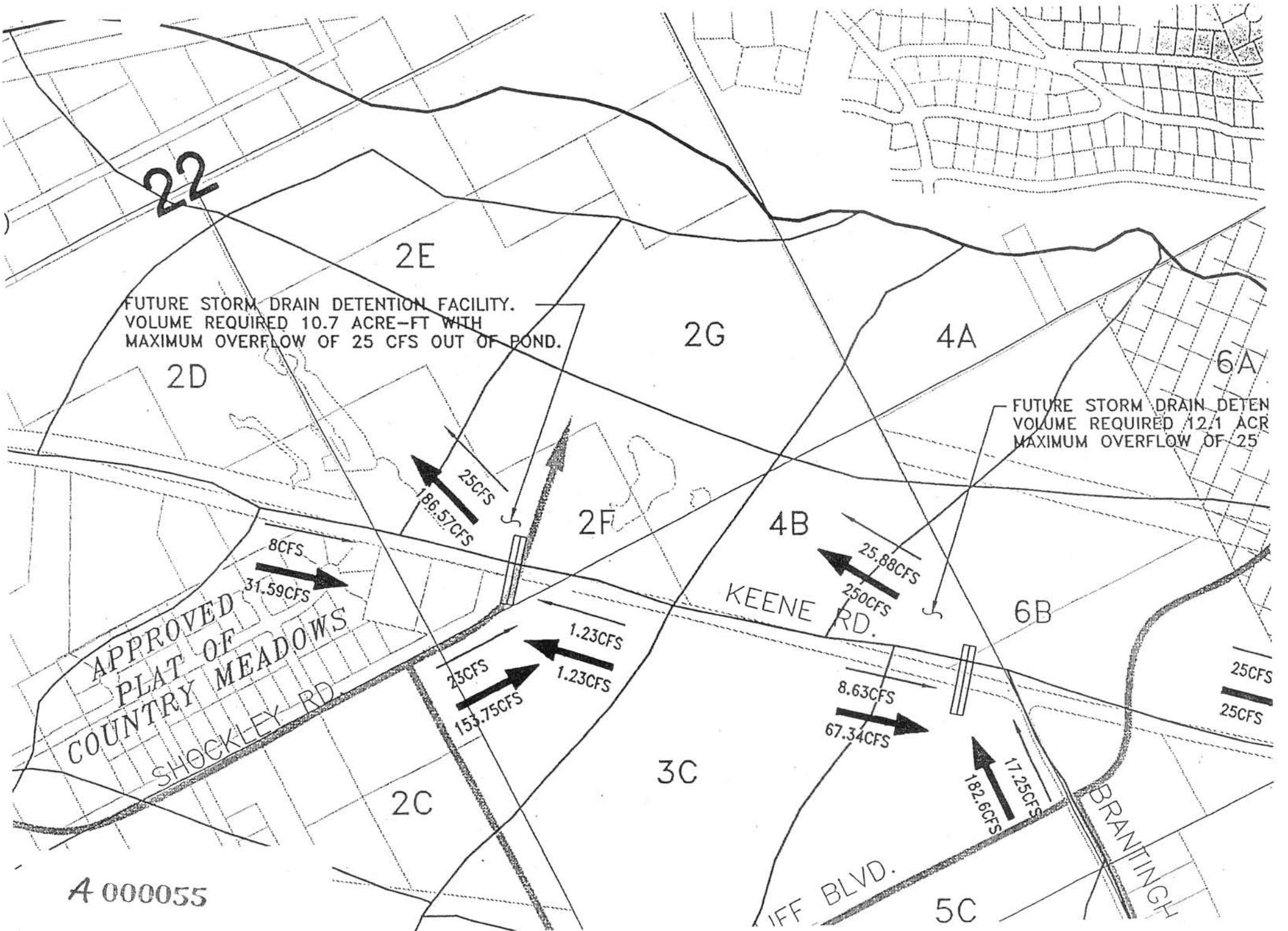
2C

BRANITINGH

IFF BLVD.

5C

A 000055



KEENE VALLEY VENTURES INC.

COPY

COPY RECEIVED March 26, 2007

Mr. Thomas Lampson
City Attorney
City of Richland
505 Swift Boulevard
Richland, Washington 99352

MAR 29 2007

Time: _____
LAWLER BURROUGHS
& BAKER P.C.

Dear Mr. Lampson:

Keene Valley Ventures Inc. ("KVV") is the owner of approximately 22 acres of undeveloped land on the north side of Keene Road at Shockley Road, in the City of Richland. KVV has noted a gradual but persistent rise in the water table during the time that KVV has owned the property. Recently however, there has been standing water in the ditch in front of the KVV property, and on the property itself. KVV believes that the reasons for the rising water table on its property are traceable to various decisions made by and actions taken by the City of Richland.

Drainage from Keene Road is supposed to be managed by the ditch system on either side of the road. In addition to storm water gathered by the road itself, the ditches are also burdened by storm water from communities that abut Keene Road.

The ditches in the vicinity of the KVV property drain in one two directions. Those to the east of Lambert Street (Lambert Street is the entrance to the community of Cherry Wood) drain to the east (the "East System"). This East System is designed with a series of steps that filter silt from the storm water, slow down the flow of storm water and distribute the water along the length of the ditches. KVV understands that residual storm water is designed to eventually drain into Amon Creek.

The ditches to the west of Lambert Street (the "West System") are not so well-designed. From Lambert Street they fall to the west where they reach a low point at Shockley Road, the entrance to the KVV property. The ditch on the south side of Keene Road drains, via pipes under Keene Road, to the ditch on the north side of Keene Road. This north-side ditch is directly in front of the KVV property and because this is also the low point of the West System, any excess storm water gathered from the vicinity sits in this ditch until it percolates into the soil. Because the ditch has a higher elevation than most of the KVV property, the water eventually filters into the water table of the KVV property.

The natural drainage for the entire sub-basin in the vicinity of the KVV property is to the west, the low point being approximately at the intersection of Queensgate Drive and Interstate 182. However, Keene Road and its ditches interrupt this natural flow. In addition, the City of Richland has allowed the Apple Wood and Cherry Wood communities to divert storm water to the west that would naturally flow to the east.

For instance, the easternmost-sections of Apple Wood, comprising approximately 20 to 25% of the total area of the community, would naturally drain to the east. However, the storm drainage system installed when the community was developed diverts this water to west and deposits it in the West System ditch on the south side a Keene Road, which overflows into the ditch on the north side of Keene, abutting the KVV property.

A similar situation exists with Cherry Wood. This community does not drain its storm water into the ditch system but into a retention pond on the west side of Cherry Wood, abutting the KVV property. This is an unfortunate location for a retention pond, so close to a low lying property but even more unfortunate is the fact that the easternmost portion of Cherry Wood, like Apple Wood, would naturally drain to the east but

A 000056

March 26, 2007

the storm drain system constructed when Cherry Wood was developed takes this storm water to the west. Once storm water is in the retention pond it will naturally seep into the ground where it helps to raise the water table of the KVV property.

It is interesting that the storm water in Cherry Wood could have easily used the East System as their storm water drainage. Why this was not required by the City of Richland is unknown.

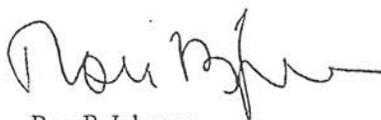
So, we have a poorly designed West System that concentrates storm water at the KVV property, water that would normally drain further to the west. In addition there is an improper diversion of storm water from Apple Wood into the West System and an improper diversion of storm water from Cherry Wood, in both cases improperly adding to the burden on the KVV property.

Finally, it appears as though all of the storm water collected at the commercial property to the west of the KVV property drains into a low spot directly behind that property, finding its way inexorably to the KVV water table. Given the low-lying nature of the land surrounding this commercial property such drainage should not have been allowed by the City of Richland.

The City of Richland has liability under well recognized theories of negligence, trespass, nuisance, and inverse condemnation. See generally the results and discussions in *Pruitt v. Douglas County*, 116 Wn. App. 547 (2003) *Burton v. Douglas County* 14 Wash. App. 151 (1975), *DiBlasi v. City of Seattle*, 136 Wn. 2d 865 (1998), and *Collella v. King County*, 72 Wn.2d 386 (1967). KVV has the option to commence litigation against the City for both damages and injunctive relief. However, prior to commencing litigation, KVV wants to allow the City an opportunity to address and remediate the artificial and channelized storm water flows in the vicinity of KVV's property. As an alternative to litigation, Keene Valley Ventures Inc. demands that the City of Richland modify the Keene Road ditch drainage system so that improperly diverted storm water ceases to be a burden on the KVV property and so all storm water gathered by the system is allowed to follow the natural drainage pattern for this sub-basin, which is to the west of the KVV property, towards the intersection of Queensgate Drive and Interstate 182. Keene Valley Ventures further demands that the City of Richland repair the damage to the KVV property caused by the improper diversion of storm water to the KVV property.

We think the next step would be a meeting where we discuss solutions and a timetable for resolution. We would also ask the City, in good faith, to enter a tolling agreement during the timeframe that the parties are working cooperatively to reach a solution. We would like to hear from you within ten (10) days of the date of this letter.

Sincerely,



Ron B. Johnson
President

c.c. Brian Lawler
Lawler, Burroughs & Baker, P.C.
Seattle, Washington

A000057



Richland

505 Swift Boulevard, P.O. Box 190 Richland, WA 99352
Telephone 509-942-7390, Fax 509-942-5666

www.ci.richland.wa.us

PUBLIC WORKS

April 18, 2007

RON B. JOHNSON
Keene Valley Ventures, Inc.
3313 W. Cherry Lane #242
Meridian, ID 83642

SUBJECT: KEENE VALLEY PROPERTY - RISING WATER TABLE

Mr. Johnson,

This letter will respond to your letter dated March 26, 2007. Thank you for taking the time to address your concerns about the water table on your property.

Your letter asserts that City actions, either through storm drainage facility design or regulation of private development has resulted in damage to your property in the form of a higher groundwater table. You indicate that in recent years the water table has risen on your property.

Contrary to your assertion the City's project designs and development approvals have generally reinforced, rather than altered, the area's natural drainage patterns. The majority of the properties that are now being developed, as the Cherrywood Estates and Applewood subdivisions are within the natural drainage basin that also includes your property. The engineered drainage systems in these developments have utilized this feature and routed stormwater within the same basin. This is consistent with the City's Stormwater Management Plan, adopted in 2005, which recommends facilities that manage stormwater within this basin.

The Keene Road drainage system similarly reinforces the area's natural drainage patterns. The drainage system along Keene Road was designed to manage runoff from the street surface and the natural drainage patterns that route storm runoff to the street. The one change that did occur with the Keene Road widening was construction of the bicycle / pedestrian path between the street and properties to the north, including your property. In the vicinity of Shockley Road this path acts to retain stormwater between the street and path. High flows could possibly overtop the path and continue down the natural drainage. To my knowledge there have been no storm events that have overtopped the path to the natural wetland and drainage areas. The Keene Road stormwater facilities do not significantly change the pre-existing drainage basin boundaries, and thus do not result in additional waters infiltrating into the groundwater near your property. The street widening required that stormwater be concentrated in the roadside ditches, but the quantity and routing remains in the same drainage basin traveling to the same outfall as before the street widening.

