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DIVISION II
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STATE OF WASHINGTON
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No. 43033-9-II

IN THE COURT OF APPEALS
STATE OF WASHINGTON
DIVISION II

EARL IDDINGS,

Appellant,

v.

MICHAEL and SUE GRIFFITH, *et al.*,

Respondents.

APPELLANT'S REPLY BRIEF

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P/m 2/4/13

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I. INTRODUCTION

The distance between precision and accuracy can, at times, be unknowable. The distance between the two concepts potentially is so great that even truth can struggle to find its way in the conflicting shadows cast by each. In this uncertain divide, even well intended civil servants can struggle.

The trial below exemplified such a challenge. During the trial, Mason County aligned its interests with the Griffiths. The Mason County Prosecuting Attorney's office advocated the same positions taken by the Griffiths. The trial court even took testimony from numerous Mason County employees, who worked for a number of Mason County departments. Interestingly, the testimony from the Mason County employees generally favored Iddings' position in the matter. But regardless of this fact, Mason County firmly aligned itself with the Griffiths and actively opposed Iddings. This two-part dynamic tended to present issues and questions to the court more as choices between positions and less as a process searching for the correct evidence and results. The dynamic between the two positions was conducive to presenting the trial court with false choices.

For instance, the trial court faced such a false choice on the question of the public's acceptance of the common law dedication for the

right-of-way and turnaround. Findings of Fact 29 through 33 from the trial court's Findings of Fact and Conclusions of Law show that the two sides offered the court competing surveys to decide the extent of the public's historic use and the extent of the County's historic maintenance of the right-of-way and turnaround. Iddings offered the trial court the Ottmar Survey CP 654, FF 29, and the Griffiths and Mason County offered the Bechtolt Survey. CP 655, FFs 31-32. The Mason County's Public Works Department supported the Bechtolt survey, despite the fact that the Department had actively opposed the Bechtolt survey prior to the trial for more than a year. RP (Vol. V) 35-83, Exhibits 1, 16, 17 and 24. The trial court chose the Bechtolt survey. CP 655, FFs 31-32. In selecting the Bechtolt Survey, the trial court failed to note any consideration of the evidence generated by almost every testifying Mason County employee and by almost every other eyewitness in the case to the singular effect that the public had historically used and Mason County had historically maintained the right-of-way and the turnaround from the road's centerline to the bluff's vertical face. Testimony of Mr. Clevenger, RP (Vol I) P 164; Testimony Mr. Lloyd Iddings, RP (Vol I) Pp. 171, 175; Testimony of Mr. Clements, RP (Vol. II) Pp. 13, 14; Testimony of Mr. Earl Iddings, RP (Vol. II) Pp. 55, 56; Testimony of Mr. McAboy, RP (Vol. IV) P. 40; Testimony of Mr. Griffith, RP (Vol. IV) P. 7; Testimony of Mr. Hicks, RP

(Vol. I) Pp. 54-55 (testimony regarding trial Exhibit 25). Like the County, the public made full use of the turnaround from the water's edge to the vertical face of the bluff. Testimony of Mr. Thuring, RP (Vol. I) P. 83; Testimony of Mr. Clevenger, RP (Vol. I) P. 153; Testimony Mr. Lloyd Iddings, RP (Vol. I Page 181); Testimony of Mr. Clements, RP (Vol II) P. 8; Testimony of Mr. Miller, RP (Vol. II) P. 46; Testimony of Mr. Earl Iddings, RP (Vol. II) P. 59.

In reading the record and trial testimony, it is clear that each participant in this matter had its reasons and motivations. The extent of this cacophony of motives and facts became apparent when the trial court reduced the dissonance into its Findings of Fact and Conclusions of Law. The resulting Findings of Fact and Conclusions of Law were not analytically harmonious, but rather missing a beat: in other words something got lost in the amalgamation of facts and motives.

From Iddings' perspective, what got lost was the fact that Washington's doctrine of Common Law Dedication and Prescriptive Rights both require evidence of *actual* historic public use and of *actual* historic municipal maintenance of the right-of-way and turnaround to sustain the trial court's decision. Instead of assessing evidence related to the actual historic use and maintenance of the right-of-way and turnaround, the trial court relied on the trial testimony of Mr. Brush, who

was Mason County's right-of-way manager, and on the Bechtolt survey that measured the right-of-way on a single day in February 2009. CP 655, FFs 30-32. Mr. Brush's testimony, as Mason County's right of way manager, may have coifed the Bechtolt survey with legitimacy, but his testimony failed to explain how a survey taken in February 2009 had any relationship to the historic use and maintenance of the right-of-way. For this reason alone, this Appeal is not about whether the Bechtolt survey is accurate or whether the other supporting evidence is creditable.

This Appeal is about whether the trial court based its decision on the correct evidence before it—as a matter of law. This Appeal arises because the Findings of Fact were wide of the mark with respect to the type of evidence required by Washington law. The trial court failed to create a foundation for its decision based on the evidence of actual historical use and historical maintenance. At trial, virtually all witnesses that could have first-hand knowledge of the facts related to the historical use and maintenance of Dewatto Bay Drive testified that the right-of-way was used and maintained from the road's centerline to the bluff's vertical face. Testimony of Mr. Clevenger (Road Maintenance and Operations Supervisor for Mason County Public Works District 2), RP (Vol I) P 164; Testimony Mr. Lloyd Iddings (Dewatto Bay Property Owner since 1959), RP (Vol I) Pp. 171, 175; Testimony of Mr. Clements (Dewatto Bay

Property Owner since 1959), RP (Vol. II) Pp. 13, 14; Testimony of Mr. Earl Iddings, RP (Vol. II) Pp. 55, 56; Testimony of Mr. McAboy (Planner for Mason County Planning Department), RP (Vol. IV) P. 40; Testimony of Mr. Griffith (Dewatto Bay Property Owner since 2006), RP (Vol. IV) P. 7; Testimony of Mr. Hicks (Fire Inspector for Mason County Fire District 2), RP (Vol. I) Pp. 54-55 (testimony regarding trial Exhibit 25). Like the County, the public made full use of the turnaround from the water's edge to the vertical face of the bluff. Testimony of Mr. Thuring (Retired, September 2010, County Engineer for Mason County Public Works), (RP (Vol. I) P. 83; Testimony of Mr. Clevenger (Road Maintenance and Operations Supervisor for Mason County Public Works District 2), RP (Vol. I) P. 153; Testimony Mr. Lloyd Iddings (Dewatto Bay Property Owner since 1959), RP (Vol. I Page 181); Testimony of Mr. Clements (Dewatto Bay Property Owner since 1959), RP (Vol II) P. 8; Testimony of Mr. Miller (Dewatto Bay Property Owner since 1976), RP (Vol. II) P. 46; Testimony of Mr. Earl Iddings, RP (Vol. II) P. 59. No evidence contradicted these witnesses that included both longtime Dewatto Bay residents and all testifying Mason County civil servants with first-hand knowledge of the Dewatto Bay Drive right-of-way and turnaround.

