BEFORE THE WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

IN RE: STATE ROUTE 5	)	
NE 129TH ST TO WHIPPLE CREEK VICINITY	)	
MP 6.93 TOMP 8.64	)	
STATE ROUTE 205	)	LIMITED ACCESS
SALMON CREEK VICINITY TO SR 5	)	
MP 35.82 TO MP 36.94	)	FINDINGS AND ORDER
SALMON CREEK INTERCHANGE PROJECT	)	
LIMITED ACCESS HEARING	)	

The hearing on the above entitled matter was held upon due notice to interested parties, beginning at 6:00 P.M. Wednesday, May 23, 2007 at the Washington State Department of Transportation, 11018 NE 51st Circle, Vancouver, Washington, before Administrative Law Judge (ALJ) Gina Hale.

The interested persons, entities and organizations were represented as follows:

Mary Ellen Dempsey, no representative present, 10512 NE 152nd Ave, Vancouver, WA 98682;

Elaine D. Neal, no representative present, 3315 X St., Vancouver, WA 98663;

Meyer Clan LLC, by Michael J. Wynne, 13914 NE 16th Ave, Vancouver, WA 98685;

205 Group Inc, by James Howsley and Donald Holsinger, 7626 Hazel Dell Ave, Vancouver, WA 98665;

DeWitt Properties LLC, Wayne DeWitt and Ty DeWitt, 10816 SE Evergreen Hwy, Vancouver, WA 98664;

Miller Paint Co. Inc., no representative present, 12812 NE Whitaker Way, Portland, OR 97230;

Allergy Associates Bldg Co. LLC, no representative present, 233 NW 16th Ave, Portland, OR 97209;

Life Properties LLC, Paul Reed, 13712 NE 20th Ave, Vancouver, WA 98686;

C-Tran, Dave Hurt and Janeen Loughin, P.O. Box 2529, Vancouver, WA 98668-2529;

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, 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 in interest to the hearing.

Casey Liles, of WSDOT, Vancouver Area Engineer, called the meeting to order under the provisions of RCW Chapter 47.52. 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 at the hearing. Additional exhibits were added as necessary to respond to comments received, 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 Director, Environmental and Engineering Programs makes the following findings:

1. PROCEDURAL FINDINGS

On July 23, 1953, Washington State Highway Commission Resolution No. 95 designated SR 5 in Clark County, Washington, as limited access highway on the Master Plan for the establishment of limited access highways. On April 20, 1993, the Assistant Secretary For Program Development by Findings and Order approved a Right of Way and Limited Access Plan entitled: "SR 5, MP 2.73 TO MP 7.45, MAIN ST. TO JCT. SR 205 VIC., CLARK COUNTY."

On August 19, 1968, Washington State Highway Commission Resolution No. 2000 designated SR 205 in Clark County, Washington, as limited access highway on the Master Plan for the establishment of limited access highways. On December 16, 1968, the Washington State Highway Commission by Findings and Order approved a Right of Way and Limited Access Plan entitled: "SR 205, MP 26.26 TO MP 37.22, COLUMBIA RIVER TO JCT. SR. 5, CLARK COUNTY."

In 2007, a new plan was prepared, superseding the above noted SR 5 plan, entitled: "SR 5, NE 129TH ST TO WHIPPLE CREEK VICINITY, CLARK COUNTY", Access Hearing Plan, Full Control, as shown on sheets 1 through 12 of 12 sheets, dated April 26, 2007 These plan sheets were admitted into evidence, marked as Exhibit No. 5, and made part of the hearing record.

Also in 2007, a new plan was prepared, superseding the above noted SR 205 plan, entitled: SR 205 SALMON CREEKVICINITY TO SR 5, CLARK COUNTY," Access Hearing Plan, Full Control, as shown on sheets 1 through 7 of 7 sheets, dated April 26, 2007. This plan was admitted into evidence, marked as Exhibit No. 5, and made part of the hearing record.

