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Division III
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No. 36580-8

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

RICHARD EGGLESTON, and
SHANNON EGGLESTON, husband and wife,

Appellant

v.

ASOTIN COUNTY, a public agency, and
ASOTIN COUNTY PUBLIC WORKS DEPARTMENT, a public agency,

Respondent

AMENDED BRIEF OF APPELLANTS

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I. INTRODUCTION

There is a strong presumption in Washington that a jury's determination of the amount of damages to be awarded is valid; this is an appeal of an order granting a new trial unless Plaintiffs agreed to a remittitur. Following a 5-day jury trial, the jury awarded a verdict of \$1,650,000; the trial court then entered the order at issue. The threshold question is whether the verdict was unmistakably the result of passion or prejudice and whether there is substantial evidence supporting the verdict.

Richard and Shannon Eggleston brought an action against Asotin County for breach of contract, inverse condemnation and water trespass. The Eggleston family live on eight (8) acres of valuable and unique riverfront property in Asotin County. As part of a bridge replacement and road realignment project the County was undertaking; the County contracted to purchase 0.38 acres of land from the Egglestons, in exchange for which, among other things, they would pay an agreed upon sum, retain all new slopes on and adjacent to the Eggleston property with attractive rockery terraces, keep three of Eggleston's five driveways, and re-install the Eggleston's water line in an agreed upon manner and location.

The County breached their contract with the Egglestons by not

building the agreed upon rockeries, only providing one driveway, and improperly installing and locating the water line. In breaching the contract regarding driveways, the County cut off access to the Eggleston's waterfront business and were found by the jury to have inversely condemned the Eggleston's property. The County also, through changes to the topography and road, directed storm water onto the Eggleston's property, thereby committing water trespass.

The trial court erred by finding that the jury's verdict was based on passion and prejudice and not supported by substantial evidence.

II. ASSIGNMENTS OF ERROR

1. The trial court erred by finding the jury acted under passion or prejudice.
2. The trial court erred by finding that there is not substantial evidence to support the jury's verdict.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. May a jury rely on reasonable inferences from the evidence in reaching their verdict? (Assignments 1, 2)
2. Is a jury entitled to consider both testimonial and documentary evidence and reach a verdict within the range of the reasonable inferences? (Assignments 1, 2)
3. Is it evidence of the jury acting under unmistakable passion or prejudice if the verdict is greater than the amount the Plaintiffs' initially ask for in closing arguments? (Assignment 1)
4. Is a jury verdict flagrantly outrageous and extravagant when it is more than was initially asked for by the Plaintiffs but within the range of the evidence and reasonable inferences from the evidence? (Assignment 1,2)
5. Is a trial court's surprise with a verdict sufficient basis to infer the verdict was the result of passion or prejudice? (Assignment 1)

IV. STATEMENT OF THE CASE

A. PROCEDURAL BACKGROUND

Following a week-long trial, a Walla Walla County jury rendered a verdict in favor of Richard and Shannon Eggleston and against Asotin County in the amount of \$1,650,000. (CP2) The County moved for a new trial. (CP8) The trial court, relying on its “inherent right” and that the “award was surprising to say the least” required a remittitur to \$1,000,000 on the basis that the verdict “appear[ed] to have been arrived at as the result of passion (in this case, anger) or prejudice against an overbearing government agency.” (CP76) The Court found the “Plaintiffs did prove they sustained damages because of the Defendant’s wrongful acts” but concluded there “was no testimony about a loss of \$1.65 million” while rejecting the reasonable inferences that it “should have been worth as much as \$2.4 million.” (CP76)

This appeal followed.

B. OPERATIVE FACTS

This case arises from actions by Asotin County in conjunction with the County’s 10-Mile Bridge Replacement and Road Realignment Project. Members of this Court may recognize this project from prior

cases before this court dealing with these same parties and facts related to this project (*see: Eggleston v Asotin County*, No. 343405 (2017); and *Asotin County v Eggleston*, 35720-1 (2019)). While the other cases were collateral public records cases, this case deals with the primary issues between the parties.

1. The Contract

Asotin County undertook the 10-Mile Creek Bridge Replacement and Road Realignment project. The plans for the project required the County to acquire various parcels of land, including .38 acres from Richard and Shannon Eggleston. Asotin County procured the services of WSDOT for land acquisition. The WSDOT agent was Linda Raber. Ms. Raber kept a diary of her activities as they related to the Eggleston land acquisition, it was admitted at trial at Exhibit 1.¹

Negotiations with the Egglestons occurred in 2009 and resulted in an agreement, the key provisions for our purposes include:

- a) Egglestons would sell to Asotin County .38 acres of land plus a

1

A copy of Exhibit 1 is attached hereto as Appendix A for the Court's convenience.

temporary construction easement for a total of \$134,200 (rounded) (EX1, p.3, EX39). This was never a point of contention; when Ms. Raber made the offer, she records: “Mr. Egelston said the money offered appears to be satisfactory provided we can come to an agreement on the issues he has raised.” (EX1, p. 3) The official offer to purchase the land came by way of letter from the County to the Egglestons. (EX39) The letter² stated that the “property has been examined by qualified appraisers and appraisal reviewers who have carefully considered all the elements which contribute to the market value of your property. ... **Based upon the market value estimated for your property, our offer is \$134,200.00 (rounded).** This offer consists of \$132,332.00 for 0.38 acres of land in fee ...” (Emphasis in original.)

- b) Asotin County would build rockeries (rock-faced terraces) on all new slopes on and adjacent to the Eggleston property³ (RP1, p. 77,

2

A copy of Exhibit 39 is attached hereto as Appendix B for the Court’s convenience.

3

A copy of Exhibit 54 is attached hereto as Appendix C for the Court’s convenience. These are pictures provided by the County’s contractor as options for a rockery wall.

l.19 - p. 78, l. 17, p. 79, ll. 4-7; p. 132, ll. 20-22; EX1, p. 8-9).

This item was repeatedly raised in the negotiations. Rich Eggleston described this as “a major issue and I wanted to make sure it was covered.” (RP1, p. 134, l. 21) After the first meeting with the Egglestons, Ms. Raber reports that she

called the county and talked to Dick Gahagan and briefed him on the meeting. ... We went over everything with the county line per line to get their input. ... The county also stated that they would agree to the use of native rock per Mr. Eggleston’s request for the retaining wall. He wants it to be much like the rock he has in front of his house now.

EX1, p. 4 (emphasis in the original)

This topic was raised again, and Ms. Raber reports:

5. What will the slope area look like (rock wall, gabion wall, brick wall, keystone, wall?) Would rather step the walls with natural rock rather than have a concrete type wall. Possibly use native rocks and stack them. This would be more attractive to look at in their opinion.

Mr. Eggleston’s comments: This is less optional than it sounds. We want a terraced slope so a vegetative screen can be placed to replace the trees and bushes we planted

to screen/shield our house from the road. ...

County comments: A native rock retaining

wall will be ok. ...
EX1, p. 8

As Mr. Eggleston then testified at trial in response to a question about where the County agreed to put in rockeries: “All slopes that were created by the project either on our property or adjacent to our property.” (RP1, p. 79, ll. 6-7)

- c) Asotin County would preserve three (3) of Eggleston’s existing driveway access points on Snake River Road (the road which was being realigned) including specifically, the Eggleston’s business driveway (RP1, p. 76, l.25 - p. 77, l.3; p. 134, l. 22 - p. 135, l. 3; p. 136, l. 9 - p. 137, l. 22; EX1, p. 5-6; EX203).

Exhibit 53⁴, is an aerial view of a portion of the Eggleston property as it existed prior to the project, four (4) of the existing driveway access points can be seen in this picture.

This was the first issue raised by the Egglestons when they met with Ms. Raber, who reported it this way:

The overview to all the conversation that took place is that the Eggleston’s need to address the access points and retain at least two of the four that they have now. The way the plan sheet shows the access it will take out a large

4

A copy of Exhibit 53 is attached hereto as Appendix D for the Court’s convenience

portion of the horse pasture and they would like it reconfigured to save as much of the horse pasture as possible.

EX1, p. 2

Negotiations continued, and an agreement was reached. Again,

Ms. Raber recorded the agreement:

And there were a couple of issues that needed to be fine tuned. One was the language about the approach locations. Cliff from TDH was very helpful in explaining where the approaches would be able to be placed. He has them as close to The [sic] Eggleston's plan as possible. ... He basically wanted the approaches where they were before and did not want to loose [sic] any any more pasture that [sic] necessary. ... The one approach by the bridge has to be moved about 10 feet further north than Rich wanted it but Cliff explained that it has to do with the slope and that the drive has to be at least 10 feet away. Rich was ok with that and agreed to the change. The Eggleston's ended up agreeing to all three locations.

EX1, p. 15.

Defense Exhibit 203, the "Construction Memorandum" further defined the locations of all three "approaches" (driveways). "Driveway approach #1" (also called the "business drive") was to be placed at +/- Station 14+10. Similar specific site locations were defined for driveway approaches #2 (the

residential drive) and #3 (the most northerly approach).

- d) Asotin County would re-route the Eggleston waterline and preserve Eggleston's access to it (RP1, p. 132, l. 23 - p. 133, l. 1; EX1, p. 7-8).

This was another key point of negotiations. Ms. Raber wrote it this way after the first visit:

The other big issue is the water line. The domestic water comes from a natural spring from across the road. The pipe for the water runs under the county road. He made the request that the line be put in a larger conduit than may be required so he would have plenty of room to maneuver if he ever needed to replace the line. Again, I told him this would all have to be confirmed with the county.

EX1, p. 3

She later notes the County's response:

The county states they will replace the water line under the road and will put it in 6 inch conduit to allow him to use bigger water line at a future date. They will run the line and hook up the water when line work is completed. This will be done through a construction memo with maintenance language included.

EX1, p. 5.

As agreed, the Construction Memorandum did cover this in more

detail⁵.

The foregoing is not intended to, nor does it represent all the material terms of the contract between these parties, but it does highlight those most pertinent to this case.

2. Breaches of Contract

5

The Construction Memorandum was only a partial record of the contract between the parties. Terms that were explicitly agreed upon, as noted by Ms. Raber, are not included in the Construction Memorandum. As Mr. Eggleston testified at trial regarding the Construction Memorandum: “ the parts that are articulated in here are the special consideration and that it's partial consideration. The other consideration being all the things they were going to do to our land that they were going to show in the drawings that we had been negotiating back and forth with from -- I mean it started at like the middle or end of January, so January, February and March, two and-a-half months that we had been negotiating and what's this going to look like, what's going to be in this location what's going to be in that location, all that stuff that was supposed to have a drawing. The only reason the drawing wasn't ready at that moment is we have to hurry and get the thing executed. But Cliff, Cliff Morey, the design engineer, part of all this taking notes and going to finish doing all the drawings is to represent what we have agreed to. So partial consideration is, well, this is the, this is part of the consideration, these things, these are the special things that are part of it and the other things are all the things that are going to get shown on the drawings. Specifically, relative to locations of drives and retaining of the -- one of the things that is possibly unclear right now, they couldn't tell me definitively. I kept asking the question: This is why we added in our negotiations the language about all of the slopes on and adjacent to our property being retained.” (RP1, p.87, l. 4 - p. 88, l. 3)

While the Egglestons fully performed each of their obligations, the County breached each of the three foregoing obligations. (RP1, p. 143, ll. 9-24)

As the trial court noted, when the County left the job, the Egglestons did not have the “attractive rockeries they had expressly bargained for”. (CP76) Not only did they not get the “attractive rockeries” they bargained for, it got worse, as explained by Rich Eggleston:

And you can see on those drawings, you can see where the, if I may grab this pointer, if you can see the road beds. So this is station 15, 25, so it's this one. But you can see where the road ends and then the shoulder goes down to the grade, they are just going to do a fill. The problem that we had was as they were doing work in that area, they were continually bringing more fill in. And in fact, their drawings don't show this. Their drawings show that the road ends right here, and the slope starts. But they actually filled 14 more feet out towards us and then dropped it straight down to the pasture, and they extended, you know, before the, pardon me, right now the right-of-way is at 50 feet from the center line, which all along our thought had been, well, build your boulder wall there, terrace it back, build it again, terrace it back. Now they built it back with fill and dropped it all the way to the right-of-way, so they added, you know, about 300 [yards], so 30 dump truckloads of material they brought and just filled on to the side of the road right there that they didn't design to do, they didn't have to do. I mean that was --

Q. Rich, the fill they brought in was a good top soil?

A. No. The same road base. No, the not roadways, same sand cobbley material. No organic. It was out of a rock bed.

RP1, p. 234, l. 14 - p. 235, l. 11

This extra fill and the cobble and silt slope can be seen in pages 1 and 5 of Exhibit 55, page 4 of Exhibit 59, pages 3 and 4 of Exhibit 62, and Exhibit 64⁶.

When the County left the job, instead of three (3) driveway access points, the Egglestons had one (RP1, p. 137, ll. 10-22); the Egglestons were left with only their residential driveway. (RP2, p. 306, ll. 13-15)

a. Business drive

When the County left the job, the Egglestons did not have an accessible business drive.

The business drive (which had been the topic of much negotiation, as noted *supra*), was built with the knowledge and express agreement of the County. Exhibit 58, pages 3-12 are photographs of the progress of the business drive as it is put in⁷. Pages 6-8 of Exhibit 58 show the County

6

These pages of these exhibits are attached hereto as Appendix E for the Court's convenience.

7

These pages of this exhibit are attached hereto as Appendix F for the Court's convenience.

Project Manager and Project Inspector watching the driveway be built.

After the driveway was done being built (RP3, p. 613, ll. 17-22), the County Project Manager, Craig Miller, approached Rich Eggleston to have him sign a Construction Memorandum agreeing to the driveway's placement⁸. Rich Eggleston explained why there are two people's handwriting on there:

Q. Craig brought one to you that said it has been agreed by the undersigned to field fit driveway C to move it closer to its pre-construction location near 10-Mile Creek?

A. That's correct.

Q. That other handwriting is different?

A. That's my handwriting.

Q. Why did you write that on there?

A. As I was about to sign it, I realized, well, they might not actually mean what they are saying here. And the road was, that access was done at that point. This is like four in the afternoon. The roadway has been done since noon. And I thought, they brought it out under the guise of, oh, we just need to document and memorialize this change to the drawings. Okay. And as I'm about to sign it I thought, I really ought to make it clear that it's how it is right now. So I [added] the note as generally set and located 4-2 of '13 and signed it and handed it back and said, okay, well, here you go.

RP1, p. 243, ll. 8-25.

The next day, the County came out and staked the guard rails

8

EX52 is the Memo signed in 2013 after the construction of the business driveway, and it is attached hereto as Appendix G for the Court's convenience.

coming off the bridge. (RP1, p. 246, ll. 8-9). Referring to EX59, pages

1-2⁹, Rich Eggleston testified:

Q. Is that your business driveway we're looking down?

A. Yes.

Q. That's the same tree that was knocked over by the excavator in the background?

A. Yes.

Q. Looking in the next page, how far across your driveway did those guard rails go?

A. All the way across and on to the downhill slope.

RP1, p. 246, ll. 10-17

Exhibit 64 shows the guardrail across the business drive¹⁰. Craig

Miller testified:

Q. So the guardrail, it went all the way across and couldn't get a car down it, couldn't even get a motor cycle down it could you?