Instead of relying on this overwhelming and consistent testimony, the trial court relied on the testimony of Mr. Brush and on the Bechtolt

survey. CP 655, FFs 30-32. Mr. Brush testified, very credibly, about how Mason County chose to rely on the Bechtolt survey as a result of a side-deal it had with Mr. Griffith and as a middle ground solution to mediate the differences between the Griffiths and their neighbors. CP 655, FF 30 (regarding Mr. Brush's credibility), RP (Vol. V) PP. 49, 58 (establishing the fact of the side deal between Griffith and Mason County Public Works), and RP (Vol. V) P. 72 Inn 19-22 (regarding Mr. Brush trying to mediate happy medium between Griffith and his neighbors). Not once in his trial testimony did Mr. Brush equate the Bechtolt survey with the historical use and maintenance of the Dewatto Bay Drive right-of-way and the related turnaround. RP (Vol. V) 1-109. To the contrary, Mr. Brush testified that he still believed, at the time of trial, that the historic use of the right-of-way and the related turnaround exceeded the distance measured by the Bechtolt survey. Exhibit 17, CP 542, RP (Vol. V) P. 76 Inn 1-3, 12-16. Nevertheless, the trial court selected the Bechtolt survey as the measure of historic use and maintenance.

The decision to embrace the precise, yet inaccurate measurements created by the Bechtolt survey and Brush testimony as the measure of the historic use and maintenance of the Dewatto Bay Drive right-of-way is not inconsequential here because the future of Dewatto Bay hangs in the balance. The future of such a pristine setting, as treasured as Dewatto

Bay, should not be determined by side-deals and compromises, but rather by evidence deliberately selected by Washington law—evidence of historical use and maintenance. When change inevitably comes to Dewatto Bay, it should come from the law’s application to the correct facts so that the urbanization of Washington’s natural shoreline arrives deliberately.

II. DETERMINATIVE FACTS

At this point in the Appeal, the facts have been fleshed out by the Appellant’s Opening Brief, the Respondent’s Motion on the Merits, the Appellant’s Response to the Motion on the Merits, the Respondent’s Motion to Order Compliance, the Appellant’s Response to the Motion to Order Compliance, the Appellant’s Amended Opening Brief, and the Respondent’s Response to the Amended Opening Brief.

MR. GRIFFITH THE INTERNET LAND SHOPPER

We now know that Griffith purchased the property in 2006 on the internet without ever visiting or seeing the property. State’s Response Brief at P. 2. Griffith purchased the property without any assurance of access and apparently without knowledge that a 50-ft bluff separated the majority of the lot from Dewatto Bay Drive. Id.

THE FILL FLAWED BECHTOLT SURVEY

We now know that Mr. Sidney Bechtolt shot the right-of-way portion of the Bechtolt survey in February 2009. RP (Vol. IV) P. 58 Inn. 8-25. We further know that even Mr. Bechtolt knew that his February 2009 survey was adversely impacted by the presence of an unknown amount of fill between the bluff's vertical face and the centerline of Dewatto Bay Drive. RP (Vol. III) P. 58 Inn 11-12. At trial, Mr. Brush amplified the impact of the fill on the Bechtolt survey with his general testimony and related trial Exhibits, particularly Trial Exhibit 17, in which Mr. Brush, writing for Mr. Thuring, states that as much as eight feet of sloughed fill negatively impacted the accuracy of the Bechtolt survey. RP (Vol. V) P. 51 Inn 6-13, Ex. 17. At trial, Mr. Brush also made it clear that the fill-plagued Bechtolt survey was the only hard evidence in the County's possession that produced a measurable distance—let alone the distance of 22.55 feet. RP (Vol. V) P. 15 Inn 6-25. Hence, the distances stated in the Bechtolt survey measured only the distance from the centerline of Dewatto Bay Drive to the edge of sloughed fill and this distance had simply no relationship to the historical use and maintenance of the right-of-way and the turnaround.

MASON COUNTY PUBLIC WORKS' SIDE DEALS AND MEDIATION EFFORTS

We now know that the Mason County Public Works Department and its Right-of-Way manager, Mr. Brush, saw the Bechtolt survey distance more as a happy medium between Griffith and his neighbors and less as a measurement of historical use and maintenance. RP (Vol. V) P. 72 lnn 6-22 and RP (Vol. V) P. 55 lnn 22-3. In fact, Mr. Brush candidly admitted that he personally used the Bechtolt survey as a bargaining chip in his March 2010 side deal with Griffith. RP (Vol. V) PP. 49, 58. Hence, Mr. Brush's conduct and later related trial testimony speaks very credibly to the fact that Mason County did not view the Bechtolt survey as a measurement of historical use and maintenance of the right-of-way and turnaround. Mason County's true sense of the Bechtolt survey is particularly relevant here because Mason County lacked any other surveys or measurements of Dewatto Bay Drive and the turnaround.

EYEWITNESSES TO HISTORICAL USE AND MAINTENANCE

We now know that the eyewitness testimony regarding the public's historic use and the County's historic maintenance of the Dewatto Bay Drive right-of-way and turnaround was substantial. Every Mason County civil servant with first-hand knowledge testified substantially to the same effect: the right-of-way extended from the centerline of the road to the bluff's vertical face. Testimony of Mr. Clevenger (Road Maintenance and

Operations Supervisor for Mason County Public Works District 2), RP (Vol I) P 164; Testimony Mr. Lloyd Iddings (Dewatto Bay Property Owner since 1959), RP (Vol I) Pp. 171, 175; Testimony of Mr. Clements (Dewatto Bay Property Owner since 1959), RP (Vol. II) Pp. 13, 14; Testimony of Mr. Earl Iddings, RP (Vol. II) Pp. 55, 56; Testimony of Mr. McAboy (Planner for Mason County Planning Department), RP (Vol. IV) P. 40; Testimony of Mr. Griffith (Dewatto Bay Property Owner since 2006), RP (Vol. IV) P. 7; Testimony of Mr. Hicks (Fire Inspector for Mason County Fire District 2), RP (Vol. I) Pp. 54-55 (testimony regarding trial Exhibit 25). Like the County, the public made full use of the turnaround from the water's edge to the vertical face of the bluff. Testimony of Mr. Thuring (Retired, September 2010, County Engineer for Mason County Public Works), RP (Vol. I) P. 83; Testimony of Mr. Clevenger (Road Maintenance and Operations Supervisor for Mason County Public Works District 2), RP (Vol. I) P. 153; Testimony Mr. Lloyd Iddings (Dewatto Bay Property Owner since 1959), RP (Vol. I P. 181); Testimony of Mr. Clements(Dewatto Bay Property Owner since 1959), RP (Vol II) P. 8; Testimony of Mr. Miller (Dewatto Bay Property Owner since 1976), RP (Vol. II) P. 46; Testimony of Mr. Earl Iddings, RP (Vol. II) P. 59. No evidence contradicted these witnesses that included both longtime Dewatto Bay residents and all testifying Mason County civil

servants with first-hand knowledge of the Dewatto Bay Drive right-of-way and turnaround.