Both of these plans are the subject of this Limited Access Findings and Order.

As part of the preparation of the above described Limited Access Plans, the Department solicited and received from public agencies concerned with this 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 "Salmon Creek Interchange Project , Final Access Hearing Report ," dated April 2007. This report shows that the data received has been taken into account by WSDOT 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 April 26, 2007, the State Design Engineer, by Order of Hearing, proposed said Access Hearing Plan

and set a hearing date for May 23, 2007, 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 materials including (1) an introductory cover letter, (2) a blank Notice of Appearance form, (3) a Notice of Access Hearing, and (4) the proposed Access Hearing Plans. These Access Hearing materials were mailed on May 7, 2007 to a list of interested parties and abutting property owners of record, as evidenced by the Affidavit of Service by Mailing signed by Nicki Peppers. 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 marked as Exhibit No. 2 and made part of the hearing record.

On May 7, 2007, an exact copy of the "Notice of Full Access Control Hearing" was published in The Columbian, as shown in the Affidavit of Publication with the printed ad copy attached, signed by Judy Moody, Principal Clerk of the Printer of The Columbian. The Affidavit of Publication was admitted into evidence, marked as Exhibit No. 3, and made part of the hearing record.

3. PRESERVATION OF PUBLIC INVESTMENT

I-5 is a north-south interstate facility that is classified in the *Washington State Highway System Plan* as a state highway of statewide significance. I-5 is a vital part of the transportation network in the Vancouver region. I-5 is a key route for regional commuters and for freight, linking the Port of Vancouver, downtown Vancouver, and downtown Portland. To the north, I-5 connects to the major metropolitan areas of Seattle, Olympia and Tacoma. As a central transportation spine within the region's Urban Growth Boundary, I-5 improvements will direct economic investment and population growth toward established urban centers.

I-205 is a north-south interstate facility that is also classified in the *Washington State Highway System Plan* as a state highway of statewide significance. I-205 is located to the east of I-5 and terminates at its junction with I-5 north of NE 134th Street. To the south, I-205 provides access to the Portland International Airport.

NE 139th Street is an east-west county roadway designated as an urban collector east of NE 20th Avenue. West of NE 20th Avenue, NE 139th Street continues for approximately 130 feet before the roadway turns north-south as NE 17th Avenue. NE 139th Street resumes at a point approximately 450 feet east of the existing NE 139th Street/NE 10th Avenue intersection to the west of I-5. The Clark County long range transportation plan indicates the re-establishment of NE 139th Street as a continuous five-lane minor arterial facility from its proposed western intersection with NE Tenney Road to NE 20th Avenue. The proposed access control within the project limits on NE 139th Street will be established as Full Access Control as shown on the proposed Access Hearing Plans and entered into evidence marked as Exhibit No. 5. In limiting access as shown on the 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 I-5/ NE 139th Street interchange within the limited access area, as a means of moving a maximum volume of traffic in an optimal and safe manner, is inversely related to the number of access points within the interchange area. It has been demonstrated in the past that as property owners establish approaches to a state highway for their personal use or business use, the optimum operation and functional integrity 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 and interchange area at properly designed intersections.

