

BEFORE THE WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

IN RE: STATE ROUTE 14)
LADY ISLAND TO 6TH STREET)
MP 12.56 TO MP 15.59)
LIMITED ACCESS HEARING)

**LIMITED ACCESS
FINDINGS AND ORDER**

The hearing on the above entitled matter was held upon due notice to interested parties, beginning at 6:00 P.M. Wednesday, April 15, 2009 at the Southwest Regional Headquarters Office for the Washington State Department of Transportation, 11018 NE 51st Circle, Vancouver, Washington, before Administrative Law Judge (ALJ) Gina Hale.

The interested persons and organizations were represented as follows:

THE COLUMBIAN, PO Box 180, Vancouver, WA 98666-0180;

CAMAS-WASHOUGAL POST-RECORD, 425 NE 4th Ave, Camas, WA 98607;

SENATOR JOSEPH ZARELLI, 204 Irv Newhouse Building, PO Box 40418, Olympia WA 98504-0418;

REPRESENTATIVE JAIME HERRERA, 416 John L. O'Brien Building, PO Box 40600 Olympia, WA, 98504-0600;

REPRESENTATIVE ED ORCUTT, 415 John L. O'Brien Building, PO Box 40600, Olympia WA, 98504-0600;

WASHINGTON STATE TRANSPORTATION COMMISSION, PO Box 47038, Olympia, WA 98504-7308;

CITY OF CAMAS, 616 NE 4th Ave, Camas, WA 98607;

CITY OF WASHOUGAL, 1701 C. St, Washougal, WA 98671;

PORT OF CAMAS/WASHOUGAL, 24 South A St, Washougal, WA 98671;

U.S. COAST GUARD STATION PORTLAND – DISTRICT 13, 6767 N Basin Ave, Portland, OR 97217;

BONNEVILLE POWER ADMINISTRATION, 905 NE 11th Ave, Portland, OR 97232;

C-TRAN, PO Box 2529, Vancouver, WA 98668-2529;

CHINOOK TRIBE, PO Box 228, Chinook, WA 98614;

CLARK COUNTY, PO Box 9810, Vancouver, WA 98666-9810;

CLARK COUNTY FIRE DISTRICT 9, 905 NE 267 Ave, Washougal, WA 98607;

CLARK PUBLIC UTILITIES, PO Box 8900, Vancouver, WA 98668;

COWLITZ TRIBE, 1055 9th Ave, Suite B, Longview, WA 98632;

ENVIRONMENTAL PROTECTION AGENCY, Region 10, 1200 Sixth Ave Suite 900, Seattle, WA 98101;

FEDERAL HIGHWAY ADMINISTRATION, 711 S Capitol Way, Suite 501, Olympia, WA 98501;

NOAA NATIONAL MARINE FISHERIES SERVICES, 7600 Sand Point Way NE, Seattle, WA 98155-0700;

SOUTHWEST WASHINGTON REGIONAL TRANSPORTATION COUNCIL, PO Box 1366, Vancouver, WA 98666-1366;

US ARMY CORPS OF ENGINEERS, PO Box 3755, Seattle, WA 98124-3755;

USDA NATURAL RESOURCE CONSERVATION SERVICE, 11104 NE 149th St, Building C, Brush Prairie, WA 98606;

US FISH AND WILDLIFE SERVICE, Western Washington Office, 510 Desmond Drive SE, Suite 102, Lacey, WA 98503-1263;

WASHINGTON STATE DEPARTMENT OF ARCHAEOLOGICAL AND HISTORIC PRESERVATION, 1063 S Capitol Way, Suite 106, Olympia, WA 98501;

RON GOODPASTOR - RIVER'S EDGE HOMEOWNERS' ASSOCIATION, PO Box 605, Camas, WA 98607;

DAVID AND MOLLY FLETCHER, 2140 SE 8th Ave, Camas, WA 98607;

SHERRIE STACH, 2220 SE 11th Ave, Camas, WA 98607;

JAMES AND PATRICIA HUBBARD, 2310 SE 11th Ave, Camas, WA 98607;

TIDLAND CORPORATION, 2305 SE 8th Ave, Camas, WA 98607;

ROBERT AND SUSAN NEVIN, 2462 SE 11th Ave, Camas, WA 98607;

FORT JAMES CAMAS, LLC, 3001 JFK Blvd Suite B, North Little Rock, AR, 72116;