A. No sir.

Q. You ended up agreeing with me that no licensed vehicle in the State of Washington on the roads of Washington would be able to drive down that?

A. Okay, yes.

RP3, p. 550, ll. 1-8.

b. The most northerly drive

9

These pages of this exhibit are attached hereto as Appendix H for the Court's convenience.

10

Exhibit 64 is attached hereto as Appendix I for the Court's convenience.

When the County left the job, the Egglestons did not have that most northerly drive.

As noted, *supra*, the Construction Memorandum specifically set out three driveways and the location for each. The 2010 Contract Plans called for 3 approaches (4 driveways: C, D, E, and F, but only 3 entrances onto the roadway). (EX30, pp. 5, 7, and 12) The 2012 Contract Plans¹¹ showed the same 3 approaches. (EX34, pp. 5, 7, 9, 9.1, 9.2, 10, 12.1)

Mr. Eggleston explained what happened with this northerly drive:

Q. And this middle one or the most northerly one, that actually did not go in on the final design, correct?

A. Within the week after we had our injunction hearing on the storm water, we came back and they revised the entire layout right there ... The next week, they came in and redesigned this, extended the curb, the side of the asphalt, they obliterated that, they made it come in here, and they put a catch basin right there.

RP2, p. 364, ll. 7-11; p. 365, ll. 5-8

c. The water line.

When the County left the job, the Egglestons did not have a properly installed or accessible waterline; the waterline was improperly

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The project went through a re-design process after cultural resources were found during the initial course of work.

buried beneath up to 9 feet of fill and a portion of it ran back under the roadway¹² (EX59, p. 5-6; RP2, p. 474, ll.12-17; EX56, pp. 2-4).

Exhibit 34, p. 12.1¹³ is the “Waterline Plan/Profile” showing the course the waterline had been designed to follow. Mr. Eggleston explained part of the problem as follows:

A. The water line was supposed to come into our property here. [marking in black on p. 12.1 of Ex34]

Q. Now stop for just a second there. Is that the sleeve?

A. That's the sleeve.

Q. Running under Snake River Road?

A. Yes.

Q. Okay.

A. And then it was going to come over to here and hook up with our existing water line in approximately that location. All that digging was going to

be done on our property. When they had the modification due to the cultural site, they didn't want to dig anymore, so they brought it on to our property and then they laid it on the surface here [marking in red on p. 12.1 of Ex34], and came back out into the road and hooked up the existing, at the original termination point and then continued under the fill how it goes on in, but they made the connection right about here (indicating), by laying the water line on top of the ground and then tying into the existing line where we

12

Exhibit 57, page 6 of Exhibit 59, and pages 2-4 of Exhibit 56 are attached hereto as Appendix J for the Court's convenience and are photographs depicting the general area and manner the water line was placed.

13

This page of Exhibit 34, including the marks added by Mr. Eggleston, is attached hereto as Appendix K for the Court's convenience.

used to have our main shut off and a frost free. They just hooked it on right there and kept it going. But that location, as it then existed when the project was done, that connection point was nine feet down in the ground, and under the road.

RP1, p. 222, ll. 1-22.

Q. Okay. So they put it in a sleeve. Then because of the trying to protect the cultural resources they put it into a water vault?

A. They were going to always put it into a water vault. They were going to bring it on the property, put it in a vault and say from now on you have to maintain the thing. Okay, fine. Then they changed and said: Now, additionally, we are going back out of the vault, back, you know, out of the right-of-way back under the road and make the connection there.

RP1, p. 223, ll. 6-15

Q. How far from the surface of the road without a manhole down to where that connection is?

A. You know, I have been saying nine feet. I think at that exact location is probably closer to six feet. I don't know that for sure, but as the line progresses dotted to the north it gets like nine feet deep right at that spot. I think it's about six feet. I do know that the manhole that is, pardon me, the structure that's underground that doesn't have a catch or manhole cover on it, the concrete thing that's in the ground is in the magnitude of 18 inches to two feet. So they do have a box that's buried under the ground under the asphalt, but I don't know how somebody could get into the thing to work on it.

RP1, p. 223, l. 25 - p. 224, l. 12

Additional problems with the waterline were noted by Engineer

Warren Watts.

Q. And were you, did you have any concerns about the

water line and how it was put in?

A. I was concerned about the way it was installed.

Q. What was wrong with how it was installed?

A. One section was just laid, what they called toed at the bottom of the slope. My age you get tongue-tied; laid at the toe of the slope, and just filled over the top of the material. The proper way is to dig a trench called a "perfect trench" (phonetic), and lay over the top of it.

Q. Okay. And so what's the problem with just laying it on the ground and putting stuff on it?

A. Well, I think several things. One would be more exposed to damage because of what would be going on top of it, it would be more exposed to freezing. Those are two main issues.

RP2, p. 427, ll. 1-15.

3. Inverse Condemnation.

a. The land.

Richard and Shannon Eggleston and their children live on an 8 acre parcel of land (RP2, p. 476, ll. 11-13) that was given to them by Shannon's father; the land had been originally acquired by Shannon's great-grandfather (RP1, p. 38, ll. 16-25) and has passed down in the family since. The Eggleston children are the 5th generation of the family to live on that land. (Tr, Vol. 1, p. 33, ll. 22-23)

This 8-acre parcel is bordered on the east by the Snake River, on the south by 10-Mile Creek, and on the west by Snake River Road (the road involved in this project) which also wraps around part of the north

side of the property. (EX2, pp. 4-5; EX53; EX55 page 6).

10-Mile creek is a small, tree-lined creek that flows year-round there at the Eggleston property. The Eggleston land has a fertile pasture area that extends easterly from the road about 3/8 of mile towards the Snake River (Tr, Vol.I, p. 33, ll. 20-12). The pasture is broken by a line of trees, which give way to a large sandy beach on the Snake River (Ex. 55, pp 5-6) .

The Eggleston land was described by Steve Knight, as follows:

Q. How much land is this? Do you know how much land Mr. Eggleston has?

A. I believe about eight acres.

Q. About eight? So if we, and he's got a beautiful location with a big pasture and exclusive beach, right?

A. Yes.

RP2, p. 476, ll. 11-16

A. This is really, really special; beyond special. This is, this is; it's close to town, it's -- our rivers have big, huge, nice beaches, okay? But not beaches that are accessible that you could drive a boat up on or you can drive down from the road, you know, and park a bunch of rigs and have a get-together or rent a boat or whatever you want to do there. It's very special and very unique.

RP2, p. 469, ll. 1-7

This sandy beach makes the land here more unique. Mr. Eggleston explained why beaches like his are so rare along the river:

Q. Do you use Aardvarks to rent out the beach to special occasions now?

A. That's one of the businesses that we did with Aardvarks is the access to the river is very restricted. In the whole river corridor there aren't really any other locations that are similar to this where the, back in the day when they were building roads they just built them where it was easiest to build it right along the edge of the [river], so almost the whole river corridor has the road, and then the river bank immediately beside it, and then if there is any flat ground or hillsides it's on the opposite side of the road from the river. And in this one location, and there are a couple of other minor ones, but certainly this was the biggest location where this happened. The road swung around and stayed away from the river, preserving the bar that's between the river and the road. And so even though the beaches for the most part are accessible by the river, you can drive the boat up and you can stop and the ordinary high water mark is the public access point, you can't actually drive a car to most of the spots without either trespassing on somebody else's property, or just not even having a good spot to get to.

RP1, p. 46, l. 14 - p. 47, l. 10.

Mr. Knight continued, describing the beach area of the property:

Q. So have you been out to that beach recently?

A. I have. I have.

Q. And does this, I mean the beach looks fairly nice?

A. It looks huge. Huge. Huge, nice beach. You could stack a dozen jet boats right next to each other, park them, pull them right up on the beach. That's pretty unique because up and down that river you have some private land that has access to the water, but you go pull your jet boat on it, you are going to have a bunch of dents on the bottom. You let your kid out swimming and they get swept down the river.

This is very unique property.

Q. Looking at the south end of the beach area you see a lot of trees and grass area for parking. Do all those things add value to a place like this?

A. Oh, yeah, huge.

RP2, p. 471, l. 19 - p. 472, l. 8

Even defense counsel was impressed with the land:

It sounds to me, and I actually very much agree with you this is an absolutely beautiful piece of property with beautiful access, beautiful beach, and I love to fish and I would love that property. I would totally pay that amount for the property. So it sounds to me like though with this business access you would be nuts to not put in a business access here because that adds a whole lot of value; isn't that right?

A. Yes.

RP2, p. 477, l. 25 - p. 478, l. 8

But the value comes from more than the beach. There is a nice pasture area that also adds great value to the parcel as a whole, as described by Mr. Knight:

Q. Taking another picture, looking at the same area, same general time frame, what, what is it worth to have a nice big pasture like this on the, out in the country right next to your home?

A. I mean very rare to have a pasture with nothing in between the pasture and the river except the land you own. I mean there are pastures along this river that the road is in between you and the river, but this is very valuable land.

RP2, p. 470, ll. 12-19

b. Aardvarks.

Before marrying Shannon, Rich drove the mail boat up the Snake River, and was an experienced, licensed river pilot. (RP1, p. 43, l. 19 - p. 44, l. 21.) Capitalizing on Rich's experience and river pilot license, the Egglestons opened a business: Aardvark's, which rented jet boats and water craft, and offered guided trips up the Snake River. (RP1, p. 46, l. 4 - p. 48, l. 10; RP2, p.406, l. 6- 17.)

In 2002, they moved the business to their land on the Snake River. (RP2, p. 409, ll. 15-16) Access to the beach (and the business) came through the "business driveway" which went down to the river and to the fields down there (RP1, p. 35, ll. 19-23). This kept business traffic away from their home and their little kids (RP1, p. 192, ll. 20-24), and yet the kids could be (and were) a part of the business. Shannon Eggleston explained it this way:

Actually, what happened with that is Aardvarks was a fun place to be. We all worked on it together. And our kids could be made to do stuff because they were an Aardvarks kid.

Q. What does that mean?

A. So that's the value.

Q. What does it mean to be an Aardvarks kid?

A. Somebody who runs to get whatever you ask for. You can't walk if you are an Aardvarks kid. You have to talk to

the customers while we are cleaning the boats, or you are the one that is in charge of cleaning the windshields so people can see where they are going, when you are able -- you are able to do tough things; put oil in the boat, take the boat out for the first run of the day to get it warmed up. And our older kids have this inherent thing about being an Aardvarks kid, and our younger kids don't have that.

Q. Okay. And so that kind of became an identity for your family?

A. Yeah. We had a theme song.

RP2, p. 485, l. 15 - p. 486, l. 8

Egglestons had a successful family business with Aardvarks. They brought about a third of their income or about \$35,000 per year in from the business (RP2, p. 355, ll. 7-9; p. 408, l. 21 - p. 409, l. 8) and had been in business for about 9 years. (RP2, p.409, ll. 9-18)

By putting a guardrail across the business driveway, the County cut-off access to the beach and parking area for Aardvarks. As Rich Eggleston explained it to the County in a 2011 letter (EX20):

A. "I have made clear on a number of occasions we are not willing to jeopardize the safety and well-being of our children by allowing uncontrolled public access to our business through our private driveway: Seems clear to me.

RP1, p. 197, ll. 6-10

As a result, in 2011, the Egglestons sold their boats. Rich Eggleston explained it to the jury this way:

Q. When they put a guardrail against your business drive what did you really lose?

A. Well, we lost our business and we lost our access. I lost faith.

Q. What did you lose for your kids? Did they have a job working for that business?

A. No. We're certainly damaged and hindered in our ability to have that business operate.

Q. How much, how much a year did you bring in from that business?

A. It was about a \$35,000 a year business.

Q. That business, this was 2010 when you lost that access, during the great recession, right?

A. Yes.

Q. Were you making it anyway?

A. Yeah, we were surviving.

RP2, p. 354, l. 24 - p. 355, l. 14

Q. So February came and went, March, April, here comes Memorial Day, you don't have any of the boats ready, you are not going to open up?

A. Well, we made the decision by then we had to sell the boats. We couldn't. I mean, I don't know what everybody else does for a living, but we couldn't sustain, you know, a major part of our livelihood which was pretty meager at that time, was that summertime business, and when we realized it's sort of like being a cowboy, and you got a cow herd, you know, you make your living off the calves that get born this spring, right, and that's what you are going to sell in the fall. If all of a sudden you have to sell the mother cows you don't have any calves, you don't have a business anymore. That's what we were faced with. It was a hard decision to make. The day I loaded those four boats up on a semi and sent them to Canada. It was a very sad day. And, yeah, that was --- but I had to make the decision.

RP1, p. 194, ll. 7-24

Q. Rich, I'm looking at page three of Exhibit 2. Is that one of your Aardvark boats?

A. Yeah, that's an Aardvark boat.

Q. That's the ones you rented out?

A. Right.

Q. The ones you ended up selling?

A. Yes.

Q. Could you have, could you have paid for those boats, you

know, gone out and let your family run around on them in the summer and just maintained them and afforded to do that if you hadn't sold them?

A. No. If I hadn't sold them we would have gone bankrupt that summer. Our family would have lost everything we have if we didn't have the income that those -- it might seem paltry to other people to think about, you know, 15, 20, \$25,000, worth of income, but I challenge everybody to think what happens when you just got to write that check that you are not planning on and it is going to be zero for the next four months. We are not going to be alive at the end of the summer to stand there and argue about it if we don't do something. It, yeah, it was a drastic decision but we didn't have a, it was not a recreational item for us to go fool around on the river with.

RP1, p. 195, l. 9 - p. 196, l. 6

The blocking of the business driveway cost the Egglestons their business, and it reduced the value of the land. Damages will be discussed, *infra*.

4. *Water Trespass.*

Prior to this project, storm water in the area drained away from the Eggleston property. This project changed all that, large areas of land now drained water onto the Eggleston property. (EX95)

Rich Eggleston used the County's plans to demonstrate how the

County's changes to the road changed the waterflow.

Q. So if we looked at that [referring to page C-S1.3 from EX34], can we tell anything from that about what the road surface or what the, yeah, was the road tipped one way or another at your driveway before the project?

A. Yes, we can see that.

Q. And would you show us, please?

A. Well, the existing road contour is this dashed one. So this dashed line would have been our old driveway coming up to that high point right there. And then if you look over there is a big wide spot in the road. You had the road bed plus some other flat area beyond it, but you can see that if you project this line over so you can see that's touching this grid line right here, and if you looked over here, it's below the grid line. So it was very flat which is part of the reason they wanted to improve the project. They wanted those curves to have [super] elevations, but the reality before the project, the slope was away from our property towards the other side of the road.

RP1, p. 229, l. 14 - p. 230, l. 6

The result was water that used to run away from the Eggleston property now ran to it.

Q. Let me ask about the green line, that would have been the road during the time that Keith Ausman lived there?

A. Yes.

Q. Which way would the water have run?

A. It would have run into the west.

Q. And the red line now after the project, which way does the water run?

A. Runs to the east.

RP1, p. 233, ll. 17-24

The result is that now the stormwater from the project floods the Eggleston property. (RP1, p. 234, ll. 4-7; Exs 62, 63, 66, 67, 68, 71, 76,

77-79, 81, 83-89) Engineer, Warren Watts, testified about what he saw:

Q. Have you been out to the property when it's raining?

A. Several times.

Q. What did you see?

A. I seen a lot. The water at different times, and there that was traveling down the roadway, both the Snake River Road and the Weissenfels Road and a lot of water headed toward Rich's driveway and entering his driveway and on to his property.