THE ONLY EVIDENCE RE ACCEPTANCE OF THE RIGHT-OF-WAY

We now know that the only evidence presented at trial regarding any acceptance, by the public or by Mason County, places acceptance of the Dewatto Bay Drive right-of-way in about 1969. The earliest evidence of acceptance presented at trial was the testimony of two long time Dewatto Bay Residents: Mr. Lloyd Iddings and Mr. Tim Clements.

These two witnesses offer the earliest testimony regarding any acceptance of the right-of-way and of the turnaround. Both witnesses offered testimony from 1959. Mr. Clements, (Dewatto Bay resident since 1959), RP (Vol. II) P. 5; Testimony Mr. Lloyd Iddings (Dewatto Bay Property Owner since 1959), RP (Vol I) P. 168. Hence, the evidence of acceptance of the right-of-way before the trial court was 1959. Neither Griffith nor Mason County offered any contradicting evidence.

III. ARGUMENT

At this stage of this Appeal, with its extensive briefings, Iddings only seeks to highlight a few issues for the Court. First, the best that can be said of the Bechtolt survey is that even Bechtolt knew he surveyed a right-of-way and turnaround reduced by sloughed loose fill and that his survey was a snapshot in time of the reduced right-of-way and

turnaround. Even Bechtolt did not claim that his survey represented the historic use and maintenance of the right-of-way and turnaround.

Second, Mason County's Right-of-Way manager, Mr. Brush, tells us that Mason County used the Bechtolt survey for almost any purpose except as part of the County's determination of the historic use and maintenance of the right-of-way and the turnaround. At no point in his trial testimony did Mr. Brush tell the trial court, or anyone for that matter, how the Bechtolt survey was related to, established, or could establish the historic use and maintenance of the Dewatto Bay Drive right-of-way and the turnaround. Instead, Mr. Brush told us all how the Bechtolt survey was a bargaining chip in the March 2010 side-deal and that the Bechtolt survey represented a "happy medium" between the parties. A happy medium between the parties does not equate to historical use and maintenance. Finally, Mr. Brush told us that the Bechtolt survey was the County's only measurement (flawed or otherwise) of the Dewatto Bay Drive right-of-way and turnaround.

The Last of Iddings' issues on this Reply is the only evidence before the Court about the vesting of any Common Law Dedication or Prescriptive right relates to use of the right-of-way and turnaround in 1959 at the earliest. Hence, any rights from statutes or ordinances existing as of 1959 ought to apply to any rights arising out of the Dewatto

Bay Drive Common Law Dedication or from the rise of any Prescriptive Rights arising from the public or municipal use of Dewatto Bay Drive. The bottom line is that the parties need a ruling on when such common law dedication rights or when such prescriptive rights vested in the public so that all parties will know which statutes and ordinances govern their respective rights and obligations in Dewatto Bay Drive.

A. Standard of Review

Dedication of a right of way is a mixed question of law and fact. Sweeten v. Kauzlarich, 38 Wash. App. 163, 166, 684 P.2d 789 (Div. III 1984). Where mixed questions of law and fact exist, the trial court (in a bench trial) may determine from the conflicting evidence the existence of facts necessary to constitute a common law dedication, and such a factual finding will not be disturbed on appeal when the finding is amply sustained in the record. Id.

Once an owner's intent to dedicate is established, the determination of whether a common law dedication has occurred is a legal issue. Sweeten v. Kauzlarich, 38 Wash. App. 163, 166, 684 P.2d 789 (1984) (citing Knudsen v. Patton, 26 Wash. App. 134, 611 P.2d 1354, review denied, 94 Wash.2d 1008 (1980)).

Under Sweeten, the facts found by the trial court fail to sustain the trial court's result. The trial court found a common law dedication at

22.55 ft. as measured by the Bechtolt survey. CP 655, FF 31. No one testified at trial to establish a relationship between the Bechtolt survey and the intended common law dedication nor the public or County's acceptance of such a dedication. The survey was simply a snapshot of Griffith's property and the turnaround in February 2009 with no evidence suggesting how such a survey established the public's historical use or the County's historical maintenance. Worse, Bechtolt admitted that an unknown amount of sloughed fill separated his measured distance from the bluff's vertical face. RP (Vol. III) P. 58 Inn 11-12. Mr. Brush likewise admitted that the survey failed to measure the scope of historic use and maintenance of the right of way. RP (Vol. V) P. 51 Inn 6-13, Ex. 17. Finally, Mr. Brush admitted at trial that Mason County supported the Bechtolt survey as the width of the right-of-way because of side-deal it made with Griffith and because it thought the surveyed distance was a happy medium between the parties. RP (Vol. V) P. 72 Inn 6-22 and RP (Vol. V) P. 55 Inn 22-3.

Iddings understands that the trial court wrote that “[t]here was no testimony that the public ever used an area wider than Dewatto Beach Drive as it currently exists,” but all the witness testimony, including that of Bechtolt and Mr. Brush, render the statement completely and utterly unsupported. CP 654, FF 24 (citation for the quoted material). To the

contrary, all the eyewitnesses to the right-of-way's historical use and maintenance provide consistent, overwhelming evidence that the historic scope of the right-of-way and turnaround extended to the bluff's vertical face. See the eyewitnesses repeated cited above. In fact, Mr. Brush informs in Trial Exhibit 17 that approximately eight feet of sloughed loose fill separates the bluff's vertical face from distance surveyed by Bechtolt. Exhibit 17, CP 542, RP (Vol. V) P. 76 Inn 1-3, 12-16.

With respect to prescriptive easements, the width of a particular easement is generally a question of fact to be determined under the circumstance of each particular case. Olympia v. Lemon, 93 Wash. 508, 511 161 P. 363 (1916). The discussion immediately above likewise applies here to the question of prescriptive easements. Put simply, the trial court's Findings of Fact are contradicted by the evidence. The scope of the Dewatto Bay Drive easement is determined by the public historic use and by the County's historic maintenance. Id. No testimony establishes the link or relationship between the Bechtolt survey and the historic use or maintenance of the Dewatto Bay Drive right-of-way.