TAZ PROPERTIES, LLC, 1900 SE 97th Ave, Vancouver, WA 98664;

JAMES GRAYBILL, 16109 NE 61st Ave, Vancouver, WA 98686;

ROBERT AND KATHARINA MCGREW, 450 C St., Washougal, WA 98671;

HAMBLETON BROS. LUMBER CO. INC., PO Box 285, Washougal, WA 98671;

PETER AND GABY BEGO, 12310 SW MACOREY CT., BEAVERTON, OR 97008;

RUTH BEGO, 2420 SE 11th Ave, Camas, WA 98607;

ALICE BLAKE, 2444 SE 11th Ave, Camas, WA 98607;

WASHOUGAL INVESTORS II, LLC, 500 E Broadway Suite 110, Vancouver, WA 98660;

SHREE BHAGYA LAXMI LLC, 11024 SE William Otty Rd., Clackamas, OR 97086;

CYNTHIA DAWSON, 2811 E.Evergreen Blvd, Vancouver, WA 98661;

COLUMBIA CREDIT UNION, PO Box 324, Vancouver, WA 98666;

STEPHEN AND SUE DEAN, PO Box 678, Camas, WA 98607;

DEA PROPERTIES 8 LLC, 1470 SE Rivershore Dr, Vancouver, WA 98683;

WASHOUGAL INVESTORS LLC, 500 E Broadway Suite 110, Vancouver, WA 98660;

BILL AND KAREN STARK, PO Box 754, Washougal, WA 98671;

HANS-ERIK AND JOAN SUNDQVIST, 707 SE Union St., Camas, WA 98607;

WASHINGTON STATE DEPARTMENT OF ECOLOGY, PO Box 47775, Olympia, WA
98504-7775

WASHINGTON STATE DEPARTMENT OF FISH AND WILDLIFE, 2108 Grand Boulevard,
Vancouver, WA 98661.

As a courtesy to interested citizens, the 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, 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.

Christopher Tams, Area Engineer for the Columbia Gorge office of the Southwest Region, called the meeting to order under the provisions of chapter 47.52 RCW. Hearing guidelines and legal requirements were provided by ALJ Gina Hale, 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 upon 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 of Engineering and Regional Operations makes the following findings:

1. PROCEDURAL FINDINGS

On July 23, 1953, Washington State Commission Resolution No. 95 designated SR 14 in Clark County, Washington as a Limited Access Highway.

On May 7, 1957, the Washington State Highway Commission, under Commission Resolution No. 492, adopted a plan entitled "PRIMARY STATE HIGHWAY NO. 8, ALPINE ROAD TO LADY ISLAND IN CAMAS, PLAN SHOWING ACCESS, CLARK COUNTY." On July 15, 1963, the Washington State Highway Commission, under Commission Resolution No. 830, adopted a plan entitled "PRIMARY STATE HIGHWAY NO. 8, LADY ISLAND IN CAMAS TO WASHOUGAL RIVER, PLAN SHOWING ACCESS, CLARK COUNTY." On July 15, 1963, the Washington State Highway Commission, under Commission Resolution No. 1337, adopted a plan entitled "PRIMARY STATE HIGHWAY NO. 8, WASHOUGAL RIVER IN CAMAS TO 17TH ST. IN WASHOUGAL, PLAN SHOWING ACCESS, CLARK COUNTY."

In 2009, a new plan was prepared, superseding all or a portion of the above noted plans, entitled "SR 14, LADY ISLAND TO 6TH STREET, CLARK COUNTY, ACCESS HEARING PLAN, FULL, PARTIAL, AND MODIFIED CONTROL" as shown on sheets 1 through 16 of 16 sheets, approved and adopted March 19, 2009 (hereinafter "Proposed Access Hearing Plan"). 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.

As part of the preparation of the above-described Access Hearing Plan, the Department solicited and received from public agencies concerned with the proposed plan 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, SR 14/CAMAS WASHOUGAL-ADD LANES AND BUILD INTERCHANGE, MP 11.93 TO 15.51, JANUARY 2009." 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 part of the hearing record.

2. NOTICE OF HEARING

On March 24, 2009, the State Design Engineer by Order proposed said Access Hearing Plan and set a hearing date for April 15, 2009, 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 part of the hearing record.