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The commercial property to the west of your property, Queensgate Village, does not in fact drain its stormwater off-site. Our records indicate that it is collected into a closed system which percolates it into the ground on-site. This is a requirement of all new commercial development in Richland and does not result in new or additional waters infiltrating into the groundwater near your property.

Increased development in the Keene Valley area and the subsequent increase in irrigated landscaped areas may have contributed to a rise in the water table in the lower areas in this vicinity, including your property. To my knowledge a general rise in the water table has not been documented, nor has the cause been conclusively identified.

Over the past several years there have been several occasions where drainage from Kennewick Irrigation District (KID) deliveries has filled the roadside ditch to the extent that a portion of the bicycle / pedestrian path has been inundated. The City is considering installation of a culvert beneath the path to reduce the likelihood of stormwater or KID drainage from inundating the path. This measure would also be consistent with the City's pattern of supporting the natural drainage pattern.

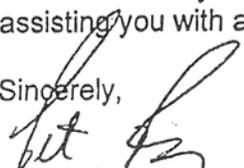
Past site plans of your property received in the City Engineer's office indicate that you are aware that the western portion of your property is a wetland, likely supported by a high water table. Site surveys and preliminary development concepts, as far back as 2001, identify significant portions of property classified as wetland. Past aerial photos also indicate that this property has had a high water table for many years.

In short, the City's actions, through its facility design and development regulation, have not created the high water table you describe. This City's actions have been consistent with good engineering practice and have used and reinforced the area's natural drainage patterns, which include a wetlands in the low-lying portions of Keene Valley, including portions of your property.

Please be aware that if you decide to apply for a preliminary plat on your property, the Richland Municipal Code (Chapter 24.16.170) indicates that natural drainage ways across a proposed preliminary plat must be accommodated in the improvement plans for the plat.

City staff is available and would welcome the opportunity to discuss plans for your property. You may schedule a meeting by calling Jason Reathaford at 942-7742 or Terri Davis at 942-7500. Thank you again for bringing your concerns to our attention. We look forward to assisting you with any plans you have to develop your property.

Sincerely,



PETE ROGALSKY, P.E.
Public Works Director

cc: Thomas O. Lampson
Steve Stairs
Jason Reathaford
Rick Simon

A000059

ATTORNEYS AT LAW

LAWLER BURROUGHS & BAKER, P.C.

ROBERT F. BAKER
BLAIR B. BURROUGHS

1001 FOURTH AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98154
(206) 464-1000 • FAX (206) 682-3584

BRIAN E. LAWLER
DENISE M. HAMEL

August 16, 2007

Mr. Thomas Lampson
City Attorney
City of Richland
505 Swift Boulevard
Richland, Washington 99352

Re: Keene Valley Ventures Inc. Property

Dear Mr. Lampson:

I appreciated the opportunity to meet you at the Land Use Law in Eastern Washington seminar last month in Spokane. I wanted to follow up with further information regarding the increasing saturation of property owned by my client Keene Valley Ventures Inc. ("KVV"). I will initially describe the property and the nearby drainage patterns and watercourses. Then I will describe the changes that have been occurring in the last several years. Finally, I will provide information on the causes of the increased saturation. Our goal is to pursue a constructive solution to this problem by engaging the City in meaningful dialogue and problem solving. If that fails, we will consider litigation, for damages and injunctive relief.

KVV owns approximately 22 acres of undeveloped land on the north side of Keene Road at Shockley Road, in the City of Richland. At the time of acquisition in November of 2001, the property had wetlands, which were professionally delineated and surveyed. Those wetlands were approximately 6.77 acres of the entire 22 acres. KVV intended to develop the property for residential development and expected to fill some portion of the wetlands consistent with regulatory requirements. KVV reasonably expected to develop 17.56 acres of its property, which would have included some density transfer from the non-filled wetlands.

KVV has noted a gradual but persistent rise in the water table during the time that KVV has owned the property. We have several objective indicators of this increase. First, soil tests taken at different times show increase in

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groundwater levels and soil saturation. Second, one can observe water pooling on portions of the property where water did not pool. Third, one can easily observe standing water for long periods of time (including during the summer) in the ditch in front of the KVV property. (See attached recent photo taken from July 2007).

KVV believes that the reasons for the rising water table on its property are traceable to various decisions made by the City of Richland. Water is being artificially collected and channeled to the City drainage ditch along Keene Road. We have identified several distinct but interrelated problems.

First, the City's system of storm drainage routes storm water to the KVV property. By way of background, City storm water ditches in the vicinity of the KVV property drain in one two directions. Those to the east of Lambert Street, the entrance to the community of Cherrywood Estates, drain to the east (the "East System"). This East System is designed with a series of steps that filter silt from the storm water, slow down the flow of storm water and distribute the water along the length of the ditches. KVV understands that residual storm water is designed to eventually drain into Amon Creek.

The ditches to the west of Lambert Street (the "West System") are not so well designed. From Lambert Street they fall to the west where they reach a low point at Shockley Road, which crosses Keene Road (on a right angle) at approximately the middle of the frontage of the KVV property. The ditch on the south side of Keene Road drains, via pipes under Keene Road, to the ditch on the north side of Keene Road. This north-side ditch is directly in front of the KVV property and because this is also the low point of the West System, any excess storm water gathered from the vicinity sits in this ditch until it percolates into the soil. Because the ditch has a higher elevation than most of the KVV property, the water eventually filters into the water table of the KVV property.

Further, the City of Richland has unlawfully allowed the Applewood Estates ("Applewood") and Cherrywood Estates ("Cherrywood") communities to divert storm water to the west that would naturally flow to the east. For instance, the easternmost sections of Applewood, comprising approximately 20 to 25% of the total area of the community, would naturally drain to the east. However, the storm drainage system installed when the community was developed diverts this water to west and deposits it in the West System ditch on the south side a Keene Road, which overflows into the ditch on the north side of Keene, abutting the KVV property.

A similar situation exists with Cherrywood. This community does not drain its storm water into the ditch system but into a retention pond on the west side of Cherry Wood, abutting the KVV property. The pond collects water from the easternmost portion of Cherrywood, which like Applewood would

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otherwise naturally drain to the east. It is interesting that the storm water in Cherrywood could have easily used the East System as their storm water drainage. Why this was not required by the City of Richland is unknown.

With respect to Applewood, the City was apparently aware of the potential impacts because the approval conditions for Applewood require mitigation of storm water problems for downstream property owners. The Technical Advisory Committee Report ((S2001-102, Amended April 4, 2001) requires that the preliminary plat approval for Applewood be subject to all conditions of approval of the March 22, 2001 Memorandum from the Civil and Engineering Division which contains two important conditions:

3. A storm sewer system shall be designed to contain or pass a 25-year frequency storm. The applicant's design shall provide runoff protection to downstream property owners.... The design may include delivering some of the runoff to the northerly side of Keene Road. ... As per City ordinance 24.20.070, the storm drainage system installed as part of this plat may need to be oversized in order to handle the additional flow from future developments in the vicinity. [Emphasis added.]
6. If the project is built in phases, the applicant shall submit a master plan for storm drainage... for the entire project to ensure constructability of the entire project. This includes the location and size of any storm retention ponds that may be required to handle runoff.

We would like to know the City's positions on whether these requirements were deemed satisfied by the developer of Applewood or whether the developer of Applewood failed to comply with these conditions. We are unaware of any storm retention ponds for Applewood, although the smaller Cherrywood project does have a retention pond.

We have recently learned of another source of the artificially collected and channeled water. Since September 2006, approximately 12 million (or more) gallons of ground water have been allowed to be collected and discharged into the storm water system of Applewood by the homeowner at 1262 Jonagold Drive, in Applewood. A representative of the Applewood HOA provided this estimate to us. Allowing excess water to be collected and discharged onto impervious public streets and thence to the City storm drain system is unlawful under RMC 18.16.020.

Additionally, within the past six weeks, the City has authorized another system (weeping tile) for collecting groundwater from 10 new lots in Applewood and discharging that groundwater into the City storm water system, where it

will find its way to the KVV property. We expect this new system will add more than the 12 million gallons that have emanated from 1262 Jonagold property and, if left as is, will almost inevitably result in litigation. To our knowledge, and though KVV has been in touch with the City for months, no study or analysis was done on the approval of the weeping tile system.

We see several possible solutions to the drainages problem. Any solution needs to be comprehensive and regional, rather than piecemeal.

Form drainage ULID – The City can form or require Applewood to form a drainage ULID for its storm water. All storm water should be channeled to its natural drainage basin.

Facilitate development of KVV property – The City can enter into an Development Agreement for the KVV property where the City assures KVV of its development density, agrees to facilitate fill permitting, and agrees to participate proportionally in the cost of fill, to the extent of the City contributions to the current problem.

Purchase KVV property for regional storm water and for a wetland project.

We invite the City to review this letter and to respond in person or in writing to our analysis. We would appreciate the courtesy of a reply by September 14, 2007. In the interim, we request the City take no further action or issue any further approvals which result in increased storm water in the ditches on Keene Road adjacent to the KVV property. We are willing to meet with the City (under ER 408) to discuss these matters in further detail and in person.

We thank you for your immediate attention to this matter

Very truly yours,

LAWLER BURROUGHS & BAKER, P.C.



Brian E. Lawler

Attachment: Photo
cc: Client

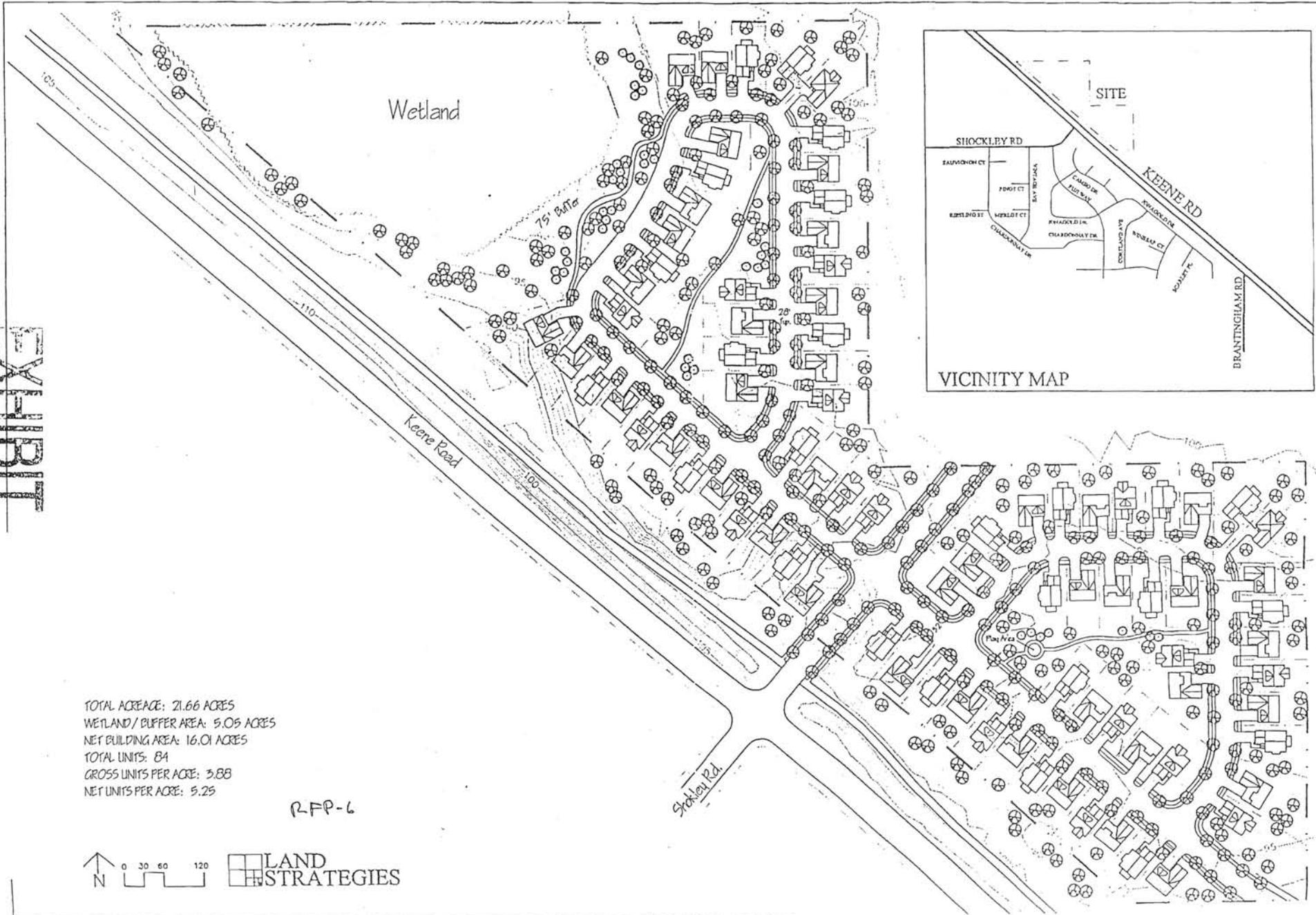
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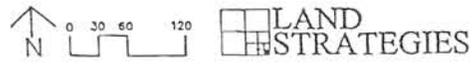
EXHIBIT