For these reasons alone, the Findings of Facts fail to sustain the trial court's Conclusions of Law; which in itself may serve as a sufficient basis to reverse the trial court's decision. See, Hegwine v. Longview Fibre Co., 132 Wn. App. 546, 555, 132 P.3d 789 (2006), aff'd, 162 Wn.2d 340,

172 P.3d 688 (2007). Alternatively, the Findings of Fact and Conclusions of Law are internally inconsistent and for that reason alone subject to reversal. See, Tolson v. Allstate Ins. Co., 108 Wn. App. 495, 499, 32 P.3d 289 (2001) (reversing and remanding arbitrator's award because of factual inconsistencies apparent on the face of the award).

B. THE BECHTOLDT SURVEY FAILS TO CAPTURE THE HISTORIC USE OF DEWATTO BAY DRIVE AND OF THE TURNAROUND

Under the doctrines Common Law Dedication and Prescriptive Rights, a necessary question is the extent and nature of the public's use and the municipal use and maintenance of the ground at issue.

Common Law Dedication

Under Washington's doctrine of Common Law Dedication, private property may be offered for dedication as a public right of way, and becomes a public right of way upon acceptance by either the pertinent government agency or the public. Horton v. Okanogan County, 98 Wash. 626, 168 P. 479 (1917). Acceptance of a common law dedication can be by either a governmental entity or the public. Horton, 98 Wash. at 481-82. Washington courts hold that the right of way extends not only to the area the public actually uses but to the full dimensions set forth in the offer of dedication or as reasonably necessary for public travel. See, In re West Marginal Way in City of Seattle, 109 Wash. 116, 186 P. 644 (1919); see

also Sweeten, 38 Wash. App. at 167 (discussing presumption that scope of dedicated road extends “to the full width reasonably necessary for public travel”).

Prescriptive Rights

To obtain a prescriptive easement in Washington, a claimant must prove the following elements: (1) use adverse to the right of the servient owner; (2) open, notorious, continuous, uninterrupted use for ten years; and (3) the servient owner had knowledge of the use at the time when he or she was able to enforce his or her rights. Bradley v. American Smelting & Ref. Co., 104 Wash.2d 677, 694, 709 P.2d 782 (1985); Curtis v. Zuck, 65 Wash.App. 377, 384, 829 P.2d 187 (1992). The scope of the acquired the prescriptive right(s) is determined by the use the public makes of the ground or by the character of the use made by the claiming public. King County v. Hagen, 30 Wn.2d 847, 854-6, 194 P.2d 357 (1948)

Requirement of Evidence of Actual Historic Use for both Doctrines

Both the Doctrine of Common Law Dedication and of Prescriptive Rights have the requirement that the public, municipal entity, or both actually use the right in question with the nature, character, or scope of such use determining the nature and intent of the right obtained by common law dedication or by prescription. This idea is not new, novel, cutting edge, or complicated. The public or municipality obtains by either

doctrine that which it actually uses. Hence, evidence of actual historical use is critical to sustain both legal conclusions that each doctrine applies here to grant the public and Mason County dedicated and prescriptive rights. This singular requirement rendered the Bechtolt survey insufficient to sustain the trial court's decision because, as stated above, the survey is a mere snapshot in time without any further testimony or evidence relating the survey to the establishment of the historical use and maintenance of the Dewatto Bay Drive right-of-way.

Fortunately for Iddings, the record contains the necessary evidence in the form of the eyewitnesses listed repeatedly above. These witnesses provide this Court with sufficient evidence to sustain the trial court's decision and to fashion an appropriate resolution of this dispute.

To resolve the question of the scope of the Dewatto Bay Drive right-of-way and turnaround, one only need to determine the width of the right-of-way. In fact, the distance between the centerline of Dewatto Bay Drive and the bluff's vertical face can be surveyed and measured. This distance can then be reduced, as needed, to any given point in time by subtracting the average annual rate of reduction of the bluff due to erosion. For example, if the parties now, in 2013, wanted to determine the width of the right-of-way in 2010, they could clear out the slough and debris from the right-of-way and turnaround to the bluff's vertical slope, create a

survey to measure the distance from the bluff's vertical face to the road's centerline, and then reduce that distance by the three times the rate of annual erosion. Thus this Court has it within its means to resolve the issues regarding the scope of the Dewatto Bay Drive right-of-way and turnaround.

C. APPLICABILITY OF RCW 36.86.010 AND OF MASON COUNTY CODES DEPENDS ON WHEN ACCEPTANCE OF THE ROAD AND TURNAROUND OCCURRED

As this Appeal has ripened and matured, so has Iddings' appreciation of the issues related to the application of statutes, like RCW 36.86.010, and applicable municipal ordinances to the Dewatto Bay Drive right-of-way. As it stands now, the parties are unsure as to when the public and municipality's rights vested such that the parties are unsure of their respective rights and obligations.

A good example is the question of whether RCW 36.86.010 applies to the Dewatto Bay Drive right-of-way. RCW 36.86.010 provides in relevant part:

From and after April 1, 1937, the width of thirty feet on each side of the center line of county roads, exclusive of such additional width as may be required for cuts and fills, is the necessary and proper right-of-way width for county roads, unless the board of county commissioners, shall, in any instance, adopt and designate a different width. This shall not be construed to require the acquisition of increased right-of-way for any county road already established and the right-of-way for which has been secured.

If RCW 36.86.010 applies the right-of-way, then the prescribed width of the right-of-way ought to be 30 feet in width from the centerline. This is not a new issue for Iddings; he specifically brought RCW 36.86.010 to the trial Court's attention in its trial brief. CP 431.

Iddings now points this Court to the evidence before the trial court regarding the earliest use of the right-of-way being 1959. Mr. Clements, (Dewatto Bay resident since 1959), RP (Vol. II) P. 5; Testimony Mr. Lloyd Iddings (Dewatto Bay Property Owner since 1959), RP (Vol I) P. 168. As such, the earliest the public and municipality could obtain vested rights would have been 1959 under the Common Law Dedication Doctrine and 1969 under the Doctrine of Prescriptive Rights. Either way, statutes like RCW 36.86.010 would apply. If so, this matter must be remanded to enable the trial Court to make further findings and conclusions as to why the statute fails to expand the width of the county road right of way to its mandated proper and necessary width. Alternatively, this Court could rule that the Dewatto Bay Drive right-of-way shall be expanded to the width no greater than 30 feet from the centerline of Dewatto Bay Drive or to the bluff's vertical face.