RP2, p. 428, ll. 6-14

Engineer Watts explained the area that water now comes from and intrudes upon the Eggleston property, using EX100 and EX216.

Storm water now flows onto the Eggleston property from two sources: surface (EX66) and subsurface (RP2, p.256, ll.1-10, EX62).

The result of channeling so much surface water onto the Eggleston property and down the driveway can be seen in the numerous exhibits admitted at trial. Mr. Eggleston explained EX63 as follows:

A. That's a picture. So we have had several rain storms between the conclusion of the project and where these pictures are taken. I came out after one of them, and the rainwater channels off the road and then comes down on to the driveway and starts to erode the side of the driveway so I'm trying to show the size of the rock it's moving with my Leatherman out there and then also I'm trying to show the undermining effect because it's starting to undermine the asphalt itself. And that's off the roadway and on the driveway areas.

RP2, p.267, ll. 16-25.

The surface storm water washed gravel and debris from the

roadway, roadbase, and driveway onto the Eggleston property. (EX 67)

It eroded slopes that should have been retained by rockeries.

5. Damages

Testimony regarding damages came from several witnesses: Rich and Shannon Eggleston, and Steve Knight were the primary sources.

The jury, after considering all the evidence presented to them, awarded a total of \$1,650,000 in damages (CP, at 3), which was broken down as follows: Breach of Contract damages \$800,000; Inverse Condemnation damages: \$600,000; Water Trespass damages: \$250,000. (CP, at 1-2) This is more than the initial ask by the plaintiffs, but within the amounts demonstrated and argued. (RP3, p. 730, ll. 4-24)

The defendants asked for a new trial, (CP8-13) and the trial judge granted a new trial if Plaintiffs did not accept a remittitur reducing the verdict to a total of \$1,000,000 (which is what was initially requested by the plaintiffs (CP3, p. 709, ll. 11-15)) as follows: Inverse Condemnation: \$650,000; breach of contract \$250,000; and water trespass: \$100,000. (CP, at 77)

Defense counsel introduced the jury to one set of values that credibly support the greater numbers awarded by the jury. In cross

examination of Mr. Steve Knight. Mr. Knight's initial testimony of damages included the following (in addition to the testimony quoted herein, *supra*):

"This is very unique property." (RP2, p. 472, l.4)

Q. Looking at the south end of the beach area you see a lot of trees and grass area for parking. Do all those things add value to a place like this?

A. Oh, yeah, huge.

(RP2, p. 472, ll 5-8)

Q. Were you able to come up with a value range if the business drive were in place and they were able to have that beach business running?

A. Yes.

Q. And what is the value range for the property with the business drive?

A. 750 to a million dollars.

Q. What is it worth without the business drive?

A. 350.

Q. 350. So it had 450 to 650 depreciation?

A. For sure.

(RP2, p. 472, ll. 12 -22)

Q. And if rockeries were there would they add to the value of the property?

A. Absolutely.

Q. Why is that?

A. Well, it's really ugly now, and if you had good access to this property, and when we're talking about the raw real estate being worth a million dollars, somebody might come in there with some resources and put something in there that's worth eight or 10 million dollars in the future and driving back and forth and looking at that what's there now is not nearly as nice as having some well-planned rockery.

(RP2, p. 473, ll. 3-13)

Q. So the two neighbors to the south would be multi-million dollar homes?

A. Absolutely.

Q. How much would a rockery add to, if you had the privacy from the rockery, you had the beauty from that, how much value would it add?

A. 150 to \$250,000 probably.

(RP2, p. 473, l. 20 - p.474, l. 1)

Q. Now, as you were there, you also had a few -- well, we've talked about some problems. We have talked about a water line that is buried up in the right-of-way, and you don't have access to the water line. Is that a problem?

A. Absolutely. If you go to sell a property that has what we call a latent defect, which is not a defect that's readily apparent to a buyer but is known by an agent or an owner, it has to be disclosed; termites, maybe you know about some termites in your house, but somebody is going to have a rough time finding them, might be back in a corner. Having a water line that's buried nine feet under the ground that's got rocks right on top of it is a latent defect that's not if, it's when that has a problem, and, you know, whoever owns the property owns that problem then and what do you do about it? So it needed to be disclosed if you ever sold the property.

Q. Does that reduce the fair market value?

A. Definitely. Doesn't help. Definitely reduces your property value.

Q. What about, we talked about storm water intrusion. Is that considered a latent defect as well?

A. Absolutely.

...

Q. With those two latent defects how much would that affect or would you anticipate that would affect the fair market value of the land?

A. I'm not sure that I looked at those things as a value before, but, you know, 50 to \$100,000 at least.

(RP2, p. 474, l. 2 - p.475, l. 6)

However, during cross-examination, defense counsel was able to bring in evidence which supported greater damages. The testimony went as follows:

Q. Well, if you're diminishing the value from 350 how much does good land along that river go for for an acre?

A. That property is very valuable. Right next to it sold for 100,000 an acre.

Q. Okay. Is, does the one next to it have a beach?

A. No.

Q. Okay. But you said that beach adds a lot of value to the property?

A. It does.

Q. 100,000 an acre, eight acres, 800,000, plus you have to add, because the beach would add, even without a rockery retaining wall, without a business drive, it is still worth \$800,000 or more, isn't that right, according to your math?

A. No.

Q. What am I missing?

A. It's the access that we're missing.

(RP2, p. 477, ll. 1-16)

The trial court issued a letter decision on December 31, 2018. In that decision, the judge primarily discussed the facts he relied upon in 3 paragraphs, beginning at the bottom of the first page (CP75) and continuing through the first to complete paragraphs on the second page (CP76). The Court concluded that there “was no testimony about a loss of \$1.65 million”, that the “verdict amount was substantially greater than what was requested in closing argument and was not supported by

evidence” and concluded “that the jury based their damage awards at least in part on a desire to punish the County for its bad treatment of one of its own citizens.”

V. ARGUMENT

1. THE JURY VERDICT IS SUPPORTED BY SUBSTANTIAL AND UNREBUTTED EVIDENCE AND MUST STAND

There is a strong presumption that a jury’s verdict is correct. *Bunch v King Co. Dept of Youth Services*, 155 Wn.2d 165, 116 P.3d 381 (Wash. 2005). A court only has authority to grant a remittitur in those limited instances where the jury’s verdict is outside the range of substantial evidence in the record, shock’s the court’s conscience, or is unmistakably the result of passion or prejudice after reviewing the evidence, including all reasonable inferences, in the light most favorable to the non-moving party. (See *i.e.*: RCW 4.76.030; *Bingaman v Grays Harbor Cmty. Hosp.*, 103 Wn.2d 831, 699, P.2d 1230 (Wash. 1985); *Collins v Clark County Fire Dist. No. 5*, 155 Wn.App. 48, 231 P.3d 1211 (Div. 2, 2010); *Meinhart v. Anaya*, 1 Wn.App.2d 59, 403 P.3d 973 (Div. 2, 2017).)

a. Standard of Review

When reviewing a trial court's order remitting a jury's award of damages, the review is *de novo*. *Bunch v King County Dep't of Youth Services*, 166 Wn.2d 165, 176, 116 P.3d 381 (Wash., 2005).

b. Jury verdicts are to be rarely overturned.

i. Jury verdicts must be protected unless the high burden of showing "unmistakably" that damages are "flagrantly outrageous and extravagant"

Washington statutes have set the standard necessary for the court to intervene in cases in which it is alleged that the jury acted as a result of passion or prejudice: the jury's action must be "unmistakably" the result of passion or prejudice.

The verdict is the jury's constitutional province and there is a strong presumption it is correct. *Bunch*, at 176. The verdict of a jury does not carry its own death warrant solely by reason of its size. *Kramer v. Portland-Seattle Auto Freight, Inc.*, 43 Wn.2d 386, 394, 261 P.2d 692 (1953). "Before passion or prejudice can justify reduction of a jury verdict, it must be of such manifest clarity as to make it unmistakable." *Bingaman*, 103 Wn.2d 831, 836, 699 P.2d 1230 (Wash. 1985).

The Supreme Court further amplified this point:

"The damages, therefore, must be so excessive as to strike mankind, at first blush, as being, beyond all measure, unreasonable and outrageous, and such as manifestly show the jury to have been actuated by passion, partiality, prejudice, or corruption. In short, the damages must be flagrantly outrageous and extravagant, or the court cannot undertake to draw the line; for they have no standard by which to ascertain the excess."

Kramerv. Portland-Seattle Auto Freight, Inc., 43 Wash.2d 386, 395, 261 P.2d 692 (1953) (quoting *Coleman v. Southwick*, 9 Johns. 45, 6 Am. Dec. 253 (N.Y.Sup.1812) (Kent, Ch. J.)).

Bunch, at 179.

ii. The reviewing court is to take the evidence, and all reasonable inferences, in the light most favorable to the non-moving party.

In evaluating the trial court decision, the appellate court is "in as good a position to determine the sufficiency of the evidence" as the trial court because the trial court is "required to specify why they are ordering a new trial, including reasons outside the record". *Bunch*, at fn.6.

A reviewing court may only interfere with the jury verdict when there is no evidence or reasonable inference from the evidence to justify the verdict. *Meinhart*, at 65-66, 403 P.3d, at 976. *See also: Collins v. Clark Co. Fire Dist. No. 5*, 155 Wn.App. 48, 82, 231 P.3d 1212 (Div. 2, 2010). In *Chapman v Black*, 49 Wn.App. 94, 97-98, 49 Wn.App. 998 (Div. 1, 1987), the court worded it this way

When there is conflicting evidence, once the jury has reached its verdict, any inquiry by the court is foreclosed, unless, as a matter of law, the court can say that there is no competent evidence or reasonable inference therefrom to support the jury's finding in favor of the nonmoving party.

c. We look to the record

In *Myers v Harter*, 76 Wn.2d 772, 459 P.2d 25 (Wash. 1969), the Supreme Court said: “It is but a conclusion to say that a jury's verdict is excessive. Before the conclusion can be reached, it must be supported by the record. * * * We look, therefore, to the record.”

d. The evidence the trial court did not consider

The County hired “qualified appraisers and appraisal reviewers” to “carefully consider[] all the elements which contribute to the market value of” the Egglestons property. “By law, they [the appraisers and appraisal reviewers] must disregard any general increase or decrease in value caused by the project itself.” (EX39)

After careful consideration, and based on the report from the appraisers and appraisal reviewers, THE COUNTY OFFERED “\$132,332.00 for 0.38 acres of land in fee ...”

Exhibit 39 is the offer letter from the County to the Egglestons. It was admitted without objection. (RP1, p. 183, ll. 7-12)

At the time of the offer and the appraisal, the Egglestons were actively operating Aardvarks. (Aardvarks was moved to the property in 2002. (RP2, p. 409, ll. 15-16) The appraisal was done in 2008. (RP1, p. 67, ll. 4-13) Aardvarks was closed in 2011. (RP1, pp. 190-194) Thus, the value of the land, including the business, was calculated. The “market value” of the property was \$132,332 for 0.38 acres. That is: \$348,242 per acre ($\$132,332 \div 0.38$), or \$2,785,937 (rounded) for the eight acres ($\$348,242 \times 8$).

e. When the missing evidence is included with that which the trial court considered; the evidence supports a much larger verdict than what was actually awarded.

The trial court provided a 3 page Letter Decision (CP 75-77) handing down the decision to grant a new trial if Plaintiffs did not agree to a remittitur. In that 3-page letter, the facts of the case are predominantly addressed in 3 paragraphs: the last paragraph on the first page, and the first two full paragraphs on the second page.

The trial court first recaps testimony from Mr. Steve Knight and the opinion that the property was “worth \$750,000 up to \$1 million.

Without the business driveway the market value is reduced to \$350,000.”

CP 75. The court continues:

However, upon cross-examination he testified that neighboring property had sold for \$100,000 per acre which defense counsel pointed out should mean that the Eggleston’s eight-acre property – which is more desirable because of the beach and river access – should be worth at least \$800,000 in its current condition. During closing argument, Plaintiffs’ counsel turned the tables somewhat, reasoning to the jury that because Mr. Knight had testified that the current market value was only approximately one-third of what it otherwise would be, that the jury might therefore infer that the property with the driveway should have been worth as much as \$2.4 million (3 x \$800,000). **Mr. Knight himself did not so testify.** While it is true that a party is entitled to the benefit of all the evidence whether or not that party introduced it (Instruction No.1), a jury is not entitled to conjecture. The Plaintiffs now again rely upon this bad logic to justify the verdict. **The verdict amount was substantially greater than what was requested in closing argument and was not supported by evidence.**

CP, 75-76 (emphasis added).

The trial court erred in this analysis. By requiring direct testimony, the trial court misapplied the law, failed to allow for reasonable inferences, and reached an erroneous conclusion. Though the undersigned has not seen case law use this wording, is it not the intent of our jurisprudence to view all evidence and reasonable inferences in favor of the jury and verdict? Do we not believe that the constitutional province of the jury should only be invaded upon clear and unmistakable error by

the jury? In failing to acknowledge the reasonable inferences based on the adduced evidence, the trial court improperly invaded the jury's verdict.

The jury had two ways to calculate the land value: that which was argued in closing arguments (based on the Steve Knight testimony) and that based on the County's appraiser's finding and the County's offer of "market value". The Steve Knight method yielded a value of \$2.4 million for the property, the County appraiser method yields a \$2.78 million value for the property. The two calculations are within about 12% of one another.

As the trial court noted, the Egglestons ARE entitled to the benefit of **all** the evidence. The jury is also expected to bring their common sense and life experiences with them when they come into the jury room. Can it be said that a jury that awards damages **within the ranges supported by the evidence** acted with passion or prejudice?

Based on the County's appraiser, the damage calculations could have been \$2,335,937 (\$1,985,937 (land) + \$250,000 (rockeries) + \$100,000 (water trespass¹⁴). The jury came back with a verdict which was

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Mr. Knight's testimony of the latent defects affect on the value of the

as much as \$685,937 LESS than the evidence supported!

The trial court must be reversed.

2. THE TRIAL COURT ERRED IN FINDING THAT THE VERDICT WAS A RESULT OF PASSION AND PREJUDICE.

The trial court notes:

Plaintiffs ... deliberately drove home the point that Asotin County treated Mr. Eggleston badly throughout the entire project. There was testimony that a county commissioner openly disparaged Mr. Eggleston at a public hearing. Exhibit 94. There was testimony that the dirt slope was constructed instead of the designed and promised rockeries to minimize construction costs. The County ignored Mr. Eggleston's concern about drainage issues and refused to make any concessions to adjust the guardrail blocking the driveway. While the County belated offered to widen the driveway, the testimony was that the fix would have created a structural weakness in the driveway. The Court can only conclude from the above facts and circumstances that the jury based their damage awards at least in part on a desire to punish the County for its bad treatment of one of its own citizens.

CP, at 76.

