

**BEFORE THE WASHINGTON STATE DEPARTMENT OF TRANSPORTATION**

<u>IN RE: STATE ROUTE 12</u>	)	
<u>NINE MILE HILL TO WOODWARD CANYON</u>	)	<b>LIMITED ACCESS</b>
<u>VICINITY, WALLA WALLA COUNTY</u>	)	<b>FINDINGS AND ORDER</b>
<u>MP 317.16 TO MP 322.67</u>	)	
<u>LIMITED ACCESS HEARING</u>	)	

The hearing on the above entitled matter was held upon due notice to interested parties, beginning at 7:00 p.m. on Wednesday, September 29, 2010 at the Touchet School in the Library Media Room, 90 Champion St., Touchet, Washington, before Administrative Law Judge (ALJ) Edward Steinmetz.

The interested persons and organizations are as follows:

**Media**

- tú Decides, 7601 W. Clearwater Avenue, Suite 407, Kennewick, WA 99336
- Walla Walla Union, Walla Walla Daily Bulletin, P.O. Box 1358, 112 S. First Avenue, Walla Walla, WA 99362

**List of State and Federal Legislators:**

- Senator Mike Hewitt, 314 Legislative Building, P.O. Box 40416, Olympia, WA 98504-0416
- Representative Maureen Walsch, 423 John L. O'Brien Building, P.O. Box 40600, Olympia, WA 98504-0600
- Representative Terry Nealey, 402 John L. O'Brien Building, P.O. Box 40600, Olympia, WA 98504-0600
- U.S. Representative Cathy McMorris, 29 South Palouse Street, Walla Walla, WA 99362
- U.S. Senator Maria Cantwell, 915 Second Avenue, Suite 3206, Seattle, WA 98174
- U.S. Senator Patty Murray, 2988 Jackson Federal Building, 915 2<sup>nd</sup> Avenue, Seattle, WA 98174

**List of Local Elected and Appointed Officials**

- Gregg C. Loney, Walla Walla County Commissioner District No. 1, PO Box 1506, Walla Walla, WA 99362
- Perry L. Dozier, Walla Walla County Commissioner District No. 2, PO Box 1506, Walla Walla, WA 99362
- Gregory A. Tompkins, Walla Walla County Commissioner District No. 3, PO Box 1506, Walla Walla, WA 99362
- Randy Glaeser, Public Works Director / County Engineer, Walla Walla County, PO Box 813, Walla Walla, WA 99362
- Jim Kuntz, Port of Walla Walla, Executive Director, 310 A Street, Walla Walla, WA 99362

### **List of Property Owners and Interested Public**

- L.W. Weidert Farms, (Timothy S. Weidert), Parcel No. 5-06581, 81167 Highway 37, Pendleton, OR 97801
- Timothy S. Weidert, Parcel No. 5-06582, 1030-A Northwest 12<sup>th</sup> Street, Pendleton, OR 97801-1200
- Darrell G. and Marsha Felch, Parcel No. 5-06585, PO Box 218, Richland, WA 99352
- Harold and Judy Ganz (Eric Greer), Parcel No. 5-06593, 1091 Touchet North Road Touchet, WA 99360
- Bernard D. Easley Trust, Parcel No. 5-06586, 1666 Cummins Road, Touchet, WA 99360
- Virginia Reavis-Pinza, Parcel No. 5-06597, 548 Touchet North Road, Touchet, WA 99360
- Brook N. Brown, Parcel No. 5-06596, 65 Worden Lane, Touchet, WA 99360
- Kenneth Brown and Robert Shanks, Parcel No. 5-06594, 511 S. Patit Road, Dayton, WA 99328
- Shirley Hindman, Parcel No. 5-06599, PO Box 200, Touchet, WA 99360
- Eric B. Huntley, Parcel No. 5-06598, PO Box 412, Touchet, WA 99360
- Ron and Tracey Asmus, Parcel No. 5-06600, 2810 W. Clearwater Ste 102, Kennewick, WA 99336
- Jerry and Terry Brown, Parcel No. 5-06601, 14350 West Highway 12, Touchet, WA 99360
- Gary and Gene Banks, Parcel No. 5-06602, 13600 West Highway 12, Touchet, WA 99360
- Carl Pinza, Parcel No. 5-06597, 548 Touchet North Road, Touchet, WA 99362
- Nick and Sharon Plucker, Parcel south of and abutting Harold and Judy Ganz (Eric Greer), Parcel No. 5-06593, and west and on the opposite side of Touchet North Road from Virginia Reavis-Pinza, Parcel No. 5-06597, 803 Touchet North Road, Touchet, WA 99360

As a courtesy to interested citizens, the Washington State Department of Transportation, hereinafter "the Department," or alternatively, "WSDOT," furnishes a copy of these Findings and Order to all persons filing a Notice of Appearance, even though some may not properly be parties to the hearing. For administrative convenience, the daily newspaper publication that provided the Affidavit of Publication, local elected officials that received notification of the Access Hearing, all persons who provided written or verbal comments, filed a Notice of Appearance, or are listed on the Affidavit of Service by Mailing for the Access Hearing as abutting property owners, are listed above. The Department, by including a person in this listing and by furnishing a copy of the Findings and Order, does not acknowledge or necessarily recognize the recipient to be a proper party to the hearing.