A 000065



TOTAL ACREAGE: 21.66 ACRES
 WETLAND/BUFFER AREA: 5.05 ACRES
 NET BUILDING AREA: 16.01 ACRES
 TOTAL UNITS: 84
 GROSS UNITS PER ACRE: 3.88
 NET UNITS PER ACRE: 5.25

RFP-6



LAND STRATEGIES

No. 010906

VACANT LAND PURCHASE and SALE AGREEMENT
THIS CONTRACT CONTROLS THE TERMS OF THE SALE OF THE PROPERTY

(Please read carefully before signing)

January 10, 2006

AGENCY DISCLOSURE: At the signing of this Agreement, the Selling Agent (insert name of selling agent) Dave Greene C-21 col. represented

Buyer, Seller, Both Parties, Neither Party and the Listing Agent (insert name of listing agent) _____ represented Seller, Both Parties, Buyer and

Seller both confirm that prior oral and/or written disclosure of agency was provided to each of them in this transaction. If Selling Agent and Listing Agent are different licensees affiliated with the same broker, then both parties consent to that broker acting as a dual agent. If Selling Agent and Listing Agent are the same person representing both parties, then both parties confirm their consent to that agent and his/her broker acting as a dual agent. Both parties acknowledge receipt of a copy of the pamphlet entitled "The Law of Real Estate Agency".

1. PARTIES. This VACANT LAND PURCHASE and SALE AGREEMENT ("Agreement") is made between Neighborhood Inc. as "Buyer", and Keene Valley Ventures Inc. as "Seller". Buyer agrees to purchase Seller's property on the following terms and conditions:

2. PROPERTY. Common Address Nka Keene road (21.66 acres)
City: Richland County: Benton State of Washington.
Zip: 99352 (Tax Parcel Number) 1-2298-300-0001-008

LEGAL DESCRIPTION: _____

If Legal Description is not attached at final acceptance of this Agreement, Buyer shall have three (3) business days after receiving the Legal Description to approve the Legal Description as accurately reflecting the Property which the parties intend to be the subject of this Agreement. Failure to give written disapproval shall be deemed to be approval.

3. RIGHT TO FARM AND RIGHT TO PRACTICE FORESTRY DISCLOSURES (SNOHOMISH COUNTY ONLY). The Property is, is not "designated farmland" or situated within 1,300 feet of "designated farmland" in Snohomish County, Washington. If it is, attach Snohomish County "Right to Farm Disclosure Statement" or equivalent. The Property is, is not "designated forest land" or situated within 300 feet of "designated forest land" in Snohomish County, Washington. If it is, attach Snohomish County "Right to Practice Forestry Disclosure Statement" or equivalent.

4. PURCHASE PRICE/FINANCING. The Purchase Price is Five Hundred Forty-One Thousand Five Hundred DOLLARS (\$ 541,500.00), payable as follows:

All cash at closing (not conditioned on Buyer obtaining a loan).
 Proceeds of Buyer Financing (attach a Financing Addendum, Washington Association of REALTORS® form A-2).
 Other (attach a Method of Payment Addendum, Washington Association of REALTORS® form A-101).

Buyer Representation: Buyer represents that Buyer has sufficient funds available to close this sale in accordance with this Agreement, and is not relying on any contingent source of funds unless otherwise set forth in this Agreement.

5. EARNEST MONEY. The amount of Earnest Money is: (\$ 10,000.00), Selling Agent acknowledges receipt of Earnest Money from Buyer in the form of: a check for \$ 10,000.00 . cash of \$ _____ . Other \$ _____ in the form of:

These funds shall be deposited into the selling broker's trust account or Frontier _____ to be credited to Buyer at closing. Selling Licensee shall deposit any check to be held by Selling Broker, or deliver any Earnest Money to be held by Closing Agent within three days of receipt or mutual acceptance, whichever occurs later. The parties instruct Closing Agent to: 1) provide written verification of receipt of the Earnest Money and notice of dishonor of any check to the parties and licensees and the addresses and/or fax numbers provided herein; and 2) commence an interpleader action in the Superior Court for the county in which the Property is located within 30 days of a party's demand for the Earnest Money unless the parties agree otherwise in writing.

6. FEASIBILITY CONTINGENCY. This Agreement is, is not contingent upon and subject to the Buyer obtaining at the Buyer's, Seller's sole expense, a report(s) regarding the feasibility of purchasing the Property; which report shall be satisfactory to the Buyer, in the Buyer's sole discretion. Buyer's inquiry should include contacting all state, county and city agencies as well as all water, sewer and other special districts in which the property is located. The Buyer's feasibility study should also include, but shall not be limited to: (1) hazardous waste inspection; (2) appraisal of the Property; (3) engineering and soil studies; (4) utility and zoning studies; (5) economic feasibility of owning and operating the property; (6) a survey of the Property; (7) whether there are any building requirements, special building requirements or environmental restrictions; (8) whether there are any growth mitigation or other impact fees that must be paid; (9) the procedure and length of time necessary to obtain approval for building permits for any changes to the improvements on the Property; and (10) other:

Buyer shall conclusively be deemed to have waived this Feasibility Contingency unless the Seller or Listing Agent receives written notice of Buyer's intent to terminate this Agreement within 45 days (thirty (30) days if not filed in) after mutual acceptance of this Agreement.

The Buyer or an authorized agent of the Buyer shall have the right, at reasonable times, to enter upon the Property for the purpose of conducting this feasibility study; provided, that Buyer shall cause no liens to be recorded against the title to the Property by Buyer or any of Buyer's agents, contractors or invitees and Buyer agrees to indemnify and hold Seller harmless from any and all losses or damages which Seller may incur due to Buyer's or Buyer's agents, contractors or invitees presence on the Property. If Buyer fails to waive or satisfy the feasibility study contingency or this transaction fails to close due to a default by the Buyer, the Buyer shall, shall not immediately deliver to Seller copies of any studies or inspections, appraisals or surveys and any other information which either the Buyer or the Buyer's agents have obtained in connection with the Buyer's feasibility study.

Buyer Initials CEA

Seller Initials my

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Page 1 of 1

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No. 010006

73 7. CONVEYANCE OF TITLE. Conveyance of fee title shall be by statutory warranty deed other;
74 (statutory warranty deed if not filled in). Buyer and Seller understand that the form of the deed
75 may affect significant legal rights as to which a real estate licensee is not licensed to give advice. If this Agreement provides for the sale and
76 transfer of the vendee's interest under an existing real estate contract, Seller shall convey Seller's interest by an assignment of contract and
77 deed sufficient in form to convey after acquired title.

78 8. CLOSING. Closing shall be within ten (10) days after satisfaction or waiver of all contingencies and "subject to's", but not earlier than
79 March 15, 2006, nor later than April 1, 2006, the latest of which shall be the termination date
80 of this Agreement. Closing shall mean the date on which all documents are recorded and the net sales proceeds are available for
81 disbursement to Seller. Buyer and Seller shall deposit, when notified and without delay, in escrow with the closing agent all instruments,
82 monies, and other documents reasonably required to complete the closing of the transaction in accordance with the terms of this Agreement.

83 9. POSSESSION. Buyer shall take physical possession of the Property:
84 on closing other (specify) _____
85 Seller shall maintain the property in its current condition until Buyer takes possession.

86 10. ESCROW/CLOSING COSTS. Closing shall occur at Frontier Title and Escrow, who shall act
87 as the escrow/closing agent unless the parties agree in writing otherwise. Unless limited by law or modified by the terms of this Agreement,
88 Buyer and Seller shall pay at closing all customary and usual closing costs and fees, including but not limited to the following: Seller shall pay
89 the Seller's excise tax, the cost of the owner's standard form of title insurance, recording fees, and Seller's half share of escrow fees (unless
90 Buyer obtains VA financing in which case Seller shall pay all escrow fees); Buyer shall pay all costs and fees associated with the financing,
91 recording fees, any other costs agreed to under the terms of this Agreement, and Buyer's half share of the escrow fees (unless prohibited by
92 government regulation). Taxes for the current year, rents, interest, association or homeowner's fees, if any, shall be pro-rated as of the date of
93 closing. Except as described in Paragraph 11(b) of this Agreement, all utility charges shall be paid and/or pro-rated outside escrow directly
94 between Buyer and Seller.

95 11. SELLER'S DISCLOSURE AND REPRESENTATIONS. If Buyer has any questions regarding the following, Buyer should make Buyer's offer
96 subject to relevant inspections and reports.

97 (a) UTILITIES: The property is presently served by a: public water main private well community well sewer main gas main
98 electric distribution line irrigation water rights provided by _____ telephone line cable TV line
99 other _____

100 none of the foregoing. The term "served by" means (except in the case of a well and irrigation water rights) that a main or line capable
101 of adequately serving the entire property abuts or adjoins the property at some point. NOTWITHSTANDING THE FOREGOING, it is the
102 BUYER'S RESPONSIBILITY TO VERIFY within _____ days (10 days if not filled in), from the date of mutual acceptance of this
103 Agreement, that any utilities serving the property meet Buyer's needs. If the Buyer does not give notice to the contrary within said
104 number of days, it shall be conclusively deemed that said utilities do meet Buyer's needs.