As part of the notice of Access Hearing, the Department prepared and mailed copies of relevant Access Hearing material, including (1) an introductory cover letter, (2) a blank Notice of Appearance form, (3) a Notice of Limited Access Control Hearing, and (4) the proposed Access Hearing Plan. These Access Hearing materials were mailed March 30, 2009, to a list of interested parties and abutting property owners of record, as evidenced by the Affidavit of Service by Mailing signed by Kimberly Blahnik and notarized by Kathleen Hortin. The list of the recipients of the mailing is attached as Exhibit A to the Affidavit. The signed Affidavit of Service by Mailing was admitted into evidence and marked as Exhibit No. 2 and made part of the hearing record.

On March 31, 2009 and April 1, 2009, an exact copy of the "Notice of Limited Access Control Hearing" was published in the *Camas Washougal Post Record* and the *Columbian*, as shown by the Affidavits of Publication with printed ad copy attached, signed by Bobbi K. Foster, Production Manager of the Camas Washougal Post Record and Judy Moody, Principal Clerk of the *Columbian*. The Affidavits of Publication were admitted as evidence, marked as Exhibit No. 3, and made part of the hearing record.

3. PRESERVATION OF THE PUBLIC INVESTMENT

This section of State Route 14 is an important and unfinished part of the State of Washington's highway system, representing a substantial expenditure of public funds to facilitate public travel. State Route 14 is functionally classified as a Principal Arterial and is part of the National Highway System. The Department of Transportation policy provides for access control on highways of this type. The proposed access control within the project limits on SR 14 will be established as Full, Partial, and Modified as shown on the proposed Access Hearing Plan entered into evidence, marked as Exhibit No. 5. In limiting access as shown on proposed Access Hearing Plans, 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 the highway 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. It has been demonstrated in the past that as property owners establish approaches to a highway for their personal use or business use, the optimum 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 facility at properly designed intersections in order to preserve a highway's efficiency and safety.

The Access Hearing Plan for the establishment of the limited access control facility, "SR 14 LADY ISLAND TO 6TH STREET, CLARK COUNTY," admitted into evidence, 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 March 24, 2009.
- Exhibit No. 2 Affidavit of Service by Mailing, dated March 30, 2009.
- Exhibit No. 3 Affidavits of Publication, dated March 31, 2009, and April 1, 2009.
- Exhibit No. 4 Access Report, SR 14/Camas Washougal – Add Lanes and Build Interchange, MP 11.93 to MP 15.51, dated January 2009.
- Exhibit No. 5 Proposed Access Hearing Plan entitled “SR 14, LADY ISLAND TO 6TH STREET, CLARK COUNTY, ACCESS HEARING PLAN, FULL, PARTIAL, AND MODIFIED CONTROL, as shown on sheets 1 through 16 of 16 sheets, approved and adopted March 19, 2009.
- Exhibit No. 6 Printed copies of the slides used during the access hearing.
- Exhibit No. 7 Letter dated April 15, 2009 from David Ripp, Executive Director of the Port of Camas-Washougal.
- Exhibit No. 8 Comment Sheet submitted at Limited Access Hearing on April 15, 2009, from Ed Waite, representing himself.
- Exhibit No. 9 Letter dated April 15, 2009 from Robert Nevin, President of the Columbia Shores Neighborhood Association, included with Comment Sheet.
- Exhibit No. 10 Letter dated April 24, 2009 from Philip Bretsch, representing Washougal Investors, LLC and Washougal Investors II, LLC.
- Exhibit No. 11 Letter dated April 27, 2009 from Robert W. McGrew, representing himself.

5. SPECIFIC ACCESS RESPONSES

The Director, Environmental and Engineering Programs has considered the following comments of abutting property owners and public agencies as part of the Access Hearing process and responds to each as follows:

1. Mr. Robert Nevin, Parcel Nos. 4-07623 and 4-07624, in a letter dated April 15, 2009, Exhibit No. 9, representing the Columbia Shores Neighborhood Association, states issues that need to be addressed as noted below. Following Mr. Nevin's statements are the Department's responses:

A) We are all in agreement that the "Private Drive with Gravel Half Hammer Head" option would be our preferred option. The private drive would dead end at the western end, The Thomas's western property boundary and Union St. No continuation with S.E. 11th Ave. The exit to our drive would be as it is now exiting onto S. Marina Way, in its present position.

Issues that need to be addressed.

1. "Continuation of the private drive westward to accommodate the Thomas's (a.k.a. Stach) access onto the private drive."