Brian White, the Assistant Regional Administrator for Development for the South Central Region called the meeting to order under the provisions of chapter 47.52 RCW. Hearing guidelines and legal requirements were provided by ALJ Edward Steinmetz, after which witnesses were called. Evidence was taken by a Court Reporter who, thereafter, transcribed the verbal testimony. Certain exhibits were duly introduced and

admitted into evidence. Additional exhibits were added as necessary to respond to comments received at or subsequent to the hearing. Based on the oral evidence, the exhibits introduced into evidence, and the additional exhibits entered into the record subsequent to the hearing, and acting under the authority of the Secretary of Transportation for the State of Washington, the Assistant Secretary for Engineering and Regional Operations makes the following findings:

## 1. PROCEDURAL FINDINGS

On April 17, 1967, Washington State Commission Resolution No. 1824 designated SR 12 in Walla Walla County, Washington, as a limited access highway on the Master Plan for the establishment of Limited Access Highways. SR 12 was established as a limited access facility by Washington State Highway Commission Findings and Order, dated January 21, 1969 as noted on the plan entitled SR 12, MP 315.37 TO MP 318.02, NINE MILE HILL TO TOUCHET, WALLA WALLA COUNTY, Right of Way & Limited Access, Partially Controlled, approved September 5, 1968. On July 13, 1979, the Washington State Department of Transportation approved SR 12 MP 318.02 TO MP 331.86, TOUCHET TO WALLULA ROAD, WALLA WALLA COUNTY, Right of Way Plan.

In 2010, a new plan was prepared, superseding the two above noted plans, entitled: "SR 12, NINE MILE HILL TO WOODWARD CANYON VICINITY." This Access Hearing Plan (Full and Partial Control) is shown on sheets 1 through 11 of 11 sheets, dated September 9, 2010. This plan was admitted into evidence, marked as Exhibit No. 5, and made part of the hearing record.

This plan is the subject of this Limited Access Findings and Order. Under this plan, SR 12 will be altered to improve traffic mobility and safety.

As part of the preparation of the Access Hearing Plan, the Department solicited and received from public agencies concerned with the proposed plans their available data on planning, land use, local traffic, and other information. Thereafter, the Department prepared and submitted to the appropriate officials an Access Report entitled, "ACCESS REPORT – US 12 Nine Mile Hill to Woodward Canyon Vicinity, MP 317.16 to MP 322.69, Walla Walla County," dated May 2010. This report shows that such data has been taken into account by the Department as required by chapter 47.52 RCW. A copy of the Access Report was admitted into evidence, marked as Exhibit No. 4, and made a part of the hearing record.

## 2. NOTICE OF HEARING

On September 14, 2010, the State Design Engineer by Order proposed said Access Hearing Plan and set a hearing date for September 29, 2010 in accordance with the provisions of chapter 47.52 RCW. The Order of Hearing was admitted into evidence, marked as Exhibit No. 1, and made a part of the hearing record.

As part of the notice of Access Hearing, the Department prepared and mailed copies of relevant Access Hearing materials, including (1) an introductory cover letter, (2) a blank Notice of Appearance form, (3) a Notice of Limited Access Hearing, and (4) the proposed Access Hearing Plan:

- “SR 12, NINE MILE HILL TO WOODWARD CANYON VICINITY,” Access Hearing Plan, Station 12+00 to Station 277+38.50, as shown on sheets 1 through 11 of 11 sheets, dated September 9, 2010.

These Access Hearing materials were mailed September 13, 2010 to the abutting property owners of record, as evidence by the Affidavit of Service by mailing signed by Kerry J. Grant and notarized by Risa Foley. The signed Affidavit of Service by Mailing, Exhibit A, and the Access Hearing materials were admitted into evidence, marked as Exhibit No. 2, and made part of the hearing record.