105 (b) Governmental Utilities: Pursuant to RCW 60.80, Buyer and Seller do request do not request (if neither box is checked, then "do
106 request" applies.) the escrow/closing agent to administer the disbursement of closing funds necessary to satisfy unpaid utility charges
107 affecting the Property. Seller represents that the Property is served by the following utilities operated by the state, county, city or other
108 governmental agencies which have lien rights against the Property. The parties authorize the Listing Agent or the Selling Agent to insert
109 over their signatures, the name and addresses of the following utility providers:

110 Name of Provider Address Name of Provider Address
111 Sewer _____ Electricity _____
112 Storm Water _____ Garbage _____
113 Drainage _____ Irrigation _____
114 Water _____ Special Districts _____
115 _____ (LID's and ULID's)
116 _____

117 Seller will pay for all utilities through the date of closing and keep all utilities/services presently connected until closing or occupancy by
118 the Buyer, whichever is sooner, except: _____
119 _____
120 _____
121 _____

122 Shares in light and/or water companies and associations, if any, will will not be included in the sale. If the Property is served by a
123 septic system, Seller will will not have the septic tank pumped prior to closing. If the Property is served by an individual private well,
124 Seller will will not provide a basic water test (bacteriological test) of well water, will will not provide a quantity test, and Seller will
125 will not provide an additional water test (primary inorganic chemical test) of well water which meets State Department of Health
126 Services standards. If Buyer wishes any additional type of water test, Buyer should make such request in an addendum attached to this
127 Agreement.

128 (c) Property Maintenance: Seller will perform ordinary maintenance on the Property as presently exists until the earlier of closing or as
129 otherwise agreed. Seller will remove all of Seller's personal property, trash, debris, and all articles not agreed to be left at closing.

130 (d) Boundaries/Square Footage: Seller makes no representations regarding the locations or length of the boundary lines or size of lot.
131 Buyer has personally observed the Property and has reached Buyer's own conclusions as to the adequacy and acceptability of the
132 Property based upon such personal inspection.
133 _____
134 _____
135 _____
136 _____
137 _____
138 _____

139 Buyer Initials CA M Seller Initials my

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No. 010906

140 12. OTHER ITEMS. The following items are included at no additional cost: Seller to leave approx. 8,000 yards of
141 fill dirt on the site. Seller to transfer city of Richland fill permit to buyer. Seller
142 to deliver to buyer all of seller's research and feasibility info for buyers review.

143 The following items are not included:

144
145 Timber and/or other crops are are not included in the sale.

146 13. TITLE.

147 (a) Title Insurance to be issued by: Frontier Title & Escrow
148 Title Insurance provided at closing shall be Standard Title Insurance Extended Title Insurance. (If no box is checked, Standard Title
149 Insurance shall be provided.) Seller will pay the cost of Standard Title Insurance. If Buyer requires Extended Title Insurance, Buyer
150 agrees to pay all costs in excess of those charged for the standard form including, without limitation, increased premiums and survey
151 costs. If a survey is required, Buyer shall order the survey within three (3) business days of receiving notice from the title company that a
152 survey is required and Buyer shall pay the estimated cost of the survey prior to performance of any survey work or Buyer can waive
153 requirement for an extended policy and accept standard title insurance.

154 (b) Title Insurance Commitment: Seller authorizes the Listing Agent or Closing Agent, at Seller's expense, to apply for a preliminary
155 commitment ("Commitment") for an ALTA form Owner's policy of Title Insurance ("Policy") as described in subparagraph (a) above, with
156 inflation protection endorsement, if available at no additional charge, to be issued by the above title company. Seller shall pay title
157 insurance cancellation fees.

158 (c) Extended Title Insurance: Buyer acknowledges that the coverage afforded by a standard form policy of title insurance provides limited
159 or no coverage for loss by reason of conflicts in boundary lines, shortage in area, encroachments, or any other matters which an accurate
160 survey would disclose. More extensive coverage through an extended policy of title insurance may be available for an additional charge
161 and subject to additional requirements imposed by the title company including a survey.

162 (d) Title Insurance Exceptions and Exclusions: The title policy shall contain no exceptions to or exclusions from coverage other than
163 those provided in the specified title policy form and those which are consistent with subparagraph (e) below. If title cannot be made so
164 insurable by closing, and if Buyer does not elect to waive any exceptions to coverage which are not consistent with this subparagraph
165 and subparagraph (e) below, this Agreement shall terminate at Buyer's option.

166 (e) Condition of Title: Unless otherwise specified in this Agreement, title to the Property at closing shall be free of all encumbrances and
167 defects which interfere with Buyer's intended use of the Property. Presently recorded reservations, covenants, conditions and
168 restrictions, easements, and existing building or zoning regulations or restrictions shall not be considered encumbrances or defects
169 provided they do not interfere with Buyer's intended use of the Property. Buyer shall conclusively be deemed to have accepted the
170 condition of title unless the Seller or Listing Agent receives written notice of Buyer's objections within _____ business days (five (5)
171 business days if not filled in) after the Commitment for title insurance is made available to the Buyer. Encumbrances to be discharged by
172 Seller shall be paid from Seller's funds at closing.

173 (f) Mineral rights are are not included.

174 14. ASSIGNMENT. Buyer may not assign Buyer's interest in this Agreement without Seller's prior written consent.

175 15. DEFAULT/TERMINATION. If this Agreement is terminated for any reason, any costs authorized under this Agreement to be advanced from
176 the earnest money deposit shall be deducted before the remaining earnest money is refunded to the Buyer or forfeited to Seller. If a dispute
177 should arise regarding the disbursement of any earnest money, the party holding the earnest money shall interplead the funds into court,
178 pursuant to Paragraph 5 of this agreement, and that party shall recover all costs and attorney fees associated with the interpleader action from
179 the earnest money before any other disbursements are made. Furthermore, if either Buyer or Seller defaults, the non-defaulting party may seek
180 specific performance or damages, except that the Seller's remedy shall be limited as follows if the box below has been checked.

181 In the event the Buyer fails, without legal excuse, to complete the purchase of the property, the earnest money deposit made by the
182 Buyer shall be forfeited to the Seller as the sole and exclusive remedy available to the Seller for such failure. Furthermore, if the earnest
183 money deposited exceeds five percent (5%) of the sale price, Seller may retain as liquidated damages and as Seller's sole remedy
184 earnest money equaling only five percent (5%) of the purchase price; any additional earnest money shall be refunded to Buyer. If the
185 earnest money is forfeited as liquidated damages, the money shall be divided fifty percent (50%) to Seller, twenty-five percent (25%) to
186 the listing broker, and twenty-five percent (25%) to the selling broker provided, however, that the amount paid to the real estate brokers
187 shall not exceed the agreed brokerage fee.

188 16. ATTORNEYS' FEES/COSTS AND MEDIATION. If the Buyer, Seller, or any real estate licensee or broker involved in this transaction is
189 involved in any dispute relating to this transaction, any prevailing party shall recover reasonable attorneys' fees and costs (including those for
190 appeals) which relate to the dispute. In the event of a dispute, it is recommended (but not required) that the parties engage in mediation in an
191 effort to resolve the dispute without the need for a lawsuit. The Washington Association of REALTORS® does offer a mediation service. For
192 information, call 1-800-280-4770.

193 17. FIRPTA COMPLIANCE. The Closing Agent is instructed to prepare a certification that the Seller is not a "foreign person" within the
194 meaning of the Foreign Investment in Real Property Tax Act. The Seller agrees to sign this certification. If the Seller is a foreign
195 person and this transaction is not otherwise exempt from FIRPTA, the Closing Agent is instructed to withhold from the Seller's funds
196 and pay to the Internal Revenue Service the appropriate amount under FIRPTA.

197 18. CASUALTY/LOSS. If, prior to closing, the Property is destroyed or materially damaged by fire or other casualty, Buyer may elect to terminate
198 this Agreement, and the remaining earnest money shall be refunded to Buyer.

199 19. COMPUTATION OF TIME. Unless specified otherwise herein, any periods of time referenced in this Agreement shall expire at 9:00 p.m.
200 (Pacific Time Zone) of the last calendar day of the specified time period, unless the last day is a Saturday, Sunday, or legal holiday as
201 prescribed in RCW 1.16.050, in which event the specified period of time shall expire at 9:00 p.m. (Pacific Time Zone) on the next business day.
202 Any specified period of three (3) days or less shall include business days only.

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Buyer Initials CEW

Seller Initials my

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No. 010906

207 20. PROFESSIONAL ADVICE. Buyer and Seller each acknowledge that it is advisable to have the terms and conditions of this Agreement reviewed by independent legal counsel and/or a tax advisor, as the terms and conditions affect the parties' rights and may have tax implications. Each party is specifically aware that issues such as form of deed used for conveyance, agency representation, financing documents, liquidated damages, title insurance and seller representations are complicated and that the parties may require advice that a real estate licensee is not licensed to give and for which parties should contact their own attorney or accountant. Furthermore, Buyer and Seller agree that: (a) they are not relying on any representations or advice by the real estate licensee involved in this transaction; and, (b) they have satisfied themselves as to the terms and conditions of this sale.

214 21. GENERAL PROVISIONS.

- 215 (a) Notices: Unless otherwise specified in this Agreement, any notice required or given under the terms of this Agreement must be written. Receipt of any notice shall be defined as the earlier of: three (3) business days following the postmark date; or the date the notice is actually received by the party or at the office of the Listing Agent for Seller and Selling Agent for Buyer regardless of the agency relationships involved. For the purposes of this Agreement, receipt by the appropriate agent (as set forth above) of a copy of documents related to this Agreement, shall constitute receipt by the party. Seller must keep the Listing Agent advised of the Seller's whereabouts, and Buyer must keep the Selling Agent advised of Buyer's whereabouts. The Listing Agent's responsibility to the Seller and the Selling Agent's responsibility to the Buyer for delivery of notices is limited to calling the party and if the party is not available by phone, mailing the notice to the party's last known address.
- 223 (b) Faxes and Counterparts: Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission shall be the same as delivery of an original. At the request of either party, or the closing agent, the parties will confirm facsimile transmitted signatures by signing an original document. This Agreement may be signed in counterparts.
- 226 (c) Integration: There are no verbal agreements or understandings which modify this Agreement. This Agreement constitutes the full understanding between Buyer and Seller.
- 227 (d) Time is of the Essence: Time is of the essence as to all terms and conditions of this Agreement.
- 229 (e) Backup Offers: Buyer is aware that during the term of this Agreement, Seller may continue to market the Property and solicit and accept backup offers.
- 231 (f) Venue/Applicable Law: This Agreement shall be interpreted and construed according to the laws of the State of Washington; venue shall be in the county in which the Property is located.
- 233 (g) Survival: All terms of this Agreement, which are not satisfied or waived prior to closing, shall survive closing. These terms shall include, but not be limited to, representations and warranties, attorneys fees and costs, disclaimers, repairs, rents and utilities, etc.

236 22. ADDITIONAL TERMS AND CONDITIONS.

238 _____
239 _____

240 23. ADDENDA/ATTACHMENTS. At the time of Buyer's offer, the following addenda/attachments are part of this Agreement:

241 _____
242 Buyer and Seller may only amend this Agreement by mutual written consent.

243 24. AGREEMENT TO PURCHASE. Buyer offers to purchase the Property on the above terms and conditions. Buyer hereby acknowledges receipt of a copy of this Agreement. Seller shall have until 6 a.m./ p.m., January 16, 2006 to accept this offer unless sooner withdrawn by delivering a signed copy to Buyer or Selling Agent's office. Acceptance shall not be effective until a signed copy hereof is actually received by Buyer or at the office of the Selling Agent.