IV. CONCLUSION

Based on the foregoing, all the collective Briefing herein, and the Court's file herein, Iddings respectfully requests that this Court remand

the matter for trial so that the parties may properly determine the scope of the Dewatto Bay Drive right-of-way and turnaround by a survey from the centerline of the existing Dewatto Bay Drive to the bluff's vertical face. Iddings further requests that this Court determine with the common law dedication and prescriptive rights attached to or vested in the public and municipality so that the parties herein may properly determine their respective rights and obligations under the applicable state statutes and municipal ordinances.

RESPECTFULLY SUBMITTED this 4th day of February 2013.

VERA & ASSOCIATES PLLC

By: 
Jose F. Vera, WSBA #25534

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DIVISION II

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STATE OF WASHINGTON

DECLARATION/CERTIFICATE OF SERVICE


DEPUTY

I, Michelle Vance, declare and say as follows:

1. I am a citizen of the United States and resident of the state of Washington, over the age of 18 years, not a party to the above-entitled action, and am competent to be a witness herein. My business address is 2110 N. Pacific St., Suite 100, Seattle, WA 98103, (206) 217-9300.

2. On February 4, 2013, I caused to be served the following documents(s) on the individuals named below in the specific manner indicated.

1. Appellant's Reply Brief; and
2. [This] Declaration of Service

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

EXECUTED this 4th day of February, 2013.


Michelle Vance

Roy Earl Morriss WSBA #34969 Genesis Law Firm, PLLC 2918 Colby Avenue Ste 211 Everett, WA 98201	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>	U.S. Mail, postage prepaid Hand Delivered Email Delivered Facsimile
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Witness List

Steven E. Ottmar

Professional Land Surveyor Since 1982 works for AES Consultants

Jeremy Neil Hicks

Fire Inspector for Mason County Fire District 2

Robert A. Thuring

Retired County Engineer for Mason County Public Works

Retired September 9, 2010

David Lewis Clevenger

Road Maintenance and Operations Supervisor for Mason County Public Works District 2

Started December 2003

Lloyd Earl Iddings

Earls Father, Property Owner since 1959

Tim Clements

Property Owner, On the West Side would be Martinez, and on the East Side would be Elders Since 1959

Gregory Miller

Property Owner, North Side Across from Dewatto Bay (Purchased 1976)

Earl James Iddings

Appellant, Construction General Contractor

Sidney Glen Bechtolt, JR

Professional Land Surveyor, Works for Agate Land Surveying, PLLC

Alan Tahja

Professional Civil Engineer, Sole Proprietor of Tahja Engineering Incorporated (Practicing Since 1994)

Michael Griffith

Respondent, Property Owner Since 2006

Kell McAboy

Planner for Mason County Planning Department

Eric Brush

Right-of-way Manager/Property Manager for Mason County Public Works

Peter Martinez

Property Owner, Right Adjacent to Griffith (Purchased in 1974-75)

George Cates

Equipment Operator for Mason County Public Works

Dale Fassio

Equipment Operator for Mason County Public Works

James McLean

Instrument Tech for Mason County Public Works

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1 A. No.

2 Q. Are you -- can you tell us when you -- when Mason County road
3 crew had been out there at all compared to when you went out
4 there the last time?

5 A. No.

6 MR. WHITEHEAD: No further questions, Your Honor.

7

8 REDIRECT EXAMINATION

9 BY MR. DAUDT:

10 Q. One last wrap-up. Mr. Hicks, I'd like you to imagine a
11 vertical concrete wall at the location of the toe of the slope
12 where it was where you -- when you last were there. In other
13 words, it comes all the way up to where the toe starts to come
14 up off the street bed. If that's where the -- if that's where
15 the wall goes in, is that going to make emergency access more
16 difficult?

17 A. Yes.

18 Q. In fact, isn't that going to make it more difficult even than
19 what it is in that condition with the slope having a vertical
20 concrete wall as opposed to a sloping soil condition?

21 A. Yes.

22 Q. How so?

23 A. Vertical wall doesn't allow our front bumper to go over a
24 little bit, or back bumper to go over a little bit, and
25 depending on what the slope of the dirt or debris is, we

1 sometimes can use a little bit of that to what we call turn
2 over, you know, the cab-forward design on our engine where the
3 front passengers could actually go over the top of it.

4 Q. So if you've got, say, a typical 45 degree soil bank, how much
5 additional room does that give you with that kind of clearance?

6 A. Maybe a foot or so, two feet.

7 Q. And even that would be taken away if you had a vertical
8 concrete wall in that location, right?

9 A. Yeah.

10 Q. Thank you.

11 THE COURT: Counsel.

12 MR. WHITEHEAD: One more question.

13

14 RE-CROSS-EXAMINATION

15 BY MR. WHITEHEAD:

16 Q. So if the -- if the wall was built a couple of feet farther
17 back from where the toe of the slope is now, that would help
18 you out turning around?

19 A. Yeah.

20 Q. Okay. No further questions.

21 THE COURT: Counsel, any more questions?

22 MR. DAUDT: No, Your Honor.

23 THE COURT: I have a question for this witness.

24 Sir, under the current circumstances would Mason County
25 Fire District 2 limit its response to an emergency in that

1 Q. All right. Well, when you say you don't have firsthand
2 knowledge, from what source did you get your information?

3 A. I don't remember if it was neighbors, Mr. Iddings or even
4 Griffith himself, but I do recall hearing that the public
5 works department did clear that, you know, when it -- it's a
6 feeder bluff. It's a sand bluff so, you know, it will
7 periodically slough off during different events.

8 Q. Well, had you ever observed this -- that bank in a condition
9 where it appeared to you to have been removed of all the loose
10 material on the bank?

11 A. What I observed when I was there on the first time it did not
12 have this sloughing or the -- it was pretty much a vertical
13 bank. Maybe the first couple of feet at the toe may have been
14 a soft, but it looked quite different from the photo I'm
15 looking at right now.

16 Q. Okay. So the photo you're looking at right now, at Exhibit
17 33, does -- does Exhibit 33 depict more or less loose material
18 at the toe than what you --

19 A. It does appear that there's a bit more of the material because
20 it appears fairly sloped there as opposed to the vertical
21 bluff that I remember.

22 Q. And just looking at these pictures at 33, would you say that
23 the toe of the slope as you remember it is closer to the first
24 yellow stake next to the truck or to the prior stake, the
25 stake further back?

1 the slope, but it was for the most part vertical. And in
2 multiple cases it was overhanging and inverted and we couldn't
3 play in that location. So.

4 Q. And why is that?

5 A. Well, the bank was vertical and there's an overhanging -- I
6 guess it would be the vegetative layer that has roots and
7 berms. And as some of this material sloughs off, it will
8 concave and undermine the actual native growth on top creating
9 a concave danger that it could break off as well.