This comment is in reference to Parcel No. 4-07847 (Stach). As WSDOT and the Columbia Shores Neighborhood Association previously discussed, the properties that currently access Union Street via the existing private driveway shown in the Access Hearing Plans will instead access SR 500 by a Type A-2 shared use residential approach at Engineer's Station 777+30.21 (114.60 ft. Rt.). The existing private driveway currently crosses Parcel Nos. 4-07859, 4-07622, 4-07935, 4-07936, 4-07624, and 4-07937. In order for Parcel No. 4-07847 to utilize the private drive, it will need to be extended west across parcel 4-07847. WSDOT will perform this mitigation work. WSDOT will also construct a hammerhead turnaround on parcel 4-07859 for use by vehicles on the private driveway as mitigation work.

Additionally, Parcel 4-07859 (Stach) and Parcel No. 4-07625 (Dean) will be included in the Type A-2 shared use residential approach located at Station 777+30.21 (114.60' Rt.). Therefore, the Type A-2 shared use residential approach will be reserved to the ownership of Parcel No. 4-07624 (Nevin) and will also be included in the proposed reciprocal driveway easement for the beneficial use by Parcel Nos. 4-07859 (Stach/Hubbard), 4-07847 (Stach), 4-07622 (Hubbard), 4-07623 (Nevin), 4-07625 (Dean), 4-07935 (Bego), 4-07936 (Blake), and 4-07937 (Dawson-Austin Revocable Trust).

B) 2. "Widening the corner at the East end of the drive to better accommodate Utility and Emergency Vehicles access."

The Department will not widen the private driveway on Parcel 4-07624 due to the limited space available between the Bonneville House and Parker's Landing, both historically significant properties. The Department will provide a Type C-9, special use approach, at Engineer's Station 769+55.13 (266.94 ft. Rt), on Parcel 4-07859 to allow for for emergency vehicles to access the private driveway that serves the Columbia Shores neighborhood directly from Union St. The Type C-9 special use approach shall be gated and locked when not in use. Therefore, the Type C special use approach will be reserved to the ownership of Parcel 4-07859 (Stach/Hubbard) and will also be included in the proposed reciprocal driveway easement for the beneficial use by Parcel Nos. 4-07847 (Stach), 4-07622 (Hubbard), 4-07623 (Nevin), 4-07624 (Nevin), 4-07625 (Dean), 4-07935 (Bego), 4-07936 (Blake), and 4-07937 (Dawson-Austin Revocable Trust).

The remainder of the comments included in Exhibit No. 9 are not related to limited access and the decisions to be made as a result of the Access Hearing process. With respect to issues involving land acquisition, Federal and State laws require just compensation to be paid for the purchase of property or property rights, including access. If less than an entire parcel is acquired, just compensation also includes losses in value or damages, if any, to the remaining property. These issues will be addressed by the appraiser during the appraisal process.

WSDOT responded to the non-limited access comments by letter dated July 21, 2009.

2. Mr. Philip Bretsch, representing Washougal Investors, LLC and Washougal Investors II, LLC, Parcel Nos. 4-07941 and 4-07924, in a letter dated April 24, 2009, Exhibit 10, states his concerns as noted below. Following Mr. Bretsch's statements are the Department's responses:

A) "As previously discussed, we are concerned about our existing access drive that currently serves the Columbia Credit Union and retail building owned by Washougal Investors, LLC. First, we want to be certain that this access point (located at 792+46.97 on page 13 of the plans received) will remain open during construction of WSDOT's improvements."

The access will remain open during construction. Some construction activities may require short duration temporary restrictions on the use of the driveway (while the road immediately in front of the approach is paved, for example). The Department will provide advance notification of these activities and schedule them so as to minimize inconvenience or delay.

B) "Furthermore, we want to be certain that all parcels within our two phased development, The Crossing, will be able to use this access point. The use of this access by all parcels in our development is critical to the success of our tenants and project as a whole. We are formally requesting that parcel numbers 73134-145 (Goodwill), 73134-159, 73134-131, 73134-113, 73134-077 (all included in property # 4-07924 on sheets provided) be granted a D-2 access at 792+46.97 along with Washougal Investors, LLC and Columbia Credit Union."

Parcel No. 4-07924 (Washougal Investors II, LLC) will be included in the Type D-2 shared use commercial approach located at Station 792+46.97 (213.33' Lt.).

C) "We also would like to comment on the new access that will be created to serve our project off of the proposed roundabout. We want to be certain that there will not be any limitations as to the parcels that this access will serve."