247 _____
248 BUYER'S SIGNATURE _____ Date _____
249 _____
250 Neighborhood Inc

Century 21 Columbia
Selling Broker (Name) _____

01/10/2006
Selling Agent's Signature _____ Date _____
Dava Greeno C-21 col.

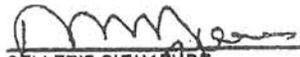
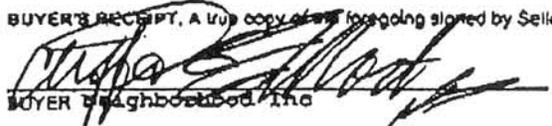
252 BUYER'S SIGNATURE _____ Date _____
253 _____
254 (208) 777-3000
255 Buyer's Phone (work)/(home)

Selling Agent's Phone (work)/(home) _____
(509) 544-6160
Selling Agent's FAX Number _____

261 Buyer's Address _____ (City, State, Zip) _____
262 25. SELLER'S ACCEPTANCE. Subject to Seller's counter offer or modifications, if any, Seller agrees to sell the Property on the terms and conditions specified herein. Upon Buyer's and Seller's mutual acceptance of terms, Seller confirms by signing this Purchase and Sale Agreement that the Listing Agent has performed Agent's obligations to Seller by procuring a buyer, and has earned the compensation described in the listing agreement referenced by MLS number _____. Seller confirms that Broker(s) is entitled to collect Broker's compensation directly from the escrow agent at closing from proceeds of the sale. Seller acknowledges receipt of a copy of this Purchase and Sale Agreement, signed by both parties. Seller's Counter Offer or modifications are made a part of this Agreement. Buyer shall have until 6:00 a.m./ p.m., January 20, 2006, unless sooner withdrawn within which to accept same. Acceptance shall not be effective until a signed copy hereof is actually received by Seller or at the office of the Listing Broker.

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 1-18-06
SELLER'S SIGNATURE Date
 Keene valley ventures Inc.
SELLER'S SIGNATURE Date
 Keene valley ventures Inc.
 (Seller's Name Printed)
 Seller's Phone (work)(home)
 3313 west cherry ln.
 Seller's Address
 Mortgagee's Name
 Mortgagee's Phone Number
 There are _____ additional mortgages on this property.
 BUYER'S RECEIPT. A true copy of the foregoing signed by Seller, is hereby received.

 BUYER Neighborhood, Inc.
 Date

No. 010906
 Century 21 Columbia
 Listing Broker (Name)
 01/10/2006
 Listing Agent's Signature Date
 (509) 544-2100
 Listing Agent's Phone (work)(home)
 (509) 544-6160
 Listing Agent's FAX Number
 Meridian, Id 83642
 (City, State, Zip)
 Seller's Loan Number
 Mortgagee's Address
 BUYER
 Date

A000070

Purchase and Sale Agreement No. 010906
Addendum No. 01

ADDENDUM/AMENDMENT

This Addendum/Amendment To Purchase and Sale Agreement ("Addendum") is entered into this 18th day of January, 2006 between Neighborhood Inc. ("Buyer") and Keene Valley Ventures Inc. ("Seller") and modifies and supplements that certain Purchase and Sale Agreement between the Buyer and Seller Dated January 10, 2006 for property located at NKA Keene Road, Richland, Washington ("Agreement").

IT IS AGREED BETWEEN THE BUYER AND SELLER AS FOLLOWS:

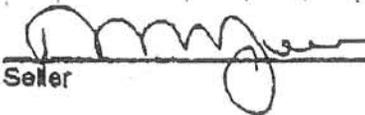
- 1) At closing Seller will initiate a 1031 tax free exchange. Buyer so acknowledges and agrees to cooperate in the said exchange.
- 2) Seller has provide Buyer with the following documentation to assist in Buyer's feasibility study:
 - i) Contour plan for the site prepared by Stratton Surveyts, including the outlines of the wetlands on the site as identified in the document "Wetland Delineation on the Balnes Property". This plan also shows the approximate areas of the delineated wetlands that may be filled in accordance with the approval of the Board of Adjustment of the City of Richland.
 - ii) Lot layout plan showing 84 lots which was developed for Seller's use in assessing potentials lot layouts for the Property. This plan has not been submitted to the City of Richland for their review.
 - iii) "Wetland Delineation on the Balnes Property" prepared by Tom Duebendorfer, dated January 8, 2001.
 - iv) "Appeal of an Administrative Determination" dated August, 14, 2001.
 - v) "Preliminary Geotechnical Engineering Study, Keene Valley Residential Development, Richland, Washington" dated January 2005 and prepared by Shannon & Wilson Inc.
 - vi) "Geotechnical Investigation for Proposed Keene Valley Ventures, Richland, WA." Dated November 16, 2005 prepared by DWR Consultants, Inc.
 - vii) Copy of permit #01-01590 issued by the City of Richland as a fill permit for the Property.
- 3) Buyer agrees to keep all of the information and documents (those noted herein and any others that Seller may provide at Buyer's request) provided to Buyer strictly confidential and to return said documents to Seller if Buyer does not close on the Property.
- 4) Seller shall have until 8:00 p.m. on January 18, 2006 to accept the offer made by Buyer in the Agreement noted herein (Agreement no. 010906.)
- 5) The Feasibility period shall be 30 days from mutual acceptance.

Note: This Addendum supersedes any conflicting terms in the Agreement, and all other terms of the Agreement which have not been modified or superseded by this Addendum are ratified and shall remain in full force and effect.



 Buyer
 1/18/06

 Date



 Seller
 1-18-06

 Date

A000071

No. 182007

VACANT LAND PURCHASE and SALE AGREEMENT
THIS CONTRACT CONTROLS THE TERMS OF THE SALE OF THE PROPERTY

(Please read carefully before signing)

January 8, 2007

AGENCY DISCLOSURE: At the signing of this Agreement, the Selling Agent (insert name of selling agent) Dave Greeno C-21 col. represented

Buyer, Seller, Both Parties, Neither Party and the Listing Agent (insert name of listing agent)

Seller both confirm that prior oral and/or written disclosure of agency was provided to each of them in this transaction. If Selling Agent and Listing Agent are different licensees affiliated with the same broker, then both parties consent to that broker acting as a dual agent...

1. PARTIES. This VACANT LAND PURCHASE and SALE AGREEMENT ("Agreement") is made between Envision Homes, LLC as "Buyer", and Keene Valley Ventures, INC. as "Seller".

on the following terms and conditions:

2. PROPERTY. Common Address NKA KEENE RD. (21.66ac.) City: Richland County: Benton State of Washington, Zip: 99352 (Tax Parcel Number) 1-2298-300-0001-008

LEGAL DESCRIPTION:

If Legal Description is not attached at final acceptance of this Agreement, Buyer shall have three (3) business days after receiving the Legal Description to approve the Legal Description as accurately reflecting the Property which the parties intend to be the subject of this Agreement.

3. RIGHT TO FARM AND RIGHT TO PRACTICE FORESTRY DISCLOSURES (SNOHOMISH COUNTY ONLY). The Property is/is not "designated farmland" or situated within 1,300 feet of "designated farmland" in Snohomish County, Washington.

4. PURCHASE PRICE/FINANCING. The Purchase Price is Five Hundred Seventy-Five Thousand (\$575,000.00) DOLLARS, payable as follows:

All cash at closing (not conditioned on Buyer obtaining a loan); Proceeds of Buyer Financing (attach a Financing Addendum, Washington Association of REALTORS form A-2); Other (attach a Method of Payment Addendum, Washington Association of REALTORS form A-101).

Buyer Representation: Buyer represents that Buyer has sufficient funds available to close this sale in accordance with this Agreement, and is not relying on any contingent source of funds unless otherwise set forth in this Agreement.

5. EARNEST MONEY. The amount of Earnest Money is (\$10,000.00). Selling Agent acknowledges receipt of Earnest Money from Buyer in the form of: a check for \$10,000.00, cash of \$, note for \$.

These funds shall be deposited into the selling broker's trust account or FACTORY to be credited to Buyer at closing. Selling Licensee shall deposit any check to be held by Selling Broker, or deliver any Earnest Money to be held by Closing Agent within three days of receipt or mutual acceptance...

6. FEASIBILITY CONTINGENCY. This Agreement is/is not contingent upon and subject to the Buyer obtaining at the Buyer's/Seller's sole expense, a report(s) regarding the feasibility of purchasing the Property; which report shall be satisfactory to the Buyer...

Buyer shall conclusively be deemed to have waived this Feasibility Contingency unless the Seller or Listing Agent receives written notice of Buyer's intent to terminate this Agreement within 60 days (thirty (30) days if not filled in) after mutual acceptance of this Agreement.

The Buyer or an authorized agent of the Buyer shall have the right, at reasonable times, to enter upon the Property for the purpose of conducting this feasibility study; provided, that Buyer shall cause no liens to be recorded against the title to the Property by Buyer or any of Buyer's agents, contractors or invitees...

Buyer Initials [Signature] Seller Initials [Signature]

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No. 182007

73 7. CONVEYANCE OF TITLE. Conveyance of fee title shall be by statutory warranty deed other:
74 (statutory warranty deed if not filled in). Buyer and Seller understand that the form of the deed
75 may affect significant legal rights as to which a real estate licensee is not licensed to give advice. If this Agreement provides for the sale and
76 transfer of the vendee's interest under an existing real estate contract, Seller shall convey Seller's interest by an assignment of contract and
77 deed sufficient in form to convey after acquired title.

78 8. CLOSING. Closing shall be within ten (10) days after satisfaction or waiver of all contingencies and "subject to's", but not earlier than
79 September 3, 2007, nor later than September 14, 2007, the latest of which shall be the termination date
80 of this Agreement. Closing shall mean the date on which all documents are recorded and the net sales proceeds are available for
81 disbursement to Seller. Buyer and Seller shall deposit, when notified and without delay, in escrow with the closing agent all instruments,
82 monies, and other documents reasonably required to complete the closing of the transaction in accordance with the terms of this Agreement.

83 9. POSSESSION. Buyer shall take physical possession of the Property;
84 on closing other (specify)
85 Seller shall maintain the property in its current condition until Buyer takes possession.

86 10. ESCROW/CLOSING COSTS. Closing shall occur at Escrow Services Plus, who shall act
87 as the escrow/closing agent unless the parties agree in writing otherwise. Unless limited by law or modified by the terms of this Agreement,
88 Buyer and Seller shall pay at closing all customary and usual closing costs and fees, including but not limited to the following: Seller shall pay
89 the Seller's excise tax, the cost of the owner's standard form of title insurance, recording fees, and Seller's half share of escrow fees (unless
90 Buyer obtains VA financing in which case Seller shall pay all escrow fees); Buyer shall pay all costs and fees associated with the financing,
91 recording fees, any other costs agreed to under the terms of this Agreement, and Buyer's half share of the escrow fees (unless prohibited by
92 government regulation). Taxes for the current year, rents, interest, association or homeowner's fees, if any, shall be pro-rated as of the date of
93 closing. Except as described in Paragraph 11(b) of this Agreement, all utility charges shall be paid and/or pro-rated outside escrow directly
94 between Buyer and Seller.