10 Q. Was the -- do you recall the county keeping that area clear
11 when you were a kid?

12 A. Yes, we do. They would come in and clean out that area, and I
13 actually remember them still pushing material into the bay at
14 the point back then probably late '70s, early '70s when I was
15 about four or five. And ever since then they would always
16 come down on any major event or -- the county really likes to
17 spend time down there, and they clean the right-of-way a lot.
18 We have some of the nicest ditches in Mason County.

19 Q. Now, you've sat here through the entire trial so far, right?

20 A. That is correct.

21 Q. And you've heard the testimony and the questions from counsel.
22 Now, I guess the question I have, you know, there's been a lot
23 of testimony about sort of, you know, periodic sloughing into
24 the -- into the turnaround area because it's a sandy bank and
25 so you -- can you describe to your understanding based on your

1 vertical slope without this -- without this sloughing material
2 at the bottom side of it.

3 Q. So how much further back would you say it went when you were a
4 kid back -- to get back to the hard bank that you had to
5 actually climb up?

6 A. There would be very little of this sloughing material, I would
7 estimate at the very most three to five feet on the bottom.
8 I'm just guessing at this point of that -- this sloping
9 material. The rest of this bank would be nearly vertical,
10 sometimes cantered in almost to the bottom.

11 Q. Are there -- do people park in that area?

12 A. I remember times of overflow parking on holidays. I do
13 remember some of the family and friends would park anything
14 from a camper to a motorhome there on extended holidays. The
15 bank at that point was far enough back where you could park a
16 motorhome there and still access the roadway without the
17 bumper of the motorhome being out into the road.

18 Q. Okay. Has -- what would happen now if somebody tried to park
19 in that same area?

20 A. You know, I would have to park a motorhome there, but I would
21 imagine it would be pretty tight access to get around it now
22 from this spot of the bank.

23 Q. Has sand been removed from this area to your knowledge?

24 A. Uh-huh.

25 Q. Over the years?

- 1 cleaned up. But it's always been a vertical bank.
- 2 Q. Do you remember when the road was paved?
- 3 A. Mid '70s.
- 4 Q. And that was done by who?
- 5 A. The county.
- 6 Q. And when you say the bank was cleaned up on Griffith's
- 7 property, who did that?
- 8 A. The county.
- 9 Q. Did the residents in that area ever do any of their own
- 10 cleanup?
- 11 A. No.
- 12 Q. What were some of the other uses of the property? Was it --
- 13 you talked about the kids playing in that area, climbing up
- 14 the wall. What else was done with the property?
- 15 A. Well, it's where always cars turned around. That's the only
- 16 turnaround on Dewatto Beach Drive toward that end. There's
- 17 some driveways three-quarters of a mile or so that are private
- 18 that people would, you know, try to use once in a while, but
- 19 that was the main turnaround for everybody for as long as I
- 20 can remember.
- 21 Q. And is that also at the end of the road?
- 22 A. Yes.
- 23 Q. Would you say that's the dead end of Dewatto Beach Drive?
- 24 A. Yes. It's at the end of the road.
- 25 Q. Now, the property next -- there are more properties beyond

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1 that correct?

2 A. It depends on an event that we have out there. If we have an
3 event -- for a big freeze, we could have a slough that could
4 come down and really cover the road.

5 Q. And I certainly agree.

6 A. And this here, this here, this is not sloughing. This has
7 been filled. This is not a natural occurrence.

8 Q. You've also testified that when you were a child, it was very
9 difficult to climb the bank because there was basically no
10 sloughing or it was much steeper; is that correct?

11 A. Yes. It was vertical, almost vertical.

12 Q. Would you look at the photograph from 2007 which is Exhibit
13 62. Is that the photograph that we discussed, the seven or
14 eight feet of sloughing?

15 A. Seven or eight feet of sloughing? It doesn't --

16 Q. That was just your prior testimony.

17 A. No. That doesn't look like seven or eight feet of sloughing.

18 Q. All right. If you were a child today, could you climb up that
19 bank?

20 A. If I were a child today could I climb up that bank? Not too
21 far.

22 Q. In the current condition could you climb up that bank? The
23 sloughed part.

24 A. Oh. The current which is on Exhibit 34?

25 Q. No. Your current age and in that photograph.

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1 A. From the steep slope adjacent to the road area.

2 Q. So there's a steep slope more or less vertical that's up to
3 the right of the excavator in this picture in Exhibit 37?

4 A. That's correct.

5 Q. It appeared to you you could see rake marks in that -- if you
6 could see -- so it appeared to you at least that they had
7 raked down sand to pile up sand in that location or they were
8 raking it down for some purpose?

9 A. That's correct.

10 Q. Into the -- into the area where the excavator is sitting.

11 A. Yes.

12 Q. Okay. And do you know whether that area had previously been
13 free of sand or not?

14 A. I was aware that the area was -- yeah. Well, I can't say that
15 the entire area was free of sand. I mean, there may have been
16 ravel back against the toe of the slope, but basically, yes,
17 it was a cleared area in which vehicles used that area to turn
18 around at the end of the county road.

19 Q. Okay. So just to be clear, so where we're seeing this
20 excavator now, at least in that general vicinity in the prior
21 condition that you were familiar with, it was at grade and
22 could be used as a turnaround.

23 A. That's correct.

24 Q. Sir, I'm going to show you what's been marked for
25 identification by the defendants as their Exhibit No. 62. And

1 eventually I paid a licensed surveyor to produce a survey for
2 me. It was required from the county.

3 Q. Now, talking about the county, so you've done a survey and
4 you've done some engineering drawings. Describe the first
5 part of the permit process involved in this with the county.

6 A. Okay. So after my original road access permit was denied, and
7 that was based off of me just sketching a road straight up the
8 hill similar to Iddings's grandmother's road, which I guess
9 it's totally -- her driveway's totally illegal right now
10 because it goes straight up the bluff and washouts occur and
11 there's no storm water stuff. Anyway, so you couldn't really
12 do it that way. That's when I hired the engineer. He
13 produced a drawing, and I believe it took about a year for
14 that process to happen. Took the drawings to the county, and
15 then there was this Mason County environmental protection
16 permit, or environmental permit.