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 April 26, 2007.
Exhibit No. 2	Affidavit of Service by Mailing dated May 7, 2007.
Exhibit No. 3	Affidavit of Publication dated May 17, 2007.
Exhibit No. 4	Salmon Creek Interchange Project, Final Access Report, dated April 2007.
Exhibit No. 5	Proposed Access Hearing Plan entitled "SR 5, NE 129th St. to Whipple Creek Vicinity, Clark County", Access Hearing Plan, Full Control, as shown on sheets 1 through 12 sheets, dated April 26, 2007. Proposed Access Hearing Plan entitled "SR 205, Salmon Creek Vicinity to SR 5, Clark County", Access Hearing Plan, Full Control, as shown on sheets 1 through 7 sheets, dated April 26, 2007.
Exhibit No. 6	Printed copies of the presentation slides for the Access Hearing.
Exhibit No. 7	Letter dated April 24, 2007 from Marty Snell, Clark County, Community Planning Director.
Exhibit No. 8	Letter dated May 15, 2007, from Thomas F. Meyer, DVM, and Jean L. Meyer, DVM, representing Meyer Clan LLC.
Exhibit No. 9	Department's letter to Thomas and Jean Meyer in response to Exhibit No. 8.
Exhibit No. 10	Letter dated May 23, 2007, from Erin Anderson, Attorney, Stoel Rives LLP, representing Life Properties LLC.
Exhibit No. 11	Department's letter to Ms. Anderson, in response to Exhibit No. 10.
Exhibit No. 12	Letter dated May 23, 2007, from James D. Howsley, Attorney, Miller Nash LLP, representing Don Holsinger, an owner of 205 Group Inc.
Exhibit No. 13	Department's letter to Mr. Howsley, in response to Exhibit No. 12.

5. SPECIFIC ACCESS RESPONSES

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

I. Thomas F. Meyer, DVM, and Jean L. Meyer, DVM, Parcel Nos. 4-07397 and 4-07398, in a letter dated May 15, 2007, Exhibit No. 8, and as represented by Michael J. Wynne on pages 23 and 24 of the Limited Access Hearing Transcript, express the requests and concerns catalogued below. Following each of Dr. Meyer's statements are the Department's responses which are also contained in a letter from the Department to Drs. Meyer attached hereto as Exhibit No. 9:

1.) "We request that if the access to NE 139th St. is prohibited, then the current improved access from NE 16th Ave. in the Southeast portion of this property (Parcel No. 4-07398) *be fully replaced as to provide adequate access to the undeveloped Southern portion of this property."*

NE 16th Avenue is a county road, therefore Clark County has jurisdiction over access points off of NE 16th Avenue. If this is a legal access point with the County, then WSDOT will work with the County to replace this access point from NE 16th Avenue to Parcel No. 4-07398.

2.) "Furthermore, there is concern that by taking an additional 30 feet of access from the South property line (Parcel No. 4-07398*), that future development may not have sufficient lot width size to meet the Clark County standards for sufficient setback requirements. We request that any reduction in lot size will not jeopardize any future development of the remaining undeveloped land by future county zoning setback requirements that would negate the development of this land."*

Federal and State laws require just compensation for purchase of property or property rights. If less than an entire parcel is acquired, just compensation also includes losses in value or damages, if any, to the remaining property. This issue will be addressed by the appraiser during the appraisal process. The Department cannot speculate on the future zoning and setback requirements of this parcel.

3.) "...the water supply main was constructed at our expense in the easement of NE 139th Street as it abuts properties #1 (Parcel No. 4-07398) *and #2* (Parcel No. 4-07397), *so that any future development to these properties would have access to this utility. The sewer main also is located in this corridor. We request that proper access to these utilities be supplied and maintained so that future development will not create any detriment to the final completed construction of NE 139th St."*

WSDOT is working with all of the utility providers along the NE 139th Street corridor to relocate any utilities in conflict with the proposed roadway and structure. The current level of utility service to the area will be maintained.

4.) "Property #2 (Parcel No. 4-07397) *currently has access to a deeded county easement known as NE 139th St. with recorded width of 60 feet. This proposal would eliminate all access to this property... On page 10 of 12 of the aforementioned Access Hearing Plans, a center left turn lane*

is identified for the use of mass transit busses into the WSDOT Park and Ride on the South side of NE 139th St. We request that the same left turn privileges be given to this property #2 as a 60 feet access into this property..."

This type of access point will not be granted. However, Federal and State laws require just compensation for purchase of property or property rights. If less than an entire parcel is acquired, just compensation also includes losses in value or damages, if any, to the remaining property. This issue will be addressed by the appraiser during the appraisal process.