The access in question will be located outside of the Department's Limited Access Control, and is therefore not subject to WSDOT jurisdiction.

3. Mr. Robert McGrew, Parcel No. 4-07925, in a letter dated April 27, 2009, Exhibit 11, and in oral testimony on page 34 of the Access Hearing Transcript, states his concern that is not

related to limited access below. Following Mr. McGrew's statement is the Department's response:

"This letter is to inform you that Robert & Katharina McGrew have plans for Property #156. We do not understand why WSDOT needs it at all to accomplish the movement of traffic at 2nd St., or why they would need all of it."

The Department has determined that a portion of Parcel No. 4-07925 (tax lot ID 73134-156, referenced in Exhibit 11) is necessary for the construction of a roadway embankment to support the westbound off-ramp from SR 14 to 2nd Street, as well as land for stormwater treatment requirements.

With respect to issues involving land acquisition, Federal and State laws require just compensation to be paid for the purchase of property or property rights, including access. If less than an entire parcel is acquired, just compensation also includes losses in value or damages, if any, to the remaining property. These issues will be addressed by the appraiser during the appraisal process.

4. The Department received written testimony from Mr. Ed Waite, Exhibit No. 8, which was not related to limited access; as such, a response has not been included. WSDOT responded to these non-limited access comments by letter dated June 9, 2009.

6. PROPOSED LIMITED ACCESS PLAN MODIFICATION

The Assistant Secretary of Engineering and Regional Operations has considered the evidence on the entire portion of the "SR 14 LADY ISLAND TO 6TH STREET" plan and finds that the plans as admitted into evidence, marked Exhibit No. 5, should be modified as hereinafter set forth:

1. Plan sheet 11 of 16 sheets has been revised to add a Temporary Construction Easement on Parcel No. 4-07859 (Stach).
2. Revise plan sheet 12 of 16 sheets to add a Type A-2 approach to Parcel No. 4-07859 (Stach) and Parcel No. 4-07625 (Dean) at Station 777+30.21 (114.60' Rt). This plan revision is in response to comments by Mr. Robert Nevin, in Exhibit 9, and is recommended by the Department.
3. Revise plan sheet 13 of 16 sheets to add a Type D-2 approach to Parcel No. 4-07924 (Washougal Investors II, LLC) at Station 792+46.97 (213.33' Lt.). This plan revision is in response to comments by Mr. Philip Bretsch, in Exhibit 10, and is recommended by the Department.
4. Revise plan sheets 1 through 16 of 16 sheets to make minor revisions, to correct ownerships and parcel details, area computations, and right of way details.

7. ORDER

The Assistant Secretary of Engineering and Regional Operations specifically finds in the case of each abutting ownership that the adoption of the plan making said highway a limited access facility, said plan being attached hereto and marked Exhibit A, with the revisions as listed herein, are required for public convenience and necessity.

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

ORDERS:

A

That the section of State Route 14 in Clark County, Washington is hereby designated as a limited access highway of the Full, Partial, and Modified control type:

Between Sta. 660+00 P.O.T and Sta. 820+00 P.O.T as shown on sheets 1 through 16 of 16 sheets of the Right of Way and Limited Access plan entitled "SR 14 LADY ISLAND TO 6TH STREET, CLARK COUNTY."

B

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

1. Plan sheet 11 of 16 sheets has been revised to add a Temporary Construction Easement on Parcel No. 4-07859 (Stach).
2. Plan sheet 12 of 16 sheets has been revised to add a Type A-2 approach to Parcel No. 4-07859 (Stach) and Parcel No. 4-07625 (Dean) at Station 777+30.21 (114.60' Rt).
3. Plan sheet 13 of 16 sheets has been revised to add a Type D-2 approach to Parcel No. 4-07924 (Washougal Investors II, LLC) at Station 792+46.97 (213.33' Lt).
4. Revise plan sheets 1 through 16 of 16 sheets to make minor revisions, to correct ownerships and parcel details, area computations, and right of way details.

C

That the plan entitled "SR 14 LADY ISLAND TO 6TH STREET, CLARK COUNTY," sheets 1 through 16 of 16, as reflected in Exhibit A, is hereby adopted.

ADOPTED THIS 6th DAY OF August, 2009

ASSISTANT SECRETARY OF
ENGINEERING AND REGIONAL OPERATIONS



J.C. LENZI, CHIEF ENGINEER

APPROVED AS TO FORM:



ASSISTANT ATTORNEY GENERAL