17 There was just a lot of things I had to do, and they posted
18 signs on the property, and there was this big community uproar
19 because they -- a bunch of neighbors wrote letters because of
20 the bird issue. This bank is vertical and it's sandy and
21 there's birds that nest in this bank. And it was the first I
22 was aware of a pigeon guillemot. I've never heard of a pigeon
23 guillemot before. So what happens was then since the county
24 received all these letters from the neighbors saying that I'm
25 destroying the habitat, they had a hearing -- I believe it was

1 ago that they essentially just kind of pushed the material out
2 that had been piled up there back in December --

3 A. Right.

4 Q. -- and kind of smoothed it out a bit, but they left it all
5 there basically.

6 A. Yeah. They tried to reestablish the turnaround there a little
7 bit and pushed things off to the side.

8 Q. So if you can estimate, fine; if you can't, just say you
9 can't. But can you give me some idea of what you think in
10 terms of feet the toe of the slope would normally be
11 maintained back to from where it is right now.

12 A. You know, we would -- when we'd go in there and do a little
13 cleanup, we'd push back until we got into the bank and that
14 would be about it. So I can't really give you footage
15 estimate on that. But we didn't -- we tried not to disturb
16 the bank.

17 Q. But you would take it up to the -- up to the vertical or 70
18 percent grade bank typically?

19 A. Yes.

20 Q. And that's obviously your testimony is that hasn't been done
21 in years.

22 A. No. We haven't done any work in there.

23 Q. The material's been for years left to accumulate there, or the
24 material that Mr. Griffith's imported has just been left
25 there; is that right?

- 1 A. People would actually try and camp at the base of that bank
2 several times. They'd set tents and things up, but most of
3 the people would ask them to leave because it was the
4 turnaround.
- 5 Q. So was there at one time -- when you say they were camping,
6 what were they doing? Pitching tents, pulling campers? What
7 were they doing?
- 8 A. Both. They would set up their camps there what they thought
9 was, you know, a good -- well, it was a great camp spot, but
10 it was the turnaround. So they'd bring in campers or trailers
11 or they'd pitch tents sometimes.
- 12 Q. So was there a big enough area there to put campers and
13 trailers off of the pavement?
- 14 A. Oh, yeah. Yeah. Well, you know, the pavement hasn't always
15 been there. But there was, you know, enough -- plenty of
16 room.
- 17 Q. When's the last time you were out at the site?
- 18 A. Three weeks ago.
- 19 Q. What was the purpose of your visit at that time?
- 20 A. Fishing.
- 21 Q. Did you actually go on the -- onto Griffith's property?
- 22 A. I turned around down there.
- 23 Q. What -- did you have any difficulty turning around?
- 24 A. I have a small pickup now. My bumper hit the sand. You know,
25 you got to bump the sand that's there right now with your

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1 way out. This was at night. And had to back all the way out.

2 Q. So they did not come down -- they didn't actually go all the
3 way down to the end of the road?

4 A. They went all of the way to the end. They were staying at the
5 end of the road.

6 Q. I see.

7 A. And they woke us up, and we were wondering what was going on.
8 They had a call that there was a fire somewhere. So they had
9 to back out.

10 Q. So they were -- they had parked on Griffith's property and
11 then came --

12 A. On the easement.

13 Q. Right.

14 A. You know, on the county road they parked and investigated the
15 area, and they couldn't turn their truck around and so they
16 backed out.

17 Q. And it was part of the problem that it was at night, or I mean
18 did they -- I mean, did they try to turn it around I guess is
19 the question.

20 A. They didn't even attempt to turn it around. They couldn't.
21 There wasn't enough room.

22 Q. How about people with the boat trailers? Have you seen any
23 issues that they've had in recent years?

24 A. Well, yes. There was problems with boat trailers. I've seen
25 people come down and have to unhook their boat trailer, and

1 A. Yes.

2 Q. And that has filled in the -- that's filled in a good share of
3 the turnaround area that was there; is that correct?

4 A. In my opinion it has, yes.

5 Q. Well, is it more than just your opinion or is that your
6 observation?

7 A. Yeah, that's my observation. I think it's filled in.

8 Q. And has that -- has that impacted the ability of vehicles to
9 turn around there to your understanding?

10 A. It's made it very difficult to turn around in there.

11 Q. For what kind of vehicles?

12 A. I drive an extended cab pickup in my work, and it's more than
13 just a one-point turn. I have to back up and jockey around to
14 get in and out of there.

15 Q. So this is the truck you drive for work?

16 A. Yes, sir.

17 Q. Do other members of the public -- other than, you know, we
18 talked a little bit about what the county does. Have you ever
19 been aware of the members of the public out there using that
20 area, beach-goers, that type of thing?

21 A. There's a state beach there on that road that people collect,
22 harvest oysters and I think clams on. So yeah, there's public
23 activity out there.

24 Q. Does it get -- I mean, how would you describe -- I won't try
25 to put words in your mouth. How would you describe the amount

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1 A. Under normal circumstances I run every road in our district
2 once a week.

3 Q. So safe to say then that you -- you visit on average Dewatto
4 Beach Road once a week?

5 A. On average. Unless, you know, there's special circumstances.
6 Storm events, not so much.

7 Q. But on average, normal weather.

8 A. Right.

9 Q. And you've been doing that for eight years?

10 A. Yes, sir.

11 Q. Do you go all the way to the end of the road when you do?

12 A. I do.

13 Q. And you use the turnaround there on Mr. Griffith's property
14 when you turn around?

15 A. Yes.

16 Q. What about when you were driving on the road crew, did you run
17 vehicles out there?

18 A. On occasion.

19 Q. What kind of vehicles did you run when you would do that?

20 A. You know, I ran -- we had two-ton flatbeds with full brooms.
21 I ran some of those, and ten-yard dump trucks, plows, that
22 sort of thing.

23 Q. Were you able to turn that dump truck around when you ran the
24 dump truck out there?

25 A. Yes.

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- 1 A. Yes, it does.
- 2 Q. Were you the primary decision-maker on those?
- 3 A. Unless it was appealed to the county commissioners, yes.
- 4 Q. So you would be the first-level decision-maker?
- 5 A. That is correct.
- 6 Q. And just for general background, prior to your two years as
7 county engineer, did you also work for Mason County?
- 8 A. Yes, I did. I was engineering and construction manager, one
9 of two road maintenance supervisors. I was prior to that
10 engineering services manager, and prior to that I was project
11 engineer, and prior to that I was a temporary construction
12 engineer.
- 13 Q. And when did you start with Mason County in those --
- 14 A. As temporary construction engineer in November of 1998.
- 15 Q. And the subject matter of the lawsuit we're dealing with here
16 is the property owned by Griffith at the end of Dewatto Beach
17 Drive. Do you know what area I'm referring to?
- 18 A. I do.
- 19 Q. During your time working for Mason County did you have
20 occasion to visit that location?
- 21 A. I did.
- 22 Q. Can you give me an estimate over the eleven years or so that
23 you've worked for the county how many times you went down
24 there?
- 25 A. Somewhere between a dozen and two dozen times. I really don't

1 Q. Where you able to turn around without a point turn or did you
2 have to make a point turn?

3 A. You know, I should be -- I should say that varied at times.
4 You know, it depended on the weather and the conditions, but
5 most of the time I could just back in and pull out.