What the Court fails to note is that none of the above was

land was "50 to \$100,000 at least." RP2, p. 475, l. 2. There was some ambiguity in what he said, the trial court took it to mean "as much as \$100,000", but it could have been understood to mean that much for each of the two listed latent defects. Plaintiffs do not add the additional amount in our calculations here, but only note the ambiguity and the way the trial court addressed it.

objectionable or inflammatory. Exhibit 94 was offered and admitted without objection. Showing the dirt slope instead of contracted rockeries is part of the proof of the breach of contract. So, too, with the guardrail; it goes to breach of contract and inverse condemnation. Evidence about the construction of the business driveway, goes to breach of contract and inverse condemnation. Simply put, a plaintiff cannot prove a defendant liable of breach of contract, and inverse condemnation and water trespass without proving the defendant did something wrong. Proof that the County did something wrong is NOT proof of a jury acting out of passion or prejudice. The trial court's conclusion that the jury's verdict was a result of passion is just a conclusion, and is not supported by the record.

In *Collins v Clark County Fire Dist. No. 5*, the appellate court reversed the trial court's erroneous granting of remittitur to one part of the case. The trial court relied on reasoning remarkably similar to that found in the case at bar.

In *Collins* the jury heard about repulsive acts of sexual harassment and discriminatory treatment of subordinate female employees and plaintiff's counsel was inflammatory in closing arguments. The reported opinion notes

trial court reasoned that (1) the jury's determination of

Larwick's economic damages award “was influenced by ... [a] feeling of resentment against the District for an action against an employee who ... had been one of the primary persons putting the program in place”.

Collins, at 89.

The trial record demonstrated that the plaintiff had been the “target” of terrible acts of harassment and discrimination that were detailed to the jury in the trial.

The court of appeals reversed the trial court, stating:

But we review the trial court's reduction of the jury's damages award *de novo*, looking at the facts in the light most favorable to Larwick and presuming the correctness of the jury's verdict. Bunch, 155 Wash.2d at 179-80, 116 P.3d 381 (citing Sofie, 112 Wash.2d at 654, 771 P.2d 711, 780 P.2d 260). Having applied this standard of review to the record before us, we cannot say that jury's verdict is outside the range of substantial evidence, shocks the conscience, or appears to have resulted from the jury's passion or prejudice. Bunch, 155 Wash.2d at 179, 116 P.3d 381 (citing Bingaman, 103 Wash.2d at 835, 699 P.2d 1230).

Collins, at 89

So, too, with the case at bar, this Court must review the trial court's reduction of the jury's damages award *de novo*, looking at the facts in the light most favorable to Mr. and Mrs. Eggleston and presuming the correctness of the verdict.

And in so doing we will find as the *Collins* court did:

Thus, the record does not support the trial court's

conclusory determination that substantial evidence failed to support the jury's damages award. *Bunch*, 155 Wash.2d at 179, 116 P.3d 381; RCW 4.76.030. On the contrary, the evidence, especially viewed in the light most favorable to the nonmoving party, namely, Collins and Larwick, shows that the trial court improperly substituted its opinion for that of the jury on a key question of fact. Strongly presuming that the jury's damages award is valid, we reverse the trial court's partial grant of Defendants' motion to remit and we remand to the trial court to reinstate the jury's verdict and damages award. See *Bunch*, 155 Wash.2d at 179, 116 P.3d 381 (citing *Sofie*, 112 Wash.2d at 654, 771 P.2d 711, 780 P.2d 260).

Collins, at 93.

The trial court must be reversed and the verdict reinstated.

3. ATTORNEY FEES

The Egglestons hereby request attorney fees pursuant to RAP 18.1 and RCW 8.25.075; which provides for an award of "costs including reasonable attorney fees ..."

"RCW 8.25.075 clearly manifests a legislative intent that if a condemnor chooses to take property without instituting condemnation proceedings, the owner shall be reimbursed for his costs of litigation in obtaining his constitutionally guaranteed just compensation." *City of Snohomish v. Joslin*, 9 Wn.App. 495, 500, 513 P.2d 293 (1973).

By prevailing herein, the Egglestons are entitled to an award of reasonable attorney fees and costs on appeal.

VI. CONCLUSION

The jury's award in this case is not "so excessive as to be 'flagrantly outrageous and extravagant', particularly in light of the strong presumption we accord to jury verdicts." *Bunch*, 155 Wn.2d at 182. These words perfectly apply to the case at bar. The very high standard that must be cleared before a trial court may invade the constitutional province of the jury has not been met here. Indeed, by reviewing *all* of the facts and reasonable inferences, and giving deference to the jury (not the trial court), this Court can only be left with the singular option of protecting the jury and reversing the trial court.

Based on the foregoing facts and law, the trial court must be reversed and the jury verdict be reinstated.

Respectfully submitted this _____ day of March, 2020

Law Offices of Todd S. Richardson, PLLC

/s/ Todd S. Richardson
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of March, 2020, I caused a true and correct copy of this Supplemental Amended Brief of Appellant to be filed with the Court of Appeals Division III via JIS-Link, and that through their email service be served on the following:

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Todd S. Richardson
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APPENDIX

A

DIARY OF RIGHT OF WAY ACTIVITIES
ACQUISITION

Agent: Melinda Raber
Property & Acquisition Specialist

Project Title: Ten Mile Bridge #1

Parcel No: 5-00105
Sheet: 2 of 3

Appraisal- \$134,132.00 (\$134,200.00 rounded)
Fee: \$62,732.00
Damages: \$71,400.00

Contact: Richard J. Eggleston
Shannon M. Eggleston
7357 Snake River Road
Asotin, WA 99402-9504

Phone: (509)243-6030 Home (509)243-3545

11/17/08: Al Rouse assigned this file to me. The legal descriptions have been forwarded from the consultant and a copy of the cover letter that Al prepared. We are waiting for remaining appraisals before starting the offer letters.

11/21/08: All appraisals, DV's and corrected AOS's are here and per Al we are ready to send out the offers with the exception of confirmation from the County pertaining to the usage of the eminent domain language in the offers.

11/25/08: Risa Foley and I will be working jointly on this project with each of us assigned specific files. We sat down and went over the plan sheets and prepared all forms for each file.

12/1/08: I have reviewed the legal description and will get the documents ready today. I have an address but at this time I do not have a phone number.

Raber	EXHIBIT	2
DATE	9-30-15	MJN

12/2/08: Al has been given the ok on the eminent domain language for the offer letter. He has asked that we hold off on mailing the offer letters as the county is trying to verify additional funds needed before mailing offers.

1/5/09: Al has stated that the county has given the ok to move forward with the offer letters. The funding has been secured.

1/6/09: I have completed getting the offers ready for certified mail.

1/7/09: The offer letter was mailed out today under certified number 7003 2260 0003 8214 8338. The Offered amount is \$134,200.00 Rounded.

1/9/09: The certified package was signed for by Shannon Eggleston.

1/12/09: I received the certified receipt back from the post office.

1/13/08: I have reviewed the appraisal again to make sure I have a familiar understanding of the value. Mr. Eggleston has made it known that he is not in favor of this project and will most likely ask many questions as to value
 Later in the day: I had a message from Mr. Eggleston stating that he had a few questions about the project. I returned the call and talked to Mr. Eggleston and asked what his questions for me were. He said he has a history with the county as being the trouble maker and was sure I had heard about it. I told him that I had not heard anything specific. He stated to me that his main concerns were in regards to the new driveway taking up a large portion of the horse pasture that now exists. It won't be large enough to accommodate a horse in the after. He also stated that it is his understanding that after the project is completed he will be left with one access point. He has young children and his concern for safety revolves around the fact that business people will be coming onto the property in larger rigs and without the business access it puts them on his residential driveway with children out there in the way. I told him that I would need to talk to the county about the access issue and at this point could make no promises.
 We made an arrangement to meet on Thursday the 15th of January at 8:00am.

1/15/09: Risa Foley and I traveled to Asotin to meet with Mr. Eggleston. Risa also had meetings with other property owners. It was decided that she should come along for my meeting to take notes because we anticipate a lot of questions that we will need to address. It was my understanding that he is not happy with the project and wants things to be quite a bit different than they are projected on the plan sheet.

We met with Mr. Eggleston, his wife and another property owner from the project that happens to be the father of Mr. Eggleston's wife. The meeting was informative and for the first meeting my objective was to find out what Mr. Eggleston wants and how we can accomplish the settlement and make sure all the bases are covered. The meeting lasted four hours and was very productive. The overview to all the conversation that took place is that the Eggleston's need to address the access points and retain at least two of the four that they have now. The way the plan sheet shows the access it will take out a large portion of the horse pasture and they would like it reconfigured to save as much of the horse pasture as possible. We walked the property and looked at the issues with the

Agent Initials 

access. I stated to him that if there is an issue with site distance or any other concerns that the county might have those issues would need to be addressed. He said if there is something about the distances and where the location has to be then he would want to be quoted an RCW or something from the Design Manual to justify the county's decision. I took some pictures of the area to take back to the county. The suggestion was made that he would be willing to put in his own roads once the approaches were determined and established. He stated that then he could put it in the way he wanted it to go across his property. I told him I would present that proposal to the county. Mr. Eggleston said he would expect to be paid the dollar value of how much it would cost the contractor to install the driveway.

The other big issue is the water line. The domestic water comes from a natural spring from across the road. The pipe for the water runs under the county road. He made the request that the line be put in a larger conduit than may be required so he would have plenty of room to maneuver if he ever needed to replace the line. Again, I told him this would all have to be confirmed with the county. During the conversations about both access and the water line there were many questions about the process and how it would be accomplished. I told Mr. Eggleston that once it was agreed with the county the changes would be made with a construction memorandum to assure that the changes were not overlooked but the details were impossible to address at this time. He had several smaller issues that included saving some of the trees and being able to perhaps use part of the right of way that runs along the toe of the slope. Again I told him that all this would need to be cleared with the county. Another issue that seemed small but that he stated was important to him is the location of the pig pen. Where it sits now is the only place on the property that they feel they want it because of the winds, flies, and everything else unpleasant that goes along with raising pigs. If they are allowed to leave it, a small portion will be at the toe of the slope and encroaching on county property.

There is one tree that falls just outside the new R/W. I told him if the ground needs to be disturbed it could damage the root system and he could loose the tree. He has several other trees along the road that work as a barrier. He wants to try and transplant some of those to a new location. He may want to go ahead with that the first sign of spring. I said I would double check with the county but didn't think that would be a problem. They are not going to use the trees for anything. They appear to be something like a Sumac shrub. I made a verbal offer for the .38 of an acre needed plus the temporary construction easement for a total of \$134,200.00 (rounded) I also explained the \$750.00 allowed for the SEA if they are not satisfied with the appraisal.

Mr. Eggleston said the money offered appears to be satisfactory provided we can come to an agreement on the issues he has raised. I asked him about the two loans on the property and let him know that we would need to get a partial release on both loans. He said that he is planning on refinancing and those two loans will go away. I said that we could give the legal description to the new lender and when they do the loan the legal would except the R/W portion out. He said no, he wanted to apply for the loan without mentioning the R/W and we would deal with it after the loan goes through. Again I told him that it will be up to the county to approve all requests made at this meeting. He asked that I send him a draft of what I would propose to the county prior to sending it to the county. I told him that I would do so. He wants to make sure everything we talked about would be addressed with the county.

Agent Initials
ME

1/20/09: I called the county and talked to Dick Gahagan and briefed him on the meeting. I told him things went well and that I would be presenting the issues to the county next week to see if the requests made by Mr. Eggleston will be possible to accomplish. I set the meeting for the afternoon of January 28, 2009. 1/28/09: Risa and I traveled back to Clarkston to meet with two other property owners and also to meet with the county about the issues with Mr. Eggleston. We went over everything with the county line per line to get their input.

The first thing addressed was the Access and Safety. Mr. Eggleston stated they currently use three access points. The first one is the most southerly and closest to the bridge. The second is the residential access and sits in the middle of the property. The third is the most northerly access they use for their farm equipment. Mr. Eggleston states that they have to have at least the two most southerly access points.

The city stated in our conversation that they will give them the two most important access points and will talk to the engineer about the third one. They felt that there would be no site issues at the southerly access closest to the bridge.

Rich said he would rather do the construction work on the driveway and approaches himself. He felt that it would be done right if he did it. I told him the county would not know the exact cost and that if he wanted to do the construction he would need to get an estimate. Provided the county would even let him do it himself. The county stated that they do not want to let Mr. Eggleston do the construction. It could cause many delays if they were not able to coordinate their work with the contractors and it could cause other delays to the rest of the project.

Mr. Eggleston asked for fencing for safety issues. He is requesting a minimum of 48" high 2" by 4" grid field wire with double top barb wire. He also is requesting gates at the access points. The county says they can put in a standard swing gate at the business and residential approach. The gates will need to be set far enough off the road to allow vehicles to pull completely off the road to open said gates.

Mr. Eggleston asked if he could use part of the right of way at the toe of the slope to traverse from the northerly drive down to the rest of his property. His thought would be to run parallel along the right of way and incorporate this area as part of the driveway. The county states they don't want Mr. Eggleston using the right of way for driveway purposes. The area parallel to the right of way could be a dangerous place to be running vehicles. The county also stated that they would agree to the use of native rock per Mr. Eggleston's request for the retaining wall. He wants it to be much like the rock he has in front of his house now.

Mr. Eggleston wanted to know about the area on the opposite side of the road from his house. He states that it is hard for big rigs to turn into his driveway now and he wants to know if there will be a bump out or a turning area. The county says there is no plan to do so. The road, however, will be wider than it is now so it should be easier to make the turn. If traffic turning in was coming from the south, they still would need to cross over the lane into oncoming traffic to make the turn anyway.

The water lines were the next topic Mr. Eggleston wanted to address. The domestic and irrigation water is provided by a natural spring that is located up Weissenfels Road. The water line comes down the hill from Mr. Ausman's property and goes under the Snake River Road at approx. station 16.10 Mr. Eggleston wanted to know how the water line

Agent Initials
MR

will be addressed as it is not on the plan sheet. He wants to know if they can put the line in a bigger conduit than required so they can enlarge the line if need be at a later date. He asked about a maintenance agreement. He stated that there is no agreement now but that the water line has always been under the road. The county states they will replace the water line under the road and will put it in 6 inch conduit to allow him to use bigger water line at a future date. They will run the line and hook up the water when line work is completed. This will be done through a construction memo with maintenance language included.

There were a few additional questions asked that were more informational. Mr. Eggleston wanted to know if the construction easement would be for anything other than the construction of his driveways. I told him no, it would be used only for his driveways and that once the work was completed they would be gone but he was being paid based on a one year time frame. He also wanted to know where the mail box would be located and I told him it would be at approximately the same location. I told him he will need to check with the post office for any particular details.

Mr. Eggleston stated again that he would rather step the retaining wall areas with native rock rather than keystone, brick wall or gabion wall. (The county already stated that his request would be acceptable with them.)

The next issue that Mr. Eggleston has again addressed lies with the pig pen location. It will be partially in the right of way.. I talked to the county and they stated that they will allow the pig pen to stay but that they don't feel a need for a retaining wall. The slope won't be that close to the pig pen. They will decide how to handle the encroachment. They are talking about using a permit to allow the encroachment. Nothing has been drafted at this point.

These are the questions and answers from both Mr. Eggleston and the county based on our first meeting on 1/28/09

1. Can the Eggleston's keep the three currently used access points pretty much where they are?
 - The first access point is used for farm work and equipment.
 - The second access point is residential use
 - The third access point is for their business access.