On September 10, 2010, an exact copy of the “Notice of Limited Access Hearing” was published in the Decides Bilingual Newspaper, as shown by the Affidavit of Publication with printed ad copies attached, signed by Alvaro Torres, Publisher of the Decides Bilingual Newspaper. On September 13, 2010, an exact copy of the “Notice of Limited Access Hearing” was published in the Walla Walla Union, Walla Walla Bulletin, as shown by the Affidavit of Publication with printed ad copy attached, signed by William Thyken, Controller of the Walla Walla Union-Bulletin, Inc. These Affidavits of Publication were admitted into evidence, marked as Exhibit No. 3, and made a part of the hearing record.

The highway plan proposes the establishment of a limited access facility with Full and Partial access control for State Route 12, between STATION 12+00.00 P.O.T. and STATION 277+38.50 P.O.T., as shown on the Access Hearing Plan, entitled “SR 12, NINE MILE HILL TO WOODWARD CANYON VICINITY,” sheets 1 through 11 of 11 sheets, dated September 9, 2010, Exhibit No. 5.

### 3. PRESERVATION OF THE PUBLIC INVESTMENT

This section of State Route (SR) 12 is an important part of the State of Washington's highway system, representing a substantial expenditure of public funds to facilitate public travel. SR 12 is functionally classified as a two-lane Principal Arterial and is part of the National Highway System. WSDOT policy provides for Full, Partial and Modified access control on a highway of this classification. The proposed access control within the project limits on SR 12 will be established as Full and Partial access control as shown on the Proposed Access Hearing Plan entered into evidence, marked as Exhibit No. 5. In limiting access as shown on the Proposed Access Hearing Plan, traffic congestion is reduced, traffic safety is increased, and the highway is preserved for efficient future use, protecting the investment of public funds.

The efficiency of SR 12 as a means of moving a maximum volume of traffic in an optimal and safe manner is directly related to the number of access points onto the highway. It has been demonstrated in the past that, as property owners establish approaches to the state highway for their personal use or business use, the optimal operation of the facility gradually diminishes and becomes obsolete. Therefore, access points should be kept to a minimum consistent with allowing local traffic adequate use of the highway at properly designed intersections in order to preserve the highway's efficiency and safety.

The Access Hearing Plan for the establishment of Full and Partial limited access control as shown on the plan entitled, "SR 12, NINE MILE HILL TO WOODWARD CANYON VICINITY," sheets 1 through 11 of 11 sheets, dated September 9, 2010, admitted into evidence and marked as Exhibit No. 5, will facilitate travel, reduce accident rates, preserve the public investment, and sustain the highway as a modern transportation facility.

#### 4. EXHIBITS

The following exhibits were identified and entered into evidence at or subsequent to the hearing and are also made part of the hearing record:

- |               |  |
|---------------|--|
| Exhibit No. 1 | Order of Hearing, dated September 14, 2010.  |
| Exhibit No. 2 | Affidavit of Service by Mailing, dated September 13, 2010.   |
| Exhibit No. 3 | Affidavit of Publications, dated September 14, 2010 and September 15, 2010.  |
| Exhibit No. 4 | Access Report, "US 12 NINE MILE HILL TO WOODWARD CANYON VICINITY, MP 317.16 TO MP 322.69, WALLA WALLA COUNTY," dated May 2010.                         |
| Exhibit No. 5 | Proposed Access Hearing Plan entitled, "SR 12, NINE MILE HILL TO WOODWARD CANYON VICINITY," sheets 1 through 11 of 11 sheets, dated September 9, 2010. |
| Exhibit No. 6 | Printed copies of the slides 1 through 14 of 14 slides used in the Access Hearing.   |
| Exhibit No. 7 | Letter, dated October 20, 2010 from Ron Asmus, Asmus Farms Inc.  |
| Exhibit No. 8 | Department's response, dated January 12, 2011, to Exhibit No. 7.   |

- Exhibit No. 9            Comment Card with attached Parcel Map, Slide 14, and emails dated, April 03, 2008 and July 17, 2008, presented at the hearing by Gary Banks.
- Exhibit No. 10          Department's response, dated January 12, 2011, to Exhibit No. 9.
- Exhibit No. 11          Phone message, dated September 15, 2010, from Shirley Hindman.
- Exhibit No. 12          Department's response, dated January 12, 2011, to Exhibit No 11.
- Exhibit No. 13          Phone message, dated October 12, 2010, from Shirley Hindman, and the Department's record of its verbal response.
- Exhibit No. 14          Department's response, dated April 26, 2011, to Nicklas Plucker's comments presented at the hearing.