6 Q. So that -- would that be a one-point turn?

7 A. Yeah, I think it would be. That's fair to say.

8 Q. All right. And that was 14 -- well, roughly 14 years starting
9 eight years ago basically.

10 A. Right. I was out of the central shop at that time so they
11 have their own crew over there, and I would come over as
12 needed and fill in.

13 Q. What about other -- well, let me -- are you -- obviously
14 you're familiar with the current condition of the road.

15 A. Yes.

16 Q. Would you be able to do that one-point turn with a dump truck
17 out there with the current condition?

18 A. I don't believe so.

19 Q. And why is that?

20 A. Well, that -- the turnaround is -- hasn't been maintained for,
21 you know, some years, three years. And you know, there's been
22 some slough and different things have happened there that have
23 narrowed that down.

24 Q. And is it just slough that's been put in there or has it been
25 other things that have happened in there?

1 A. What, the property for sale?

2 Q. Yes. When Mr. Griffith purchased the property, you became
3 aware of the fact that he had purchased it?

4 A. Oh, yes. Yes. After he bought the property and he came down,
5 that's when the entire community and myself was aware that he
6 bought the property.

7 Q. And then at some point did Mr. Griffith submit some kind of
8 proposal to develop the site?

9 A. Yes. He's had multiple designs that he's submitted over and
10 over to the county for access, and there were even discussions
11 trying to work out easements amongst the property owners.
12 Some agreed; some disagreed. But there's been activity ever
13 since Mr. Griffith bought the property to try and develop the
14 property, yes.

15 Q. And what concern of that -- what concern was it of -- to you
16 about what he's doing? I mean, were you -- let me strike
17 that. Let me take a step back. Did you pay attention to what
18 he was doing? Did you follow his submissions and --

19 A. Yeah. What really got the entire community's attention is
20 that Mr. Griffith came down and started staking 40-foot and
21 30-foot. Actually, I believe it was a 30-foot right-of-way
22 for a retaining wall to go up his driveway, to access his
23 property. But what that was doing was eliminating almost a
24 hundred percent the turnaround that has been there
25 historically for years and that our family and the community

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1 Q. Did -- I thought at one point I had heard a story about your
2 father -- maybe it wasn't your father -- somebody's father
3 that had actually done some kind of clearing work down there.
4 Is that true? Is there any story behind that?

5 A. No. It's true.

6 Q. How did they do it?

7 A. Well, it wasn't really clearing. Well, clearing of the -- to
8 open up the road. You know, the turnaround area, you know,
9 because the county, like they said, they would come down
10 periodically every two, three, four years and clean it, you
11 know, and of course, you know, there's a few people down there
12 that need a little bit of material here and there, you know,
13 and so it was -- in fact, all of the cabins that are built at
14 the end of the road are all built from that spot. They're
15 sitting on it.

16 Q. What do you mean "built from that spot"?

17 A. The material came from that spot where that turnaround to
18 where these cabins were built on it back in the day. Beebe
19 did it.

20 Q. Who?

21 A. Kenney Beebe.

22 Q. Kenney Beebe?

23 A. Yes.

24 Q. The same Beebe family as the Beebe waiver we've been talking
25 about?

1 what you think the amount of turnaround that has been filled
2 in as reflected in --

3 A. It's hard to give a solid number, but my guess would be
4 anywhere from ten to fifteen feet.

5 Q. Exhibit No. 62 is the next loose one that's in front of you
6 there, and this is a picture that apparently is from 2007 of
7 the same area. Do you see that?

8 A. Uh-huh.

9 Q. Is that -- I'm going to have to ask you to say "yes" or "no."

10 A. Yes.

11 Q. Okay. Now, does this picture show us a greater excavation
12 area?

13 A. Yes.

14 Q. Is that the full extent of where the county has historically
15 graded out from that turnaround area?

16 A. For the most part. It looks like there's been a little slough
17 there, and they'll usually clean it out a little further than
18 that, leave just a little bit of slough there. So it's pretty
19 close.

20 Q. Have you -- have you in recent times actually seen any
21 problems with people turning around out there?

22 A. Gosh. I was down there I think it was last winter, and a fire
23 truck had to make a call down that way over a fire of some
24 sort, and it wasn't at the -- it wasn't at the end of the
25 road, and so the full-length fire truck had to back all the

1 A. This is -- the information within this letter is -- I prepared
2 it for the fire chief's review and signature, yes.

3 Q. All right.

4 MR. DAUDT: Move to admit Exhibit No. 25.

5 THE COURT: Counsel, any objection?

6 MR. MORRISS: None.

7 MR. WHITEHEAD: No.

8 THE COURT: Exhibit 25 is admitted.

9 (Plaintiffs' Exhibit No. 25 is admitted.)

10 Q. (By Mr. Daudt) All right. You actually made reference to this
11 earlier, and so I take it that in reviewing the -- well, the
12 first paragraph states there was a visit. Is that the visit
13 you were speaking about?

14 A. Yes.

15 Q. That was your personal visit.

16 A. Yeah.

17 Q. And then so based on the date of this letter you have an
18 approximation of the timeframe how long before the letter was
19 written that you were out there?

20 A. I seem to recall it was that day or the day before.

21 Q. So it was very close in time that this letter was written.

22 A. Yeah.

23 Q. States that -- you state that the area in question lacks
24 adequate space for emergency vehicles to turn around. Is that
25 your testimony here?

1 A. Correct.

2 Q. Now, do you -- do you know what the emergency vehicles are
3 that are used by the fire district in their dimensions and
4 turning radius?

5 A. Yes.

6 Q. Go ahead and tell me what those are.

7 A. Can I use my notes?

8 Q. Yes. Well, can you remember off the top of your head?

9 A. No, not without my notes. We did three of them.

10 Q. Have you made some notes that -- to assist your memory and the
11 specific numbers for your lengths of your vehicles and so
12 forth?

13 A. Correct.

14 Q. Go ahead and look at that.

15 A. When we measured the vehicles, we measured three different
16 vehicles. Two of them were fire engines and one of them was a
17 medic unit that's commonly used by our fire district. The
18 first engine that we measured is the one that's stationed out
19 at Collins Lake. Its overall length is 29.3 feet, and its
20 outside turning diameter is 64 feet 6 inches, and then the
21 inside curb turning is 37 feet. And how we measured that on
22 all these vehicles is we took them out in the parking lot and
23 chalk-lined them as they turned around and measured the
24 radius, measured the diameter of the chalk line that was
25 produced.