Mr. Eggleston's comments: We require a minimum of two access points, with at least one of the access being capable of access/egress from both directions of farm equipment (20' F600 truck with 28' trailer, or a semi with 48' trailer (Hay), or crew cab 1 ton with 32' boat trailer). Also, South edge of current burned out foundation needs to have access (similar to current use) to allow boat/RV/ other storage.

The county agrees to two access points with the most northerly access still in question. It will depend on safety. They will ask TDH to look into it.
Rich is in agreement with this .

2. The business access is closest to the bridge. Are there required set backs that will force the access to be moved closer to the north if in fact the county approves the three access points?

Agent Initials <i>ML</i>

County comments: The business access closest to the bridge will have no site issues and can remain in approximately the same location. The residential access can remain the same also. TDH will need to look at the northerly access to determine if feasible to keep. (Approaches will show on construction plans)
TDH still has not completed the plan revision showing the northerly access

Rich would rather complete the driveway construction and be given the full construction allowance of the existing planned work. If the County gives you permission to complete the construction, we will need to have you obtain some estimates for what it will cost. At this point, the County has a rough estimate of the expected cost for the work. The County will not know the "exact" cost for the work until after all property is purchased and the project is certified. At that time, the project will go up for bid and the contractor will submit his costs within that bid. The estimates you obtain will provide documentation to support the cost for you to do the construction.

Mr. Eggleston's comments: In order to save time and money, if we are allowed to construct our own final drives, we will not ask for any more \$\$ than what is currently designed, based on a line item bid for all driveways on project (we would expect the same in place unit pricing on our drive (\$/sf retaining wall + \$/cy fill + \$/cy surface + \$sy approach as the other drives on the project.

County comments: County will do the approach and driveway construction. There will be time frames and scheduling issues that contractor will not want to address with property owners as far as construction. They will give notification if there is a short interim of time during construction when the property will not be accessible.

Rich is in agreement with this

3. For safety purposes can fencing be installed along the R/W? Mr. Eggleston is requesting a minimum of 48" high 2" by 4" grid field wire with double top barb wire. He also is requesting gates at the access points. I asked Rich if he really wants a gate at the access point for the business? That would mean that folks would have to get out and open a gate while possibly towing a trailer or boat. That in itself could be potentially dangerous if the rig is too long to get totally off the road.

Mr. Eggleston's comments: Yes, we want gates. We currently use a cable to eliminate access on the drives when necessary. A chain link fence would also be acceptable. The improved fence specification allows for the increased risk of having high speed traffic so much closer to our animals and children.

County comments: Yes, they can put in a standard swing gate at the business and residential approach. The gate will need to be set far enough off the road to allow vehicles to pull completely off the road to open said gates.

The county has agreed to the fencing and gates. It would be their preference for you to get a bid on grid field wire fencing and standard swing gates for the two lower approaches. The county will give an allowance for gates and fencing based on your bid. You can do the construction after the project is complete at your leisure as long

Agent Initials <i>MR</i>

as you keep the fence outside the right of way and the gates far enough back that the long rigs have room to pull completely off the road to open the gates so they are not obstructing traffic on Snake River Road.

Rich is ok with this

4. Depending on where the access points will be, would it be possible to use part of the right of way along the toe of the slope to use as part of the driveway? This may not be necessary if the access points for the residence and business can remain in approximately the same place as now existing.

Mr. Eggleston's comments: We would require an access easement be in place for our driveway and any required retaining walls on and across any portion of the county ROW as part of the purchase agreement. This is not negotiable.

County comments: The access points will show on the construction plans. They will be at approximately the same location as now established. Any necessary retaining wall will be in native rock per your request. Rich will not be allowed an easement to access across and through any portion of the county R/W with the exception of designated approaches. The county requires you to be more explicit as far as the type of rock you want. They have agreed to use "native rock" per your request. You won't have an easement "carte blanche" across the county R/W. Access points will be as shown on the construction memo. The access points would be subject to county ordinances and won't be taken from you.

5. Will it be possible to have a wide turn area across the road from the driveway in order to give enough turning radius to be larger than average rigs into the business access? (Rich, I'll show this on the aerial you gave me.)

Mr. Eggleston's comments: Without the wide turn, it will be impossible for necessary farm/boat access.

County comments: There is not a wide turn area. Road will be wider than it is now and thus the turn radius will be greater than it is now.

Water Lines

1. The domestic and irrigation water is provided by a natural spring that is located up Weissenfels Road. The water line comes down the hill from Ausman's property and goes under the Snake River Road at approx. sta. 16.10.
 - A. Do we need a plan revision showing the water line being replaced?
 - B. Can he have the line encased in a somewhat larger conduit for easier access for repair or for installing a bigger line in the future?
 - C. Will the property owner be responsible for future repairs?
 - D. Does there need to be a document in place allowing the line to be under the road?

Agent Initials <i>MTR</i>

County comments: The water line will be the same size as existing line encased in a 6" SDR 35/PVC pipe under the road at approximately the same location as located now. It will be reconnected to the existing water line. There will be a construction memo signed by both parties with maintenance language included.

Additional Questions to be Answered:

1. Where will temporary access be located?

County comments: Temporary access will be at a reasonable location for ingress and egress to and from property. There is no way to know exactly where that will be.

2. How long will the construction easement be in effect?

County comments: You will be paid based on a twelve month time frame but the construction memo will only be in effect for the amount of time it will take to construct the approach and feather into existing driveways.

3. Is the temporary construction easement only for the purpose of building the driveways or will it also be used for a staging area for the project?

County comments: Your temporary construction easement will be for the construction of your approaches and driveways only.

4. Where will the mail box be located and will there be a pull-out area?

Mailboxes will be relocated at approximately the same location.

5. What will the slope area look like (rock wall, gabion wall, brick wall, keystone wall?) Would rather step the walls with natural rock rather than have a concrete type wall. Possibly use native rocks and stack them. This would be more attractive to look at in their opinion.

Mr. Eggleston's comments: This is less optional than it sounds. We want a terraced slope so a vegetative screen can be placed to replace the trees and bushes we planted to screen/shield our house from the road. Also, the rock retaining wall would allow for our drive along the ROW. A rock retaining wall is the cheapest form of retaining wall, and will only be retaining 1'-5' vertically. A gabion basket, concrete, or CMU wall is acceptable at the pig pen area.

County comments: A native rock retaining wall will be ok. You can drive along the R/W on your property but there will not be an easement in place to use the county R/W. There

Agent Initials <i>MR</i>

is no plan for a retaining wall behind the pig pen. It does not appear that the slope will affect the pig pen as there is no fill there so the wall would not be necessary. Rather than by permit, the county will allow the pig pen encroachment via the construction memo.

6. Will the utility pole along the road be in approximately the same location? Now it is located close to the only feasible place to put a well if they ever decide to do so. If it stays in approximately the same location there will be less of a financial impact to run the line to a well. (There are no immediate plans to put a well in)

County comments: Per construction plans, pole will stay in approximately the same place. Power lines are under the jurisdiction of Clearwater Power.

7. If there is a break in the portion of the water line that runs under the road, who is responsible? Does there need to be some type of agreement?

County comments: There will be a construction memorandum for the sleeve and water line under the road with a statement in regards to the maintenance. Once the line is in and connected it will become the property owner's obligation to do all maintenance.

8. How high will the grade be for the driveway approach (access points)?

TDH still has not given us an answer

9. Can they have some kind of trees along the road for privacy issues?

County comments: Can plant along the R/W but can't interfere with site distance.

10. What will the final elevation of the bridge be?

County comments: Still pending, will get an answer when determined.
TDH still has not given an answer as of 3/3/09

11. Can the pig pen be saved and remain in the same location. He states there isn't any place close that would work and keep the flies, etc. downwind from the house. This is the best location. He would like some kind of wall on the R/W side at the toe of the slope for the pen.

Mr. Eggleston's comments: This is the only location available and must be maintained. The current pen size is the minimum necessary for the # of pigs used in 4H. A modification in shape would be possible if it maintains the existing area. If any of the evergreen bushes that currently screen the pen are removed, they would need to be replaced, as would any fencing. This is the one area where we would be open to a vertical retaining wall.

Agent Initials <i>MTZ</i>

County comments: There will be a small portion of the pen in the R/W and the county will do a R/W use permit for the area if Mr. Eggleston insists. County will be responsible for repairs if fencing is damaged. As stated in # 5, there will be no need for a retaining wall at this location.

12. Will it be possible to leave the ash tree in place? The tree is just off the R/W at his existing northerly access.

County comments: If the northerly access approach is approved it may not be possible to save the tree.

 2/19/09: Mr. Eggleston called and left a message asking me when we will plan on talking again. I was on the road and planned on getting back to him the next day.

2/20/09: I called Mr. Eggleston back and left a message for him stating I would be in touch with him on Monday and hopefully be ready to set up an appointment.

2/23/09: I called and talked to Mr. Eggleston and explained that I still don't have a plan revision to show him and didn't feel I wanted to talk to him about this until we had the plan changes. He asked me if the process was going well with the county and if I felt there was anything within his requests that would be a deal breaker. I told him that I didn't think so. He then mentioned another issue that had not been brought up before. He asked what material would be used on the slopes further north in the pasture area. His concern was that rattle snakes migrate down toward the pasture and for what ever reason (nothing verifiable) he felt that grassy slopes would be less an issue than rocks. I told him I would find out and let him know. We left the conversation with a tentative appointment set for 2:00PM on Wednesday the 24th. He wanted to know if we would be ready to sign documents yet and I said no, that things that needed changes would be handled by a construction memorandum. He then stated a concern as to what would happen if the contractors did not comply with the memo. He wanted to know if his recourse would be to take the property back. I told him no, that his recourse would be to take it up with the county.

I talked to Al about looking at the construction plans and to see if he could tell what the slope cover would be. Al said to check with the county as it wasn't clear on the plans. I put a call into the county to see if they had the plan revisions yet and to ask Dick about the slope materials. Mostly I wanted to make sure a trip to Asotin would be warranted. Dick called back and said that the meeting with the engineers would not be until Thursday. He also stated that the material on the slopes would be native and the fill would be material from the cuts. He said the plan would be to seed the slopes when project was complete.

I called and left a message for Mr. Eggleston letting him know that I was cancelling the appointment for the 24th and I also relayed the information about the material to be used for the slopes.

Agent Initials
 MR

2/24/09: I called and left a message with Mr. Eggleston again stating I was cancelling the meeting for this afternoon. I also asked that he call me and give information on his loan. He had mentioned in a prior meeting that he planned to re-finance. I had told him at the prior meeting that we would need a partial reconveyance. I stated that I did not know if the lender would ask for a portion of the money or even all of it. He said he did not want to rock his financial boat by bringing up the eminent domain transaction. I said I need to know where he is in the refinance time frame. We will go ahead with the process with Wells Fargo unless otherwise notified.

2/25/09: Mr. Eggleston has not returned my call with the information needed to proceed with the partial reconveyance.

2/26/09: Mr. Eggleston called back and acted as if he had no clue about what I was referring to in regards to a partial reconveyance. I explained it to him much as I did in our first meeting. He said he never realized that potentially the bank could ask for any portion of the money offered by the county. I again stated that I did explain that to him in our first meeting. He tried to say that this process will end up costing him money because he has waited on the refinance when in fact he also said to me that he was waiting for the interest rate to go down a bit more. I also reminded him that he had said he wants no part of disclosing the new R/W with his new lender. He said he will get the information on the existing loans and we will proceed under the assumption that the deal will be completed prior to the new loan going through. He was pushing for a Monday meeting but I told him it would depend on when the county got the information to me. Mr. Eggleston said he is upset that it has been three weeks sense our last meeting and he feels we are not moving fast enough but are asking him to hurry up and get information from him for things the county needs. I asked him what he was referring to but he had no comment to justify his accusation. He just felt it was taking too long. I reminded him that he was the one with two pages of requests, a portion of which would require a plan revision. I explained that all those changes take time and so will the partial reconveyance. He stated that he will call both lenders and ask what they require to get the partial reconveyance completed.

3/2/09: Mr. Eggleston sent an e-mail giving me the contact person for each of his lenders. He stated that he gave them verbal permission for me to talk about the accounts in regards to eminent domain for the strip take the county needs. Mr. Eggleston also gave me two more of his concerns to take into consideration. He asked about capitol gains and I will suggest to him that he check with his tax accountant. We are not in the position to give tax information. His other request had to do with the footprint of a burned out building that sits on his property. He asked that any variance that needs to be in place that may be necessary will be in place to accommodate the use of the foundation for a future building. It will be my suggestion that he contact planning. As far as I know there is nothing affected by the project that will make a difference with future plans to build.

3/3/09: Mr. Eggleston called and asked if I was still planning on coming to Asotin on Wednesday the 4th of March. I said that was the plan. He stated that his plan had

Agent Initials <i>MR</i>

changed and he would be in town and wanted to talk again about his issues. I set an appointment for 3:00pm the 4th.

3/4/09: Risa Foley and I traveled to Asotin and met with Mr. Eggleston prior to my meeting with the Ausman's. Mr. Eggleston gave me the signed authorization to move forward with the partial releases needed to clear the exceptions on his property. I told him I had been in touch with both banks and the indication was that they would do the partial release without requiring payment of the funds to go towards his loans. I stated to Mr. Eggleston, that was not cast in stone. We would need to wait and see what they would require for sure.

We went over everything that was on the original list of requirements from Mr. Eggleston and I gave him the answers based on my conversations with the county. We talked about the county's proposal that any additional gates and fencing could be an administrative settlement based on two bids provided by Mr. Eggleston. That would free up the contractors from having to bid for additional material that would be used on the Eggleston property only and it would allow the construction of said fence and gates to be done at Eggleston's discretion. Mr. Eggleston did agree to the proposal. We talked about the fact that the county does not want him to use any portion of the right of way for driveway purposes. Mr. Eggleston made the statement that if he could not use a portion of the R/W it did not leave him enough room to traverse back and forth from the residential driveway to the burned out foundation and then on to a parking area to the north and to the pig pen that sets to the north also. We walked the property and Mr. Eggleston kind of talked the situation out and tried to come up with something that he felt would work. He want access to the pig pen, the ability to travel parallel to the new road which gives him parking for an R/W and access to the burned out foundation. He also wants to save the elm tree that sits in front of the northerly approach. We talked about moving the northerly approach a little further north which would give the tree a better chance of survival and a straight shot into the pig pen area. He felt it was important to drive a truck into the pig pen area for when they go to market or slaughter. We were out of time and asked if we could come back the next morning to finish the discussion. and he stated that the next morning at 9:00am would be fine. When Risa Foley and I got there at 9:00 the next morning Mr. Eggleston stated that he had a different proposal. Now the plan for three approaches, with the middle approach being the residential approach did not seem the best way for him. In his words, "I don't know why I didn't think of this before." The revisions had already been turned in to TDH for construction plan changes. Now the proposal will be to combine the residential approach with the northerly approach and again run parallel along the right of way for the driveway(using a portion of the right of way). I again stated that I did not feel the county would allow part of the driveway to be in the R/W. He was adamant that his plan would work and asked that I take his drawing to the county and present it as what he wants to make this deal happen. I told him that I would drop the sketch by on my way out of town.

I did stop by the county and talked to Dick Gahagan about Mr. Eggleston's proposal. He said that he did not want the main driveway that far north for site and safety reasons and that he did not want any part of the driveway on county right of way. He said he would need to talk to Joel and get back to me.