## 5. SPECIFIC RESPONSES

The Assistant Secretary for Engineering and Regional Operations has considered the comments of abutting property owners and public agencies as part of the Limited Access Hearing process and responds to each as follows:

1. Mr. Carl Pinza, representing Virginia Reavis-Pinza Parcel No. 5-06597, in oral testimony on pages 25-26 of the Limited Access Hearing transcript, asked if a fence will be constructed along the highway Right of Way boundary adjacent to his property. Mr. Pinza expressed concern for cows getting off his property and hit by vehicles traveling on the proposed new highway.

**WSDOT Response:**

*The Department responded in oral testimony on page 26 of the Limited Access Hearing transcript. An access control fence will be constructed along the highway Right of Way boundary adjacent to Parcel No. 5-06597 (Virginia Reavis-Pinza). The typical fence normally constructed for access control in the South Central Region is a four-wire barbed wire fence on metal T-posts.*

2. Mr. Nicklas Plucker referenced his neighbor Virginia Reavis-Pinza's Parcel No. 5-06597, in oral testimony on page 26-27 of the Limited Access Hearing transcript, and stated that a proposed access point almost right in front of his house is unacceptable. Mr. Plucker suggested moving the access point at least 50 feet to the north of his northern driveway. Mr. Plucker suggested meeting with Kerry Grant and his neighbor, Dave Rapenah to discuss the issue of where the access should be moved to.

**WSDOT Response:**

*The Department responded to Mr. Plucker's comments by letter, dated April 26,*

2011, Exhibit No. 14. The Department will revise the plans to move the access approximately 60' to the north.

3. Mr. Ron Asmus, Parcel No. 5-06600, in oral testimony on pages 27- 28 of the Transcript of Limited Access Hearing, and by letter dated October 20, 2010, Exhibit No. 7, stated his concern that his alfalfa seed growing business will require frequent travel between the northern and southern remaining portions of his property with large farm equipment. Mr. Asmus requested the Department construct a farm equipment underpass for his use to access his property that will remain north of the proposed SR 12.

WSDOT Response:

*In response to Mr. Asmus' comments in the Limited Access Hearing transcript, pages 27-28, and in Exhibit No. 7, the Department responded as shown in Exhibit No. 8. The Department anticipates constructing a farm use only underpass culvert limited to farm use only in the vicinity of highway engineering station LE 211+50. The proposed frontage road access to the north portion of the Asmus parcel will be eliminated and the proposed frontage road will no longer cross the Hindman Parcel No. 5-06599 to serve the Asmus parcel.*

4. Mr. Gary Banks, Parcel No. 5-06602, on a comment card, submitted at the Limited Access Hearing, Exhibit No. 9, asked how the new project will affect his four existing approaches. Mr. Banks currently uses three of the approaches for heavy farm equipment and large cattle and hay truck/trailers.

WSDOT Response:

*The Department responded to Mr. Banks' comments by letter dated January 12, 2011, Exhibit No. 10. This project will not change access to Parcel No. 5-06602 (Gary and Gene Banks). All four accesses are located outside of the establishment of limited access and will remain as they currently exist.*

5. Ms. Shirley Hindman, Parcel No. 5-06599, during phone conversations on September 15, 2010, Exhibit No. 11, and October 12, 2010, Exhibit No. 13, stated her concern about moving cattle between the remaining north and south portions of her parcel. Ms. Hindman also asked about widening the road to her house and building a 911 road into her property.

WSDOT Response:

*The Department responded to Ms. Hindman's comments by letter dated January 12, 2011, Exhibit No. 12, and by phone conversation, Exhibit No. 13. A new frontage road will be constructed from Touchet North Road which will provide access to the remaining north section of Parcel No. 5-06599. This project will not include widening the road or building a 911 road to the Hindman house on Parcel No. 5-06599. This project will also not provide a cattle crossing under SR 12 that connects the northern and southern portions of the parcel.*

## 6. PROPOSED LIMITED ACCESS PLAN MODIFICATIONS

The Assistant Secretary for Engineering and Regional Operations, has considered the evidence presented on the entire portion of the Access Hearing Plan entitled, "SR 12, NINE MILE HILL TO WOODWARD CANYON VICINITY," sheets 1 through 11 of 11 sheets, dated September 9, 2010, and finds the plans admitted into evidence, marked as Exhibit No. 5, should be modified as hereinafter set forth and marked as Exhibit A to this Limited Access Findings and Order, as follows:

1. Revise plan sheet 1 of 11 sheets; the changes are shown in red and green. On this sheet is an overview of the changes made to the entire 11 sheet plan set.
2. Revise plan sheet 7 of 11 sheets; the changes are shown in red and green. Sheet 7 will be modified to move the south grade intersection to the new highway alignment from Touchet North Road approximately sixty feet north in response to comments by Mr. Plucker given in oral testimony on pages 26-27 of the Limited Access Hearing transcript. This change is recommended by the Department.
3. Revise plan sheet 8 and 9 of 11 sheets; the changes are shown in red and green. In response to comments by Ron Asmus (Parcel No 5-06600) given in oral testimony on pages 27 and 28 of the Limited Access Hearing transcript and by letter, dated October 20, 2010 (Exhibit No 7), sheets 8 and 9 have been modified to include a farm use only underpass culvert. The proposed culvert is identified as a "CULVERT FOR OVERCROSSING" and will be constructed at approximately highway engineering station 208+00. As a result of this modification, the eastern terminus of the Frontage Road will be moved westerly to the property line that is between properties owned by Eric Huntley (Parcel no. 5-06598) and Shirley Hindman ( Parcel No. 5-06599). This change is recommended by the Department.
4. Revise plan sheet 8 of 11 sheets; the changes are shown in red and green. Sheet 8, as a result of moving the easterly terminus of the Frontage Road (Recommendation No. 3, above), the northerly access to the Shirley Hindman Parcel No. 5-06599 was moved from approximately highway engineering station 194+50 LT. to the new terminus at the western edge of said parcel at approximately highway engineering station 186+00 LT. This change is recommended by the Department.

## 7. ORDER

The Assistant Secretary for Engineering and Regional Operations specifically finds in the case of each abutting ownership that the adoption of the Right of Way and Limited Access Plan (Full and Partial control) making said highway a limited access facility, said plan being attached hereto and marked as Exhibit A, sheets 1 through 11 of 11

sheets, with the revisions as listed herein, is required for public convenience and necessity.

Based upon the foregoing findings and the evidence supporting them, the Assistant Secretary for Engineering and Regional Operations for the Department of Transportation, State of Washington,

**ORDERS:**

**A.**

That the section of State Route 12 in Walla Walla County, Washington is hereby designated as a limited access highway of the Full and Partial control type:

Between STATION 12+00.00 P.O.T. and STATION 277+38.50 P.O.T. as shown on sheets 1 through 11 of 11 sheets of the Access Hearing Plan entitled, "SR 12, NINE MILE HILL TO WOODWARD CANYON VICINITY," dated September 9, 2010.

**B.**

That the plan set forth in Exhibit No. 5 for the establishment of access control of said highway be revised as follows, and as further shown by Exhibit A, hereto attached, and by this reference made a part hereof:

1. Revise plan sheet 1 of 11 sheets; the changes are shown in red and green. On this sheet is an overview of the changes made to the entire 11 sheet plan set.
2. Revise plan sheet 7 of 11 sheets; the changes are shown in red and green. Sheet 7 is modified to move the south grade intersection to the new highway alignment from Touchet North Road approximately sixty feet north.
3. Revise plan sheet 8 and 9 of 11 sheets; the changes are shown in red and green. Sheets 8 and 9 are modified to include a farm use only underpass culvert. The proposed culvert is identified as a "CULVERT FOR OVERCROSSING" and will be constructed at approximately highway engineering station 208+00. As a result of this modification the eastern terminus of the Frontage Road will be moved westerly to the property line that is between properties owned by Eric Huntley (Parcel no. 5-06598) and Shirley Hindman ( Parcel No. 5-06599).
4. Revise plan sheet 8 of 11 sheets; the changes are shown in red and green. Sheet 8, as a result of moving the easterly terminus of the Frontage Road (modification No. 3, above), the northerly access to the Shirley Hindman Parcel No. 5-06599 was moved from approximately highway engineering station 194+50 LT. to the new terminus at the western edge of said parcel at approximately highway engineering station 186+00 LT.

C.

That the Access Hearing Plan (Full and Partial control) entitled,

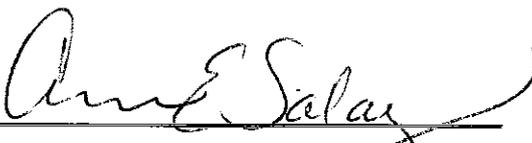
“SR 12, NINE MILE HILL TO WOODWARD CANYON VICINITY,” sheets 1 through 11 of 11 sheets, as reflected in Exhibit A, is hereby adopted.

ADOPTED THIS 16<sup>th</sup> DAY OF March, 2012

ASSISTANT SECRETARY FOR  
ENGINEERING AND REGIONAL OPERATIONS

  
\_\_\_\_\_  
J.C. LENZI, CHIEF ENGINEER

APPROVED AS TO FORM:

  
\_\_\_\_\_  
ANN E. SALAY  
ASSISTANT ATTORNEY GENERAL