95 11. SELLER'S DISCLOSURE AND REPRESENTATIONS. If Buyer has any questions regarding the following, Buyer should make Buyer's offer
96 subject to relevant inspections and reports.

97 (a) Utilities: The property is presently served by a: public water main private well community well sewer main gas main
98 electric distribution line irrigation water rights provided by telephone line cable TV line

99 other Buyer to determine
100 none of the foregoing. The term "served by" means (except in the case of a well and irrigation water rights) that a main or line capable
101 of adequately serving the entire property abuts or adjoins the property at some point. NOTWITHSTANDING THE FOREGOING, it is the
102 BUYER'S RESPONSIBILITY TO VERIFY within _____ days (10 days if not filled in), from the date of mutual acceptance of this
103 Agreement, that any utilities serving the property meet Buyer's needs. If the Buyer does not give notice to the contrary within said
104 number of days, it shall be conclusively deemed that said utilities do meet Buyer's needs.

105 (b) Governmental Utilities: Pursuant to RCW 60.60, Buyer and Seller do request do not request (if neither box is checked, then "do
106 request" applies.) the escrow/closing agent to administer the disbursement of closing funds necessary to satisfy unpaid utility charges
107 affecting the Property. Seller represents that the Property is served by the following utilities operated by the state, county, city or other
108 governmental agencies which have lien rights against the Property. The parties authorize the Listing Agent or the Selling Agent to insert,
109 over their signatures, the name and addresses of the following utility providers:

Table with 4 columns: Name of Provider, Address, Name of Provider, Address. Rows include Sewer, Storm Water, Drainage, Water, Electricity, Garbage, Irrigation, Special Districts (LID's and ULID's).

110 Seller will pay for all utilities through the date of closing and keep all utilities/services presently connected until closing or occupancy by
111 the Buyer, whichever is sooner, except: _____

112 Shares in light and/or water companies and associations, if any, will will not be included in the sale. If the Property is served by a
113 septic system, Seller will will not have the septic tank pumped prior to closing. If the Property is served by an individual private well,
114 Seller will will not provide a basic water test (bacteriological test) of well water, will will not provide a quantity test, and Seller will
115 will not provide an additional water test (primary inorganic chemical test) of well water which meets State Department of Health
116 Services standards. If Buyer wishes any additional type of water test, Buyer should make such request in an addendum attached to this
117 Agreement.

118 (c) Property Maintenance: Seller will perform ordinary maintenance on the Property as presently exists until the earlier of closing or as
119 otherwise agreed. Seller will remove all of Seller's personal property, trash, debris, and all articles not agreed to be left at closing.

120 (d) Boundaries/Square Footage: Seller makes no representations regarding the locations or length of the boundary lines or size of lot.
121 Buyer has personally observed the Property and has reached Buyer's own conclusions as to the adequacy and acceptability of the
122 Property based upon such personal inspection.

130 Buyer Initials JM

130 Seller Initials MS

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No. 162007

140 12. OTHER ITEMS. The following items are included at no additional cost: _____
 141 _____
 142 _____
 143 The following items are not included: _____
 144 _____
 145 Timber and/or other crops are are not included in the sale.

146 13. TITLE.
 147 (a) Title Insurance to be issued by: Cascade Title
 148 Title Insurance provided at closing shall be Standard Title Insurance Extended Title Insurance. (If no box is checked, Standard Title
 149 Insurance shall be provided.) Seller will pay the cost of Standard Title Insurance. If Buyer requires Extended Title Insurance, Buyer
 150 agrees to pay all costs in excess of those charged for the standard form including, without limitation, increased premiums and survey
 151 costs. If a survey is required, Buyer shall order the survey within three (3) business days of receiving notice from the title company that a
 152 survey is required and Buyer shall pay the estimated cost of the survey prior to performance of any survey work or Buyer can waive
 153 requirement for an extended policy and accept standard title insurance.
 154 (b) Title Insurance Commitment: Seller authorizes the Listing Agent or Closing Agent, at Seller's expense, to apply for a preliminary
 155 commitment ("Commitment") for an ALTA form Owner's policy of Title Insurance ("Policy") as described in subparagraph (a) above, with
 156 inflation protection endorsement, if available at no additional charge, to be issued by the above title company. Seller shall pay title
 157 insurance cancellation fees.
 158 (c) Extended Title Insurance: Buyer acknowledges that the coverage afforded by a standard form policy of title insurance provides limited
 159 or no coverage for loss by reason of conflicts in boundary lines, shortage in area, encroachments, or any other matters which an accurate
 160 survey would disclose. More extensive coverage through an extended policy of title insurance may be available for an additional charge
 161 and subject to additional requirements imposed by the title company including a survey.
 162 (d) Title Insurance Exceptions and Exclusions: The title policy shall contain no exceptions to or exclusions from coverage other than
 163 those provided in the specified title policy form and those which are consistent with subparagraph (e) below. If title cannot be made so
 164 insurable by closing, and if Buyer does not elect to waive any exceptions to coverage which are not consistent with this subparagraph
 165 and subparagraph (e) below, this Agreement shall terminate at Buyer's option.
 166 (e) Condition of Title: Unless otherwise specified in this Agreement, title to the Property at closing shall be free of all encumbrances and
 167 defects which interfere with Buyer's intended use of the Property. Presently recorded reservations, covenants, conditions and
 168 restrictions, easements, and existing building or zoning regulations or restrictions shall not be considered encumbrances or defects
 169 provided they do not interfere with Buyer's intended use of the Property. Buyer shall conclusively be deemed to have accepted the
 170 condition of title unless the Seller or Listing Agent receives written notice of Buyer's objections within _____ business days (five (5)
 171 business days if not filled in) after the Commitment for title insurance is made available to the Buyer. Encumbrances to be discharged by
 172 Seller shall be paid from Seller's funds at closing.

173 (f) Mineral rights are are not included.
 174 14. ASSIGNMENT. Buyer may not assign Buyer's interest in this Agreement without Seller's prior written consent.
 175 15. DEFAULT/TERMINATION. If this Agreement is terminated for any reason, any costs authorized under this Agreement to be advanced from
 176 the earnest money deposit shall be deducted before the remaining earnest money is refunded to the Buyer or forfeited to Seller. If a dispute
 177 should arise regarding the disbursement of any earnest money, the party holding the earnest money shall interplead the funds into court,
 178 pursuant to Paragraph 5 of this agreement and that party shall recover all costs and attorney fees associated with the interpleader action from
 179 the earnest money before any other disbursements are made. Furthermore, if either Buyer or Seller defaults, the non-defaulting party may seek
 180 specific performance or damages, except that the Seller's remedy shall be limited as follows if the box below has been checked.
 181 In the event the Buyer fails, without legal excuse, to complete the purchase of the property, the earnest money deposit made by the
 182 Buyer shall be forfeited to the Seller as the sole and exclusive remedy available to the Seller for such failure. Furthermore, if the earnest
 183 money deposited exceeds five percent (5%) of the sale price, Seller may retain as liquidated damages and as Seller's sole remedy
 184 earnest money equaling only five percent (5%) of the purchase price; any additional earnest money shall be refunded to Buyer. If the
 185 earnest money is forfeited as liquidated damages, the money shall be divided fifty percent (50%) to Seller, twenty five percent (25%) to
 186 the listing broker, and twenty five percent (25%) to the selling broker provided, however, that the amount paid to the real estate brokers
 187 shall not exceed the agreed brokerage fee.

188 16. ATTORNEYS' FEES/COSTS AND MEDIATION. If the Buyer, Seller, or any real estate licensee or broker involved in this transaction is
 189 involved in any dispute relating to this transaction, any prevailing party shall recover reasonable attorneys' fees and costs (including those for
 190 appeals) which relate to the dispute. In the event of a dispute, it is recommended (but not required) that the parties engage in mediation in an
 191 effort to resolve the dispute without the need for a lawsuit. The Washington Association of REALTORS® does offer a mediation service. For
 192 information, call 1-800-280-4770.

193 17. FIRPTA COMPLIANCE. The Closing Agent is instructed to prepare a certification that the Seller is not a "foreign person" within the
 194 meaning of the Foreign Investment in Real Property Tax Act. The Seller agrees to sign this certification. If the Seller is a foreign
 195 person and this transaction is not otherwise exempt from FIRPTA, the Closing Agent is instructed to withhold from the Seller's funds
 196 and pay to the Internal Revenue Service the appropriate amount under FIRPTA.

197 18. CASUALTY/LOSS. If, prior to closing, the Property is destroyed or materially damaged by fire or other casualty, Buyer may elect to terminate
 198 this Agreement, and the remaining earnest money shall be refunded to Buyer.

199 19. COMPUTATION OF TIME. Unless specified otherwise herein, any periods of time referenced in this Agreement shall expire at 9:00 p.m.
 200 (Pacific Time Zone) of the last calendar day of the specified time period, unless the last day is a Saturday, Sunday, or legal holiday as
 201 prescribed in RCW 1.16.050. In which event the specified period of time shall expire at 9:00 p.m. (Pacific Time Zone) on the next business day.
 202 Any specified period of three (3) days or less shall include business days only.
 203
 204

205 Buyer Initials JB Seller Initials MM
 206 _____

A 000074

No. 102007

207 20. PROFESSIONAL ADVICE. Buyer and Seller each acknowledge that it is advisable to have the terms and conditions of this Agreement
 208 reviewed by independent legal counsel under a tax adviser, as the terms and conditions affect the parties' rights and may have tax
 209 implications. Each party is specifically aware that issues such as form of deed used for conveyance, agency representation, financing
 210 documents, required disclosures, title insurance and other representations are complicated and that the parties may require advice that a real
 211 estate licensee is not licensed to give and for which parties should consult with an attorney or accountant. Furthermore, Buyer and Seller
 212 agree that: (a) they are not relying on any representations or advice by the real estate licensee involved in this transaction; and, (b) they have
 213 consulted their attorneys as to the terms and conditions of this sale.

214 21. GENERAL PROVISIONS.

215 (a) Notices: Unless otherwise specified in this Agreement, any notice required or given under the terms of this Agreement must be written.
 216 Receipt of any notice shall be deemed as the earlier of three (3) business days following the postmark date; or the date the notice is
 217 actually received by the party or at the office of the Listing Agent for Seller and Selling Agent for Buyer regardless of the agency
 218 relationship involved. For the purpose of this Agreement, receipt by the appropriate agent (as set forth above) of a copy of documents
 219 related to this Agreement, shall constitute receipt by the party. Seller must keep the Listing Agent advised of the Seller's whereabouts,
 220 and Buyer must keep the Buying Agent advised of Buyer's whereabouts. The Listing Agent's responsibility to the Seller and the Selling
 221 Agent's responsibility to the Buyer for delivery of notices is limited to calling the party and if the party is not available by phone, mailing
 222 the notice to the party's last known address.

223 (b) Errors and Omissions: Facsimile transmission of any signed original document, and reproduction of any signed facsimile
 224 transmission when the the terms of delivery of an original. At the request of either party, or the listing agent, the parties will confirm
 225 facsimile transmissions signatures by signing an original document. This Agreement may be signed in counterparts.

226 (c) Interpretation: There are no verbal agreements or understandings which modify this Agreement. This Agreement constitutes the full
 227 understanding between Buyer and Seller.

228 (d) Term of the Warrant: This is of the estate as to all terms and conditions of this Agreement.