Agent Initials <i>JMR</i>

3/17/09: I talked to Dick and he said again that he did not want the northerly approach to be the main access into the property. He said that they had received the construction plan revision from TDH showing the three approaches that were asked for from Mr. Eggleston on our first visit on 1/28/09 and that he would e-mail it to me. Mr. Eggleston called at about the same time and wanted to know how things were going. I told him that I had just talked to Dick and he denied the proposal for the northerly approach as the main approach. I also stated that I had received the construction plan revision based on his initial request for the three approaches at approx. the same location as they were in the before. He asked that I e-mail it to him and after he takes a look he will give me a call back. Mr. Eggleston called back and was furious with the revision. He stated to me that the new plan was actually worse in many ways than their first proposal. He asked me why there was an s curve in the driveway on the southerly approach rather than a straight shot in. I said that was an engineer question. Mr. Eggleston wanted me to quote chapter and verse to the reason why or find someone who could. He went on for about an hour as to why this would not work. He then stated that he wanted to flip the approach at the bridge with the residential approach and forget the most northerly approach altogether. I said it was my understanding that he did not want the commercial approach to be where the current residential approach is because he was concerned for the safety of his children. I had referred to the southerly approach as the business approach from the first time we met and it was always my understanding that was the approach he wanted large vehicles to travel on. He had made the statement that he did not want any business traffic to come down the residential driveway. He said no, that the only users of the commercial approach would be rigs with boats and boat trailers but mostly it would be kids drinking and using the road as a way to get down to the river. He was concerned for the kids in regards to speeders that may use the approach to get to the river. He stated that big rigs would be driven down the residential approach and that usually they would be driven by Keith Ausman, the children's grandfather and that he is experienced and knows the kids are there and is always careful. This is not at all what has been talked about from the very beginning but in his mind, I had it all wrong. He said he wanted the two southerly approaches swapped and the northerly approach eliminated and that he would put his request on the copy of the construction plan I mailed him and e-mail those changes back to me.

3/18/09: Rich called back and said he has come up with a plan that changes the newest construction plan version. He asked my opinion as to whether or not it would work. I told him I am not an engineer and could not give an opinion as to how it would work. I asked him to make the changes and e-mail them to me. I said I would go over it with my acquisition supervisor, Al Rouse. After we look at it, I will give him a call and then submit it on to the county provided AJ concurs that it looks doable. When AJ and I talked about it, the feeling was that we need to make Mr. Eggleston commit to signing if the changes are made and not hold up that signing with other small details. There are two loans on the property and he needs to understand that either one or both of the lenders could ask for a portion of the proceeds. If that happens he would need to sign a new voucher showing the payment going to the lender.

Agent Initials <i>ME</i>

3/19/09: Dick and Joel from the county called and stated that there are not too many issues with the plan Mr. Eggleston proposed on the construction plan sheet. Joel has suggested that we all meet with Mr. Eggleston next week and get this resolved. If we are all in the room at the same time, hopefully we all hear the same thing. I will have documents ready on the assumption we can resolve the access issues and be ready to move to signing. Dick will call tomorrow and give me a date as to TDH's schedule.

I called Mr. Eggleston back and told him that I will be in touch with the county and present the information to them. Once we have a chance to get the county input I will call Mr. Eggleston back. He said that is fine with him. I e-mailed everything back to the county and will wait for their response. I have asked that they call me and we will set up a conference to talk about the issues.

3/23/09: The county called and stated that they are trying to set a meeting for sometime next week for all of us to meet. I let them know that Al and I could pretty much set our time schedule to what they needed but Tuesday; Wednesday or Thursday would be better.

I e-mailed Mr. Eggleston and asked when he might be available. He stated he would be out of town all next week. I let the county know and they tentatively set the appointment for the 8th of April at 9am. I called Mr. Eggleston and let him know. He said he and Shannon would be there but he was feeling somewhat railroaded with all of us being there at the same time. I reminded him that he wanted to know chapter and verse why the approaches could not be in the exact location or configuration that he wanted. The county concurred that if we were all together and figured it out together, maybe we could have closure. Mr. Eggleston agreed to the meeting but again stated that he does not want to sign anything until we have a statement from his bank in regards to the amount of money they may require.

3/24/09: I e-mailed Rich and let him know we are working on a meeting so the engineers can give him some chapter and verse answers he requested as the where and where not he will be able to put the approaches.

3/26/09: I received an e-mail from Wells Fargo giving me the contact person for the partial for the first lien on Egglestons property. I also received an e-mail from US Bank that was a cc to Mr. Eggleston stating that they should hear something that day about the partial.

4/2/09: I have not heard from either lender on the progress of the partial releases. I called and e-mailed both contacts, asking for a progress report. Later: Amber from Wells Fargo e-mailed and stated that she is following up on the partial for Eggleston's but she is still waiting for the signed letter from the Eggleston's stating that the dollar amount offered by the county is acceptable to them.

4/7/09: Rich e-mailed and wanted to know again what time the meeting with the county is on Wednesday. He also stated that he has a quote for fencing that we had talked about earlier. The quote includes two electric gates that were never discussed in any of

Agent Initials <i>MP</i>

our earlier conversations. The e-mail also stated that during the course of evaluating this project they hired engineering firms to consult about the project and they had attorney fees to analyze options. Rich is asking for an additional \$8,500.00 for expenses dealing with the evaluation of the property.

I followed up with the lenders on Eggleston's property to see if there is any thing I need to do to expedite the partials. Rich had stated before that he did not want to sign until he knew if the lenders would be asking for a portion of the proceeds.

4/8/09: Al Rouse and I traveled to Asotin to meet with the project engineer and Dick and Joel from the Asotin County Public Works Dept. The Eggleston's were also planning on being there. The meeting was scheduled for 9:00am and went for three hours. It had been agreed earlier that Rich would be allowed to put in fencing and swing gates across the front of the property. There will be three approaches with gates and fencing along the frontage. It is understood that the fencing will be along the right of way or a foot inside the right of way. Riche's bid also included electronic gates on two of the approaches for \$2,000.00 a piece. He made the argument that for the "safety of family" it would be safer not to have to get out of the vehicle to open gates. Joel agreed to allow the electronic opening for the residential approach but not for the business approach. The business approach is not used that much and the gate can be left open during the day and closed at night. The Eggleston's agreed to this proposal.

We talked about everything that had been discussed in earlier meetings as an overview and made sure we were all in agreement as to the special conditions. We went over the construction memo. And there were a couple of issues that needed to be fine tuned. One was the language about the approach locations. Cliff from TDH was very helpful in explaining where the approaches would be able to be placed. He has them as close to The Eggleston's plan as possible. (Eggleston's plan was from the first change TDH made based on what Eggleston had asked for in our second meeting) He basically wanted the approaches where they were before and did not want to loose any more pasture that necessary. The most southerly approach for the business was going to take out quite a bit of pasture based on the second plan that TDH came up with. The one approach by the bridge has to be moved about 10 feet further north than Rich wanted it but Cliff explained that it has to do with the slope and that the drive had to be at least 10 feet away. Rich was ok with that and agreed to the change. The Eggleston's ended up agreeing to all three locations. We also talked again about the rock retaining wall. They want the wall out of rip/trap type rock under State spec. #9-13.7. It was understood and agreed as to the spec. The wall would be terraced to whatever height deemed necessary at the time of construction. Cliff took notes as to how it would be on the final construction plans and Eggleston's were in agreement. Once we were done talking about and agreeing to the approaches and the retaining wall we went on to talk about the "pig pen" We determined the location and Eggleston's were assured that they could keep it where it is. They were also told that the area falls right at the cut and fill area and there would be no need to put a retaining wall around it

There were a few questions asked about the water line and the direction it should take once it comes out on Eggleston's property from across the road. The approximate (old) location is about where the driveway will be so they will need to make an adjustment in the location. Cliff assured Eggleston's that the water would not be off for an extended

Agent Initials <i>MR</i>

amount of time. It will be made clear to contractors that this is a domestic water line and will need to be hooked up as soon as possible. Both the property owner and the county were satisfied with the decisions made and put into effect with the construction memorandum. Joel also agreed to the fencing but because there was never any conversation about electric gates he was hesitant about that part of the bid. Mr. Eggleston said his concern was for the safety of his family and felt that if his wife did not have to get out of the car to open a gate it would be safer. Joel agreed to allow an electric gate for the residential approach but would not agree to pay for the commercial approach. Mr. Eggleston agreed. This only leaves the issue that was brought to the table at the final hour in regards to \$8,500.00 that Mr. Eggleston feels would be a fair amount to compensate above the appraised value of the property. This would be to cover expenses relative to the project that he has incurred in his effort to establish to his satisfaction the process and the needs of his property to widen the road. Joel and Al both explained to him that additional funds need to be justified and approved prior to any verbal agreement to meet his demands. Joel said he would take the request to the county commissioners and get back to him but could not make any promises.

Mr. Eggleston again wanted an explanation of the process to deliver proceeds to him once a deal had been cut. I had explained it to him a couple of different times and told him to go with the guide line of 45 days. Joel explained it to him again and told him that it should not take 45 days but that would give them a window in case there were any snags. I reminded him that we all left the meeting with the understanding that Joel would check with the commissioners at their next meeting and would get back to me and I in turn would contact the Eggleston's.

I talked again about the two partial reconveyances needed to clear title. Worst case would be that the banks may want some of the proceeds and the Eggleston's would have to re-sign the vouchers. I have made this statement several times and there is no doubt that they are fully aware of the situation.

Mr. Eggleston's comment to me was that he is not really concerned about it and that he feels that the banks will pass on this without asking for any of the proceeds.

4/10/09: Amber from Wells Fargo has asked for additional help in running the legal description. I sent her the curve data sheet in hopes she could run it with that.

4/13/09: I called Amber and let her know that I would have our title examiner call her and run the legal with her. Joel called and said the commissioners' meeting was held and he presented the request from Eggleston's for the \$8,500.00. The commissioners approved the request. I called Eggleston's and let them know and they set an appointment for Thursday the 16th. He is out of town and needs the appointment for 3:00pm.

4/14/09: Chris Kroll, title examiner called Amber and went over the legal description with her.

4/16/09: Mr. Eggleston was able to reach me by phone at my motel and said he had gotten back to town and wanted to know if I could meet with them earlier than 3:00 pm. We agreed to meet at 10:00am at the Public Works Building.

Agent Initials


5/1/09: The overnight package arrived and the transmittal is now complete and ready to go back to the county.

I hereby certify that the written instruments secured and forwarded herewith embody all the considerations agreed upon between me and the property owner; agreement on said instruments was reached without coercion, promises other than those shown in the instruments, or threats of any kind whatsoever by or to either party; I understand that the parcels are to be secured for use in connection with a Federal aid highway project; I have no direct or indirect present or contemplated future personal interest in the parcels or in any benefit from the acquisition of such property.

Melinda Rabe
Agent's Name

5/4/09
Date

EXHIBIT "B"

***CONSTRUCTION MEMORANDUM
(2 PGS.)***



Memorandum

Date: , 2009

To: Asotin County
FROM: Linda Raber, Property & Acquisition Specialist
South Central Region, WSDOT

SUBJECT: Construction Item
10 Mile Bridge No.1, CRP 238

Richard J. Eggleston and Shannon M. Eggleston
FA No. BRS-C023(008)
Right of Way Plan Sheet 2 of 3 Sheets
Parcel Numbers: 5-00105 (tax parcel #) 1-049-00-054-0000-0000

In the transaction with Richard J. Eggleston and Shannon M. Eggleston, husband and wife, Parcel No. 5-00105, on the above-referenced project, the following special consideration was made as partial consideration of the negotiated settlement.

It is understood and agreed that Asotin County or its assigns, agrees to install a six inch SDR 35 PVC sleeve for a private water line that now exists under the B Line Road and under the Snake River Road. Both lines will be in the approximate location as the existing lines. The lines will be replaced with like materials and reconnected on both sides of the road at the approximate location of the existing connection approximately at Station 15+60.

All future maintenance of said lines will be the obligation of the property owner, their heirs, successors, or assigns. Any future repairs of the PVC sleeve will be the responsibility of the County of Asotin. It is further understood and agreed that any future replacements of said water line under said roadway will require the property owners to comply with County requirements.

The grantors herein further grant to the County of Asotin or its agents, the right to enter upon the grantors' remaining lands where necessary, to connect the water lines.

It is also understood and agreed that the County of Asotin, or its assigns, agrees to construct three road approaches at the approximate location of:

- Driveway approach #1 (+/- Station 14+10) Most southerly approach
- Driveway approach #2 (+/- Station 15+50) Center approach (primary approach)
- Driveway approach #3 (+/- Station 16+04) Most northerly approach

Retaining wall between approach #2 and #3 to retain the integrity of the approaches constructed in a terraced design of native rock or rip/rap stated in DOT standard 9-13.7 or like material.

Page 2
Construction Memorandum

The "pig pen" located approximately at Station 17+40 will remain in the same location. The property owner will be allowed to use the portion of right of way necessary to maintain the integrity of said pig pen. Notification will be given to the property owner if the pigs need to be temporarily moved during road construction.

This encroachment that is being allowed is subject to the future needs of Asotin County. The county reserves the right to use the subject right of way if a future need arises.

~~This encroachment of the county right of way is being permitted to the present owners. Said permission of encroachment will be terminated upon any change of ownership.~~

[Handwritten signature]
4/16/09

The grantors herein further grant to the County of Asotin or its agents, the right to enter upon the grantors' remaining lands where necessary, to perform any work necessary for the construction of said approaches.