229 (e) Backup Offer: Buyer is aware that during the term of this Agreement, Seller may continue to market the Property indicated and accept
 230 backup offers.

231 (f) Venue/Applicable Law: This Agreement shall be interpreted and construed according to the laws of the State of Washington, venue
 232 shall be in the county in which the Property is located.

233 (g) Survival: All terms of this Agreement, which are not satisfied or waived prior to closing, shall survive closing. These terms shall include,
 234 but not be limited to, representations and warranties, covenants, time and time, of completion, repairs, rent and interest, etc.

235 22. ADDITIONAL TERMS AND CONDITIONS.

236 23. ASSIGNMENT/ACCEPTANCE. At the time of Buyer's offer, the following conditions/requirements are part of this Agreement:

237 Buyer and Seller may only amend this Agreement by mutual written consent.

238 24. ACCEPTANCE TO PURCHASE. Buyer offers to purchase the Property on the above terms and conditions. Buyer hereby acknowledges receipt
 239 of a copy of this Agreement, Seller shall have until 1-17-07 PM January 11, 2007, to accept this offer unless sooner
 240 withdrawn by delivering a signed copy to Buyer or Selling Agent's office. Acceptance shall not be effective until a signed copy hereof is actually
 241 received by Buyer or at the office of the Selling Agent.

242 BUYER'S SIGNATURE _____ Date 1-17-07
 243 SELLER'S SIGNATURE _____ Date _____
 244 (208) 722-8262 _____
 245 Buyer's Phone (work/home) _____
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301 25. SELLER'S ACCEPTANCE. Subject to Seller's counter offer or instructions, if any, Seller agrees to sell the Property on the terms and
 302 conditions specified herein. Upon Buyer's and Seller's mutual acceptance of terms, Seller consents by signing this Purchase and Sale
 303 Agreement that the Listing Agent has performed Agent's obligations to Seller by procuring a buyer, and has earned the commission described
 304 in the listing agreement referenced by MLS number _____ (Seller certifies that Brokerage is entitled to collect Broker's
 305 commission if a copy from the escrow agent is closing from proceeds of this sale. Seller acknowledges receipt of a copy of this Purchase and
 306 Sale Agreement, signed by both parties. If Seller's Listing Offer or modifications are made a part of this Agreement, Buyer shall have until
 307 _____ PM _____ 1-17-07, unless sooner withdrawn within which to accept same.
 308 Acceptance shall not be effective until a signed copy hereof is actually received by Seller or at the office of the Listing Agent.

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Century 21, Columbia
 Selling Broker (Agent)

 01/08/2007
 Selling Agent's Signature
 Date

 (808) 544-8160
 Selling Agent's Phone (work/home)

 (808) 544-8160
 Selling Agent's FAX Number

 360 East Yosemite Av., Suite 200

 (City, State, Zip)

BUYER

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[Signature] 1-9-07
SELLER'S SIGNATURE Date

SELLER'S SIGNATURE Date

Keene Valley Ventures Inc.
(Seller's Name Printed)

(208) 898-0915
Seller's Phone (work)/(home)

3313 west cherry lane #242
Seller's Address

Mortgagee's Name

Mortgagee's Phone Number

There are _____ additional mortgages on this property.

25. BUYER'S RECEIPT. A true copy of the foregoing signed by Seller, is hereby received.

BUYER

1-17-07
Date

Nn. 182007

Century 21 Columbia
Listing Broker (Name)

[Signature]
Listing Agent's Signature Date

(509) 521-4834 (509) 544-2100
Listing Agent's Phone (work)/(home)

(509) 544-6160
Listing Agent's FAX Number

Meridian, Id 83642
(City, State, Zip)

Seller's Loan Number

Mortgagee's Address

BUYER

Date

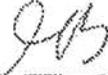
ADDENDUM TO VACANT LAND PURCHASE AND SALE AGREEMENT

THIS ADDENDUM modifies that certain Vacant Land Purchase and Sale Agreement, dated January 8, 2007, between Envision Homes, LLC as Buyer and Keene Valley Ventures, Inc. as Seller for the property described therein.

Earnest Money: Buyer shall pay an additional \$40,000 in cash or certified funds as Earnest Money directly to Seller for a total of \$50,000 on or before the end of the feasibility period specified in paragraph 6 in the event Buyer elects not to terminate following its feasibility studies. At such time all Earnest Money shall be nonrefundable except in the case of Seller default. Upon removal of the feasibility contingency by Buyer, Escrow shall release the \$10,000 Earnest Money held by it to Seller.

Remedy on Buyer Default: Buyer and Seller acknowledge that the Earnest Money exceeds 5% of the Purchase Price. However, the terms of the agreement require an extended closing date, such that the proposed earnest money is a reasonable estimate of Seller's damages for carrying costs, and lost opportunity costs, the actual damages for which would be difficult to calculate. Therefore, in the event of Buyer default, Buyer and Seller agree that Seller shall be entitled to retain the entire Earnest Money Deposit of \$50,000 as liquidated damages as its sole and exclusive remedy, not including Buyer's obligations to indemnify Seller set forth in this Agreement.

Sellers Initials: 

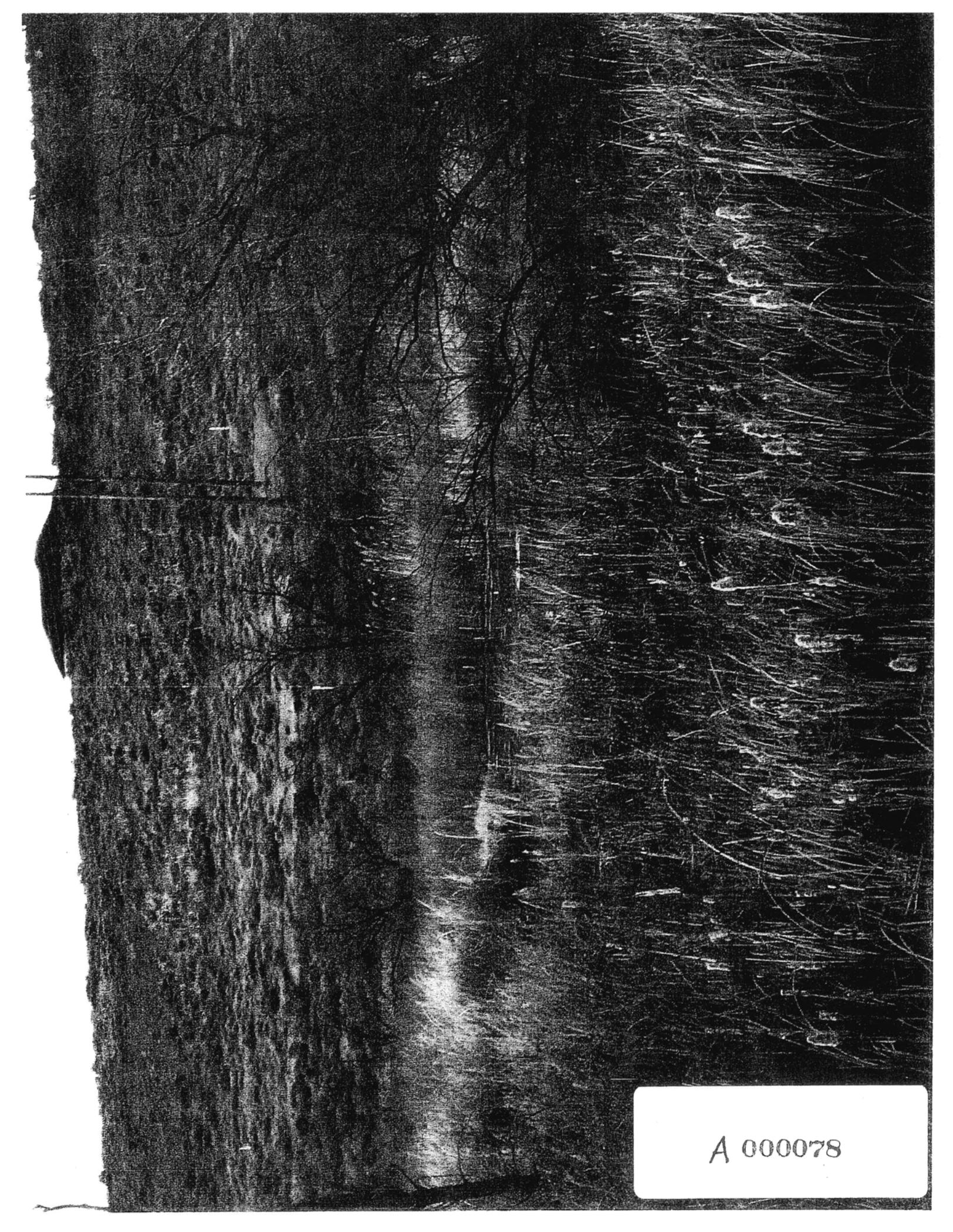
Buyers Initials: 

Buyer shall be entitled to extend closing for two (2) periods of 45 days each by notifying Seller each time in writing 7 business days in advance of the currently scheduled closing and each time paying an extension fee of \$15,000.00 in cash or certified funds directly to Seller by the date upon which closing would have occurred had it not been for the extension. These extension fees are not Earnest Money and shall be non-refundable and shall be applicable to the Purchase Price. In the event the extension fee is not paid pursuant to this agreement, the agreement shall terminate and Seller shall retain the Earnest Money and any previously paid extension fees as its sole and exclusive remedy, not including Buyer's obligations to indemnify Seller set forth in this Agreement.

Sellers' Initials: 

Buyers' Initials: 

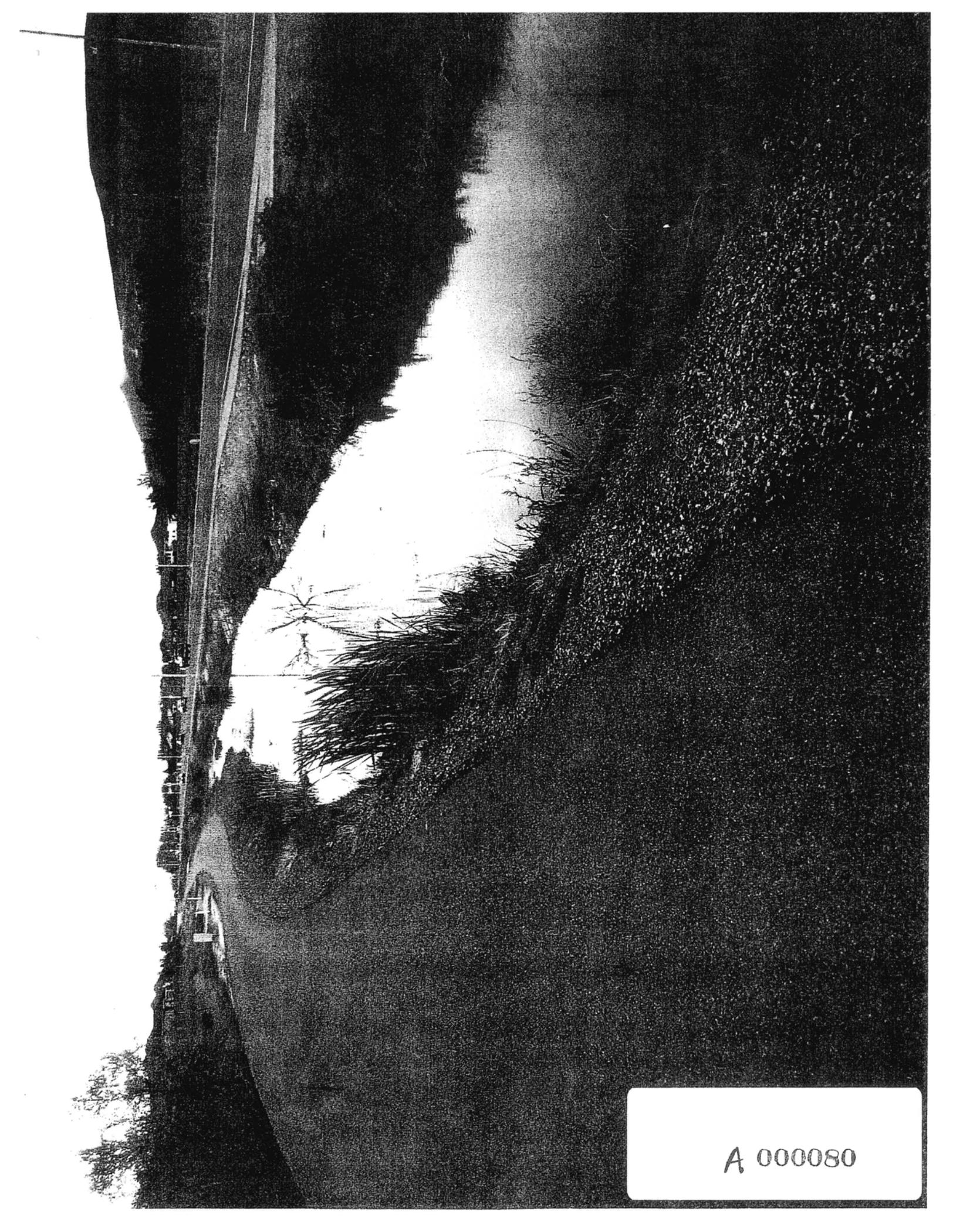
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The image shows a dark, heavily textured surface, likely the cover of an old book or a piece of aged fabric. The texture is uneven and fibrous, with many fine scratches and scuffs visible. A prominent vertical crease or fold runs down the center of the image. In the bottom right corner, there is a white rectangular label with the text 'A 000078' printed on it.

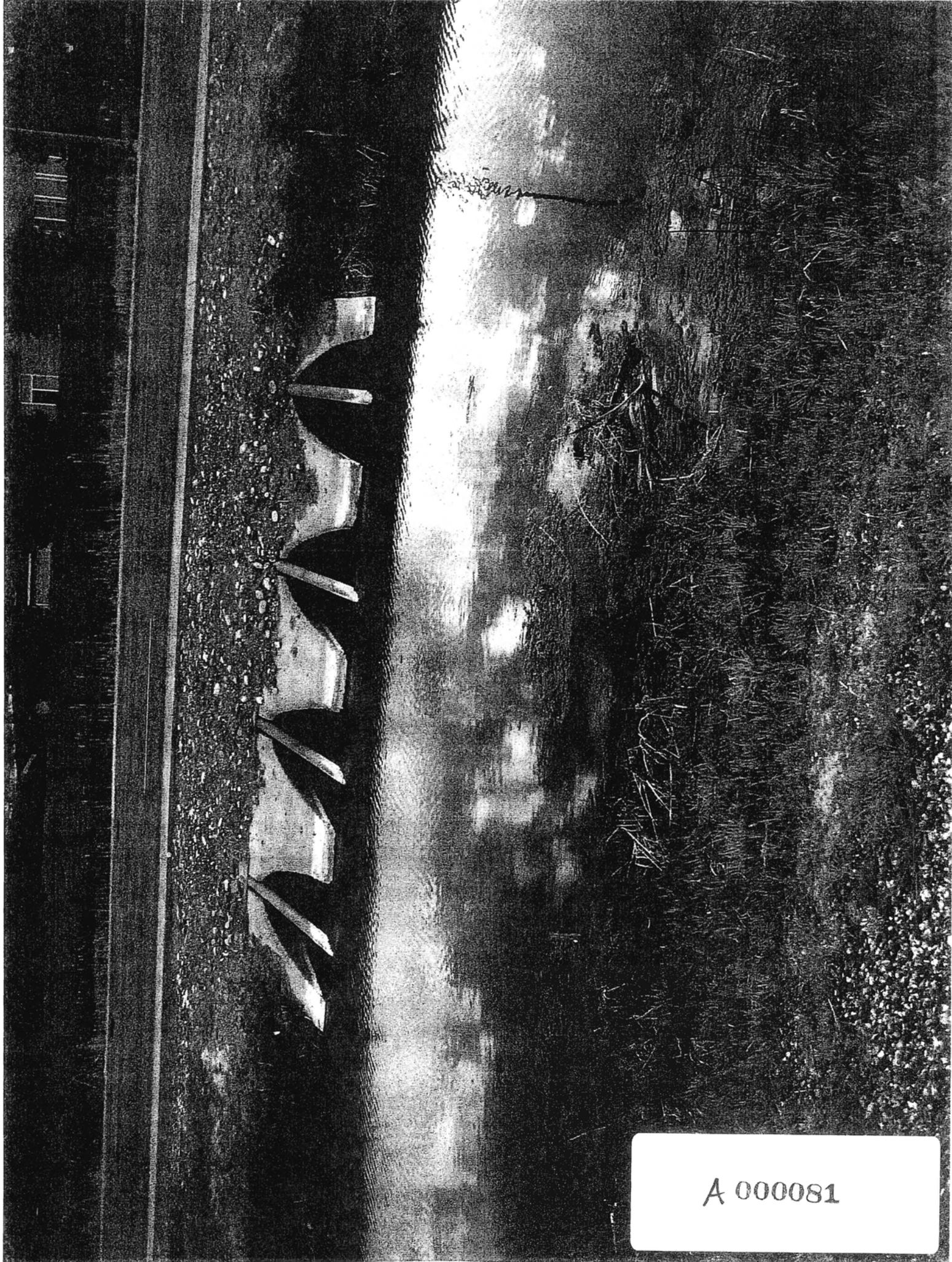
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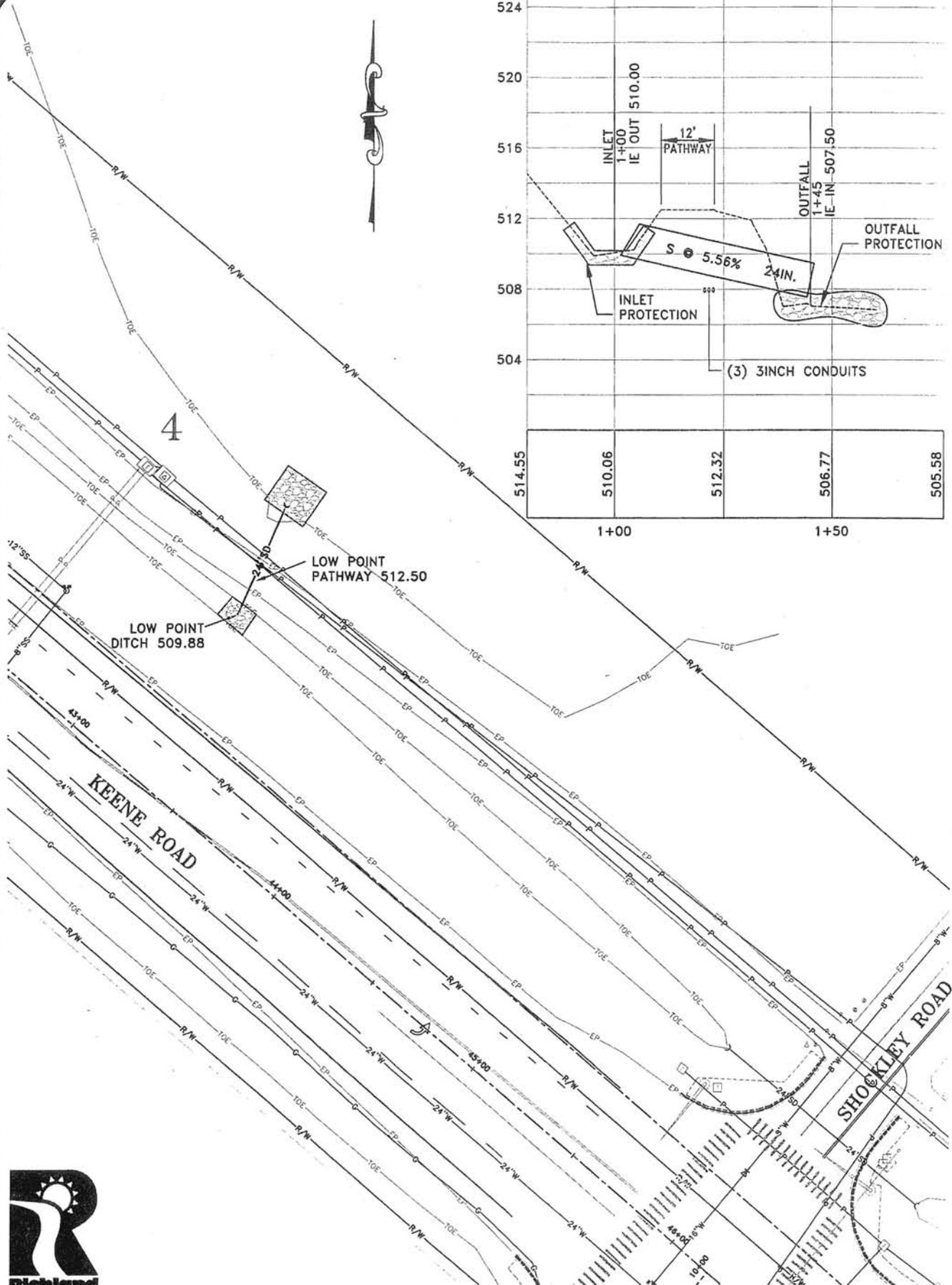
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A 000080



A 000081



DATE: MARCH 2011
 DRAWN BY: JRN
 SCALE: 1" = 50'
 CAD DWG: Keene Rd_Design

PATHWAY STORM CROSSING

KEENE AND SHOCKLEY A 000082

EX 101

Terry E. Miller

From: "George Fearing" <gfearing@tricitylaw.com>
Date: Monday, January 03, 2011 11:25 AM
To: "Terry E. Miller" <tnmiller@owt.com>
Cc: "hardesty reed" <reedh@wciapool.org>; "lampson tom" <tlampson@ci.richland.wa.us>; "rogalsky pete" <progalsky@ci.richland.wa.us>
Subject: RE: You have been sent 8 photo(s)
Terry:

Thanks. Pete Rogalsky informs me the engineering staff is in the process of designing a facility to convey water on to and through KVV property.

George

From: Terry E. Miller [mailto:tnmiller@owt.com]
Sent: Thursday, December 30, 2010 2:36 PM
To: George Fearing
Cc: rbj@lavabit.com
Subject: You have been sent 8 photo(s)

The images received in this e-mail have been resized for optimum viewing and are not recommended for printing.

Install the Costco Photo Organizer in just a few minutes. All you have to do is follow the link below:
<http://www.costcophotocenter.com/organizer>

A000083