This memorandum is required for the following reasons:
Part of Negotiations

Asotin County
By: *[Signature]* 4/16/09
Joel M. Ristari, PE Asotin County Engineer Date

Property Owners:
By: *[Signature]* 4/16/09
Richard J. Eggleston Date

By: *[Signature]* 4/16/09
Shannon M. Eggleston Date

Parcel No. 1-049-00-054-0000-0000

EXHIBIT "C"

*RELEVANT PAGES OF CONTRACT PLANS/ROCKERY WALL DETAIL
(4 PGS.)*

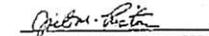
Contract Plans

TEN MILE BRIDGE NO. 1 - CRP 238

ASOTIN COUNTY, WASHINGTON
JUNE 08, 2010

ASOTIN COUNTY, WASHINGTON

APPROVED:


ASOTIN COUNTY ENGINEER

FEDERAL AID PROJECT NO. BRS-C023(008)



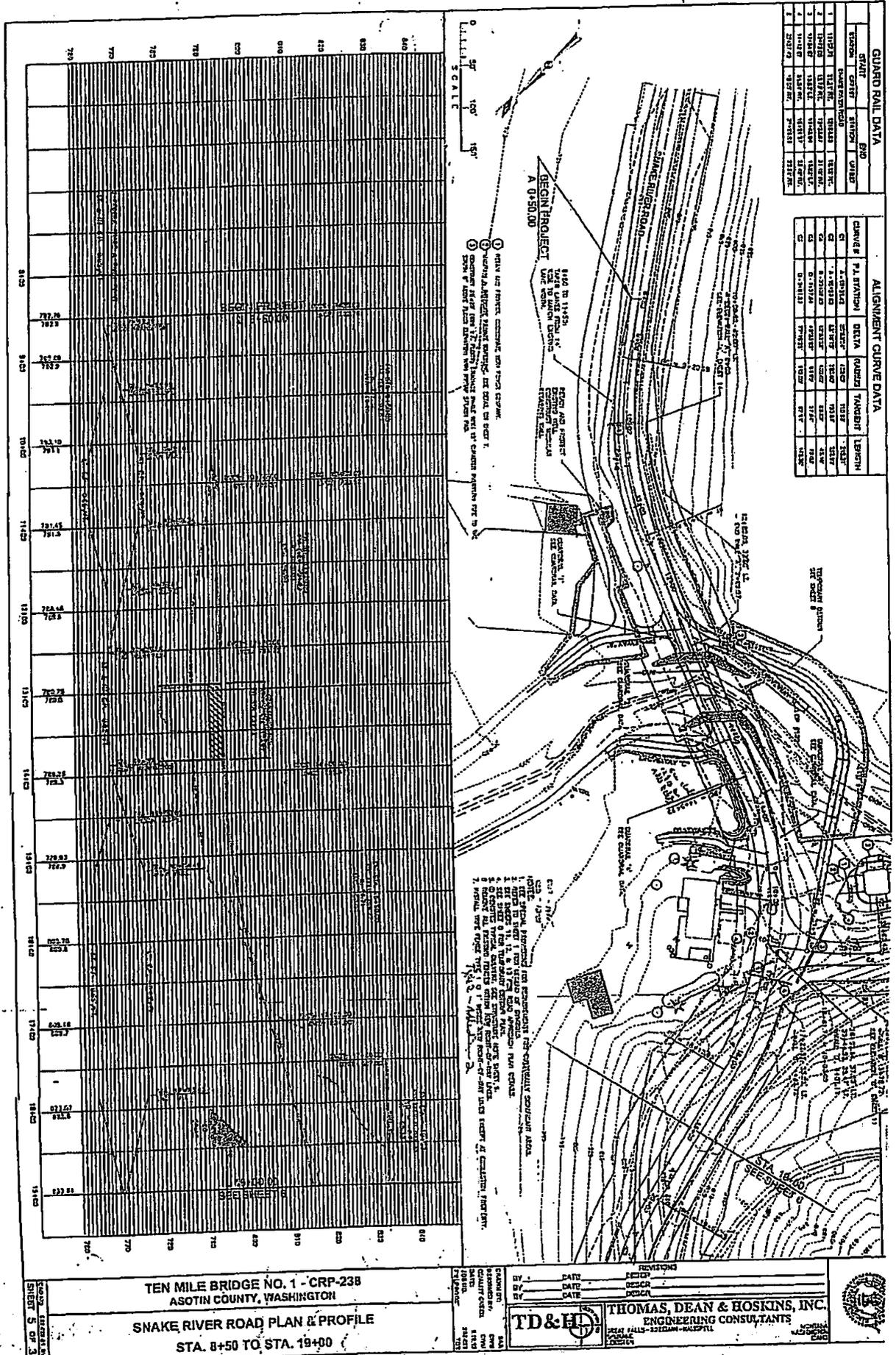
ASOTIN COUNTY



FEDERAL HIGHWAY
ADMINISTRATION



502-C023-03.CWG



STATION	TYPE	WIDTH	HEIGHT
1	WOOD	4.0	4.0
2	WOOD	4.0	4.0
3	WOOD	4.0	4.0
4	WOOD	4.0	4.0
5	WOOD	4.0	4.0

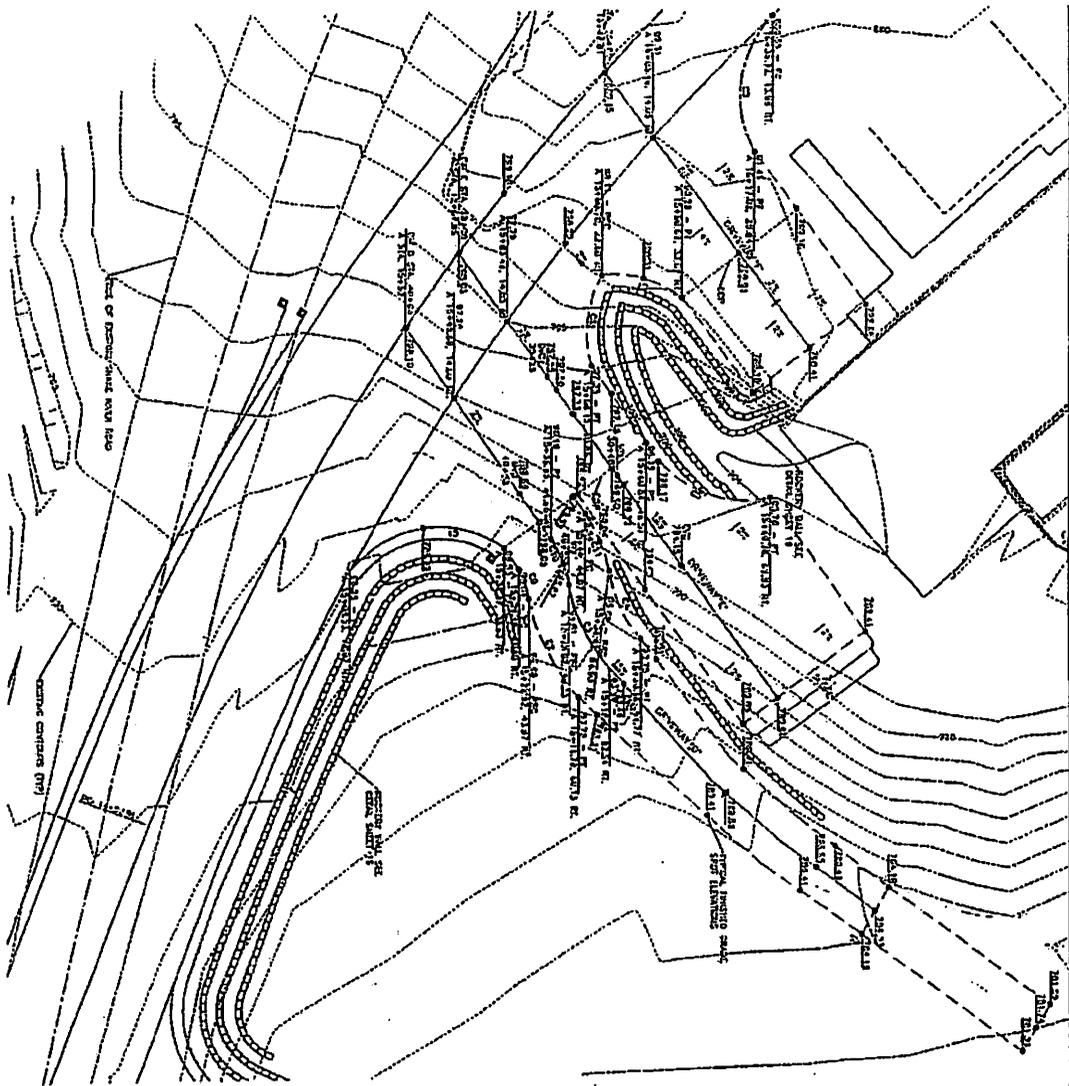
STATION	PC	PT	PI	STATION	PC	PT	PI
8+50	8+50	8+50	8+50	8+50	8+50	8+50	8+50
9+00	9+00	9+00	9+00	9+00	9+00	9+00	9+00
10+00	10+00	10+00	10+00	10+00	10+00	10+00	10+00
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19+00	19+00	19+00	19+00	19+00	19+00	19+00	19+00

- 1. REVISIONS
- 2. DATE
- 3. BY
- 4. CHECKED
- 5. DATE
- 6. BY
- 7. DATE
- 8. BY
- 9. DATE
- 10. BY

NOTE: 1. ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
 2. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.
 3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
 4. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.
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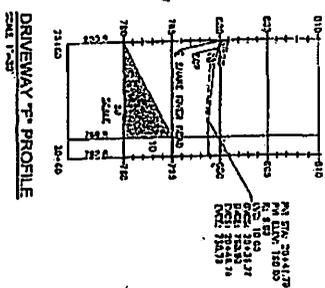
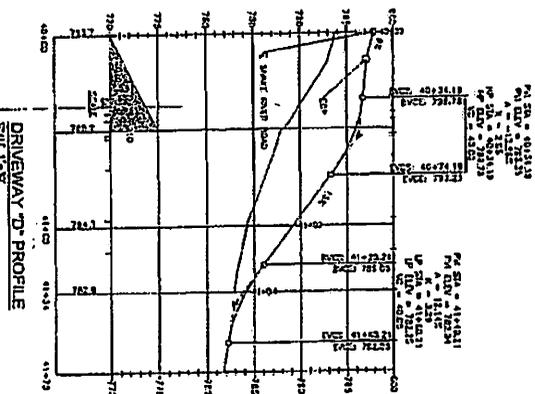
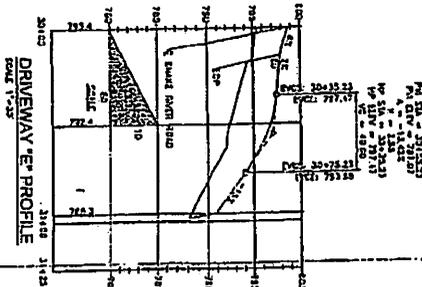
TEN MILE BRIDGE NO. 1 - CRP-238
 ASOTIN COUNTY, WASHINGTON
 SNAKE RIVER ROAD PLAN & PROFILE
 STA. 8+50 TO STA. 19+00

THOMAS, DEAN & HOSKINS, INC.
 ENGINEERING CONSULTANTS
 1000 1/2 AVENUE
 GREAT FALLS - IDAHO - 83403
 PHONE (208) 745-1111
 FAX (208) 745-1112



DRIVEWAY 'D', 'E', & 'F' PLANS
 0" = 10' = 20' = 30'
 SCALE

CURVE TABLE			
CURVE #	PI STATION	DELTA	RADIUS
1	1987.00	45° 00'	1000.00
2	2012.00	45° 00'	1000.00
3	2037.00	45° 00'	1000.00
4	2062.00	45° 00'	1000.00
5	2087.00	45° 00'	1000.00
6	2112.00	45° 00'	1000.00
7	2137.00	45° 00'	1000.00
8	2162.00	45° 00'	1000.00
9	2187.00	45° 00'	1000.00
10	2212.00	45° 00'	1000.00
11	2237.00	45° 00'	1000.00
12	2262.00	45° 00'	1000.00
13	2287.00	45° 00'	1000.00
14	2312.00	45° 00'	1000.00
15	2337.00	45° 00'	1000.00
16	2362.00	45° 00'	1000.00
17	2387.00	45° 00'	1000.00
18	2412.00	45° 00'	1000.00
19	2437.00	45° 00'	1000.00
20	2462.00	45° 00'	1000.00
21	2487.00	45° 00'	1000.00
22	2512.00	45° 00'	1000.00
23	2537.00	45° 00'	1000.00
24	2562.00	45° 00'	1000.00
25	2587.00	45° 00'	1000.00
26	2612.00	45° 00'	1000.00
27	2637.00	45° 00'	1000.00
28	2662.00	45° 00'	1000.00
29	2687.00	45° 00'	1000.00
30	2712.00	45° 00'	1000.00
31	2737.00	45° 00'	1000.00
32	2762.00	45° 00'	1000.00
33	2787.00	45° 00'	1000.00
34	2812.00	45° 00'	1000.00
35	2837.00	45° 00'	1000.00
36	2862.00	45° 00'	1000.00
37	2887.00	45° 00'	1000.00
38	2912.00	45° 00'	1000.00
39	2937.00	45° 00'	1000.00
40	2962.00	45° 00'	1000.00
41	2987.00	45° 00'	1000.00
42	3012.00	45° 00'	1000.00
43	3037.00	45° 00'	1000.00
44	3062.00	45° 00'	1000.00
45	3087.00	45° 00'	1000.00
46	3112.00	45° 00'	1000.00
47	3137.00	45° 00'	1000.00
48	3162.00	45° 00'	1000.00
49	3187.00	45° 00'	1000.00
50	3212.00	45° 00'	1000.00



<p>TEN MILE BRIDGE NO. 1 ASOTIN COUNTY, WASHINGTON</p>		<p>INTERSECTION AND APPROACH PLANS (2 OF 3)</p>	
<p>DESIGNED BY: SAUNDERS CHECKED BY: SAUNDERS DATE: 1937</p>	<p>BY: _____ DATE: _____ BY: _____ DATE: _____ BY: _____ DATE: _____</p>	<p>REVISION DESCR. DATE DESCR. DATE DESCR. DATE</p>	<p>THOMAS, DEAN & HOSKINS, INC. ENGINEERING CONSULTANTS 1001 P. O. BOX 1001 SEASIDE, CALIFORNIA</p>

APPENDIX B



Asotin County
PUBLIC WORKS DEPARTMENT
 P.O. Box 160
 Asotin, Washington 99402-0160
 Phone: (509) 243-2074
 Fax: (509) 243-2003

County Roads

Sewer Department

Solid Waste Department

January 7, 2009

Richard J. Eggleston
 Shannon M. Eggleston
 7357 Snake River Road
 Asotin, WA 99402-9504

OFFER LETTER

Ten Mile Creek Bridge Project – CRP 238
 Federal Aid No. BRS-C023(008)
 R/W Plan Sheet 2 & 3 of 3 Sheets
Parcel Number: 5-00105

Dear Property Owners:

The Asotin County Public Works Department plans to proceed with the above-titled public project. As a part of the project, we need to purchase your property and/or property rights identified on the "Right of Way Plan" by the "parcel number" listed above. The bearer of this letter is the department's agent in completing this transaction.

Your property has been examined by qualified appraisers and appraisal reviewers who have carefully considered all the elements which contribute to the market value of your property. By law, they must disregard any general increase or decrease in value caused by the project itself.

Based upon the market value estimated for your property, our offer is \$134,200.00 (rounded). This offer consists of \$132,332.00 for 0.38 acres of land in fee including damages and \$1,800.00 (rounded) for 0.37 acres Temporary Construction Easement.

Payment for your property and/or property rights will be made available to you by certified mail approximately 45 days after you accept the County's offer, provided that there are no delays in closing the transaction. The date on which payment is made available to you is called the "payment date". On that date, the County becomes the owner of the property purchased and responsible for its control and management.

You may wish to employ professional services to evaluate the County's offer. If you do so, we suggest that you employ well-qualified evaluators so that the resulting evaluation report will be useful to you in deciding whether to accept the County's offer. The County will reimburse up to \$750.00 of your evaluation costs upon submission of the bills or paid receipts.

If you decide to reject the county's offer, the county, acting in the public interest, will use its right of eminent domain to acquire your property for public use, and just compensation for your property will be determined by that process as prescribed by law.



OFFER LETTER

Parcel # 5-00105 - Eggleston

January 7, 2009

Page 2 of 2

The Internal Revenue Service (IRS) requires that the County obtain your correct taxpayer identification number (TIN) or social security number (SSN) to report income paid to you as a result of this real estate transaction. You will be required to complete the attached W-9 form and provide it to the department's agent upon acceptance of the County's offer. If you want additional information, please contact an IRS office.

If you have personal property presently located on the property being acquired by the County that needs to be moved, the County will reimburse you for the cost of moving it through the Relocation Assistance program.

We have attempted by this letter to provide a concise statement of our offer and summary of your rights. We hope the information will assist you in reaching a decision. Please feel free to direct any questions you may have to the undersigned.

May we please have your early reply as to acceptance or rejection of this offer?

Thank you.

Sincerely,



Melinda Raber
Property and Acquisition Specialist
WSDOT SCR Real Estate Services
(509) 577- 1655
raberm@wsdot.wa.gov

Receipt of this letter is hereby acknowledged. I understand that this acknowledgment does not signify my acceptance or rejection of this offer.

 _____
Signature 1-15-09
Date

(509) 243-6030 (0) _____ 509 243-3575 (1+)
Phone Number(s)

20004664

APPENDIX C



Delco

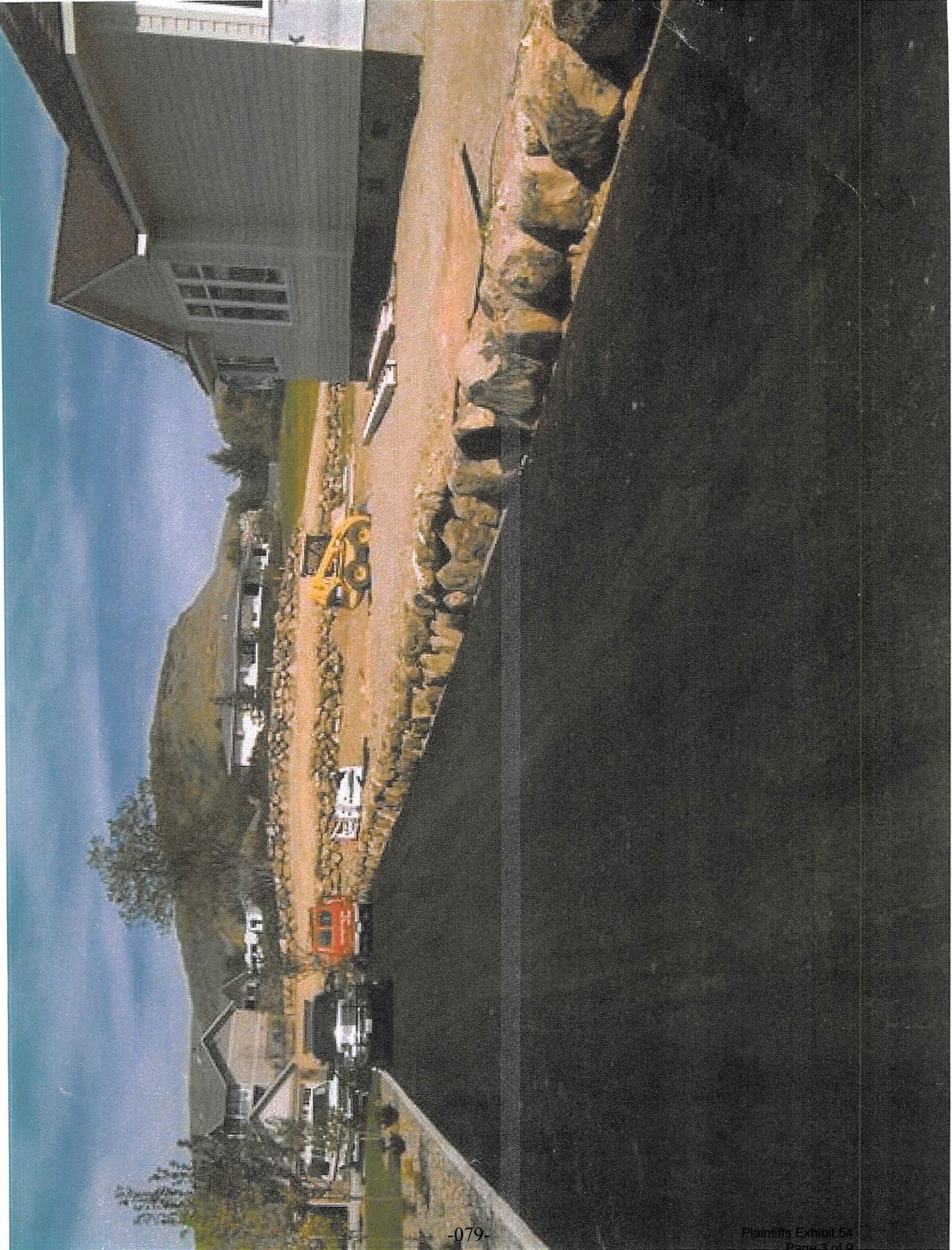
-077-

**PLAINTIFF'S
TRIAL EXHIBIT
54**

Delso



Delso





Dobco



Debeso

Debsco



Dobco



Debeso

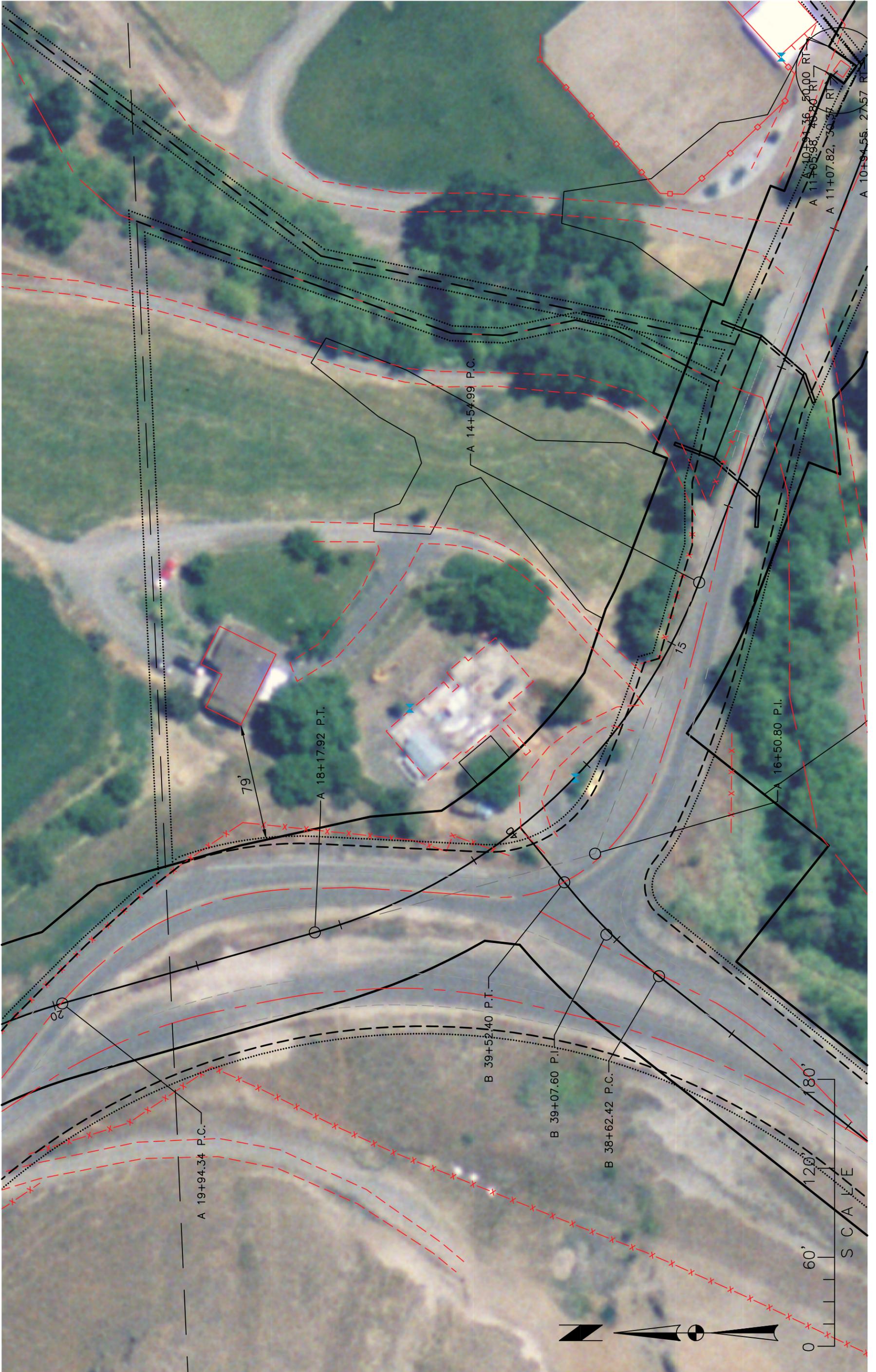


Debo



-085-

APPENDIX D



APPENDIX E





Aardvark's
243-9404
BOAT RENTALS











APPENDIX F





















APPENDIX G

Asotin County
P.O. Box 864 - 101 2nd Street
ASOTIN, WA 99402
1-509-243-2065
Fax 1-509-243-4978

Nemo

TO: Rich Eggleston
and Asotin County

DATE 4/2/13

SUBJECT: Ten Mile Bridge Project

It has been agreed upon by the undersigned to field fit Driveway "C" to move it closer to its pre-construction location near Ten Mile Creek.

- As generally set & Located 4/2/13.

Craig S. Miller

SIGNED

Please reply

No reply necessary

MCC-800-2
PRINTED IN U.S.A.

PLAINTIFF'S
TRIAL EXHIBIT

52

ASOTIN CO 4024 - 001184

APPENDIX H





APPENDIX I





APPENDIX J



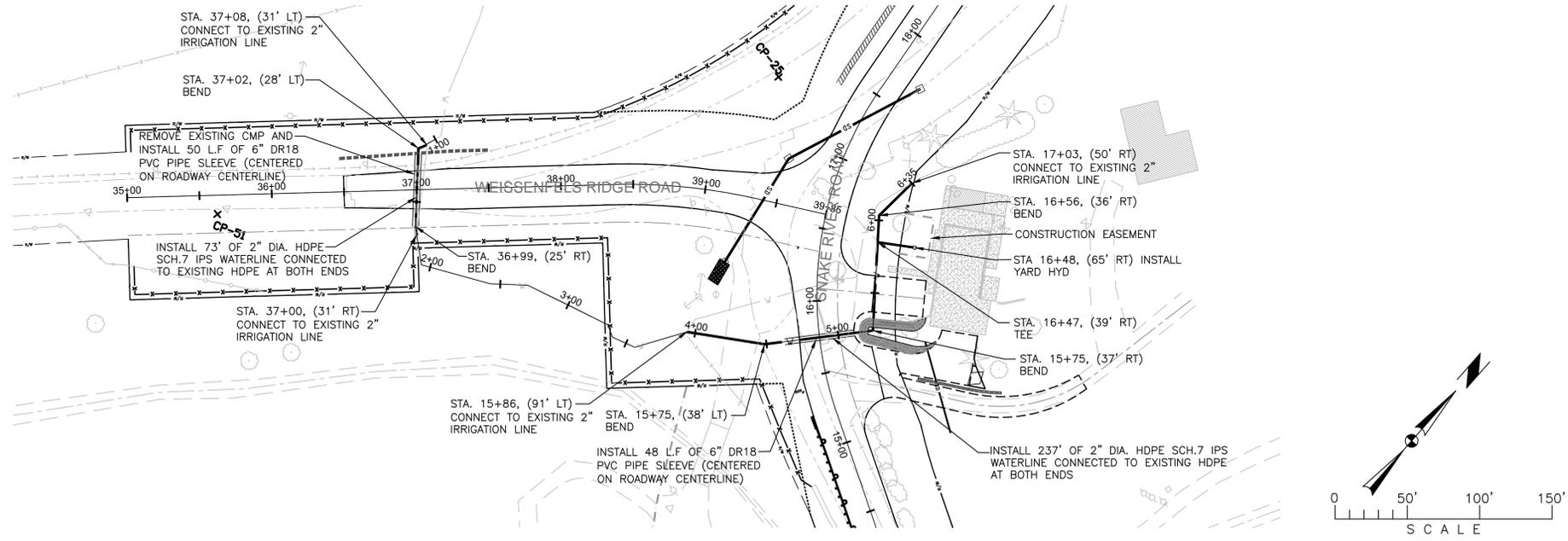




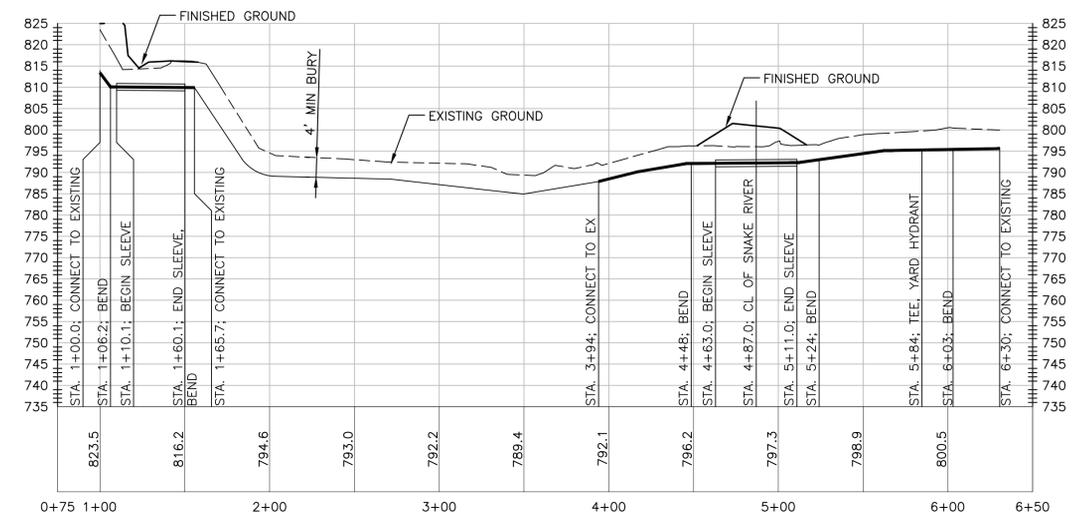




APPENDIX K



NOTE:
STATIONING ALONG WATER LINE IS FOR PROFILE PURPOSES ONLY.



FILE NAME	S02-009-C12.1	REGION NO.	X	STATE	WASH	FED.AID PROJ.NO.				TEN MILE BRIDGE NO. 1 ASOTIN COUNTY WATERLINE PLAN/PROFILE	PLAN REF. NO. SHEET C12.1 OF 42 SHEETS
TIME	9:35 AM	JOB NUMBER	X	CONTRACT NO.		BRS-C023(008)					
DATE	9/27/2012	LOCATION NO.	X					08/24/2012	DATE		
PLOTTED BY											
DESIGNED BY	MMJ										
ENTERED BY											
CHECKED BY	X										
PROJ. ENGR.	CKW										
REGIONAL ADM.		REVISION		DATE	BY						

THE LAW OFFICES OF TODD S. RICHARDSON, PLLC

March 18, 2020 - 2:07 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 36580-8
Appellate Court Case Title: Richard & Shannon Eggleston v. Asotin County, et al
Superior Court Case Number: 13-2-00226-5

The following documents have been uploaded:

- 365808_Briefs_20200318140351D3037575_5356.pdf
This File Contains:
Briefs - Appellants - Modifier: Amended
The Original File Name was 20-03-18 Amended Supplemental Appellant Brief.pdf

A copy of the uploaded files will be sent to:

- jbaker@mrklawgroup.com
- jmoberg@mrklawgroup.com

Comments:

Sender Name: Todd Richardson - Email: todd@myattorneytodd.com

Address:

604 6TH ST

CLARKSTON, WA, 99403-2011

Phone: 509-758-3397

Note: The Filing Id is 20200318140351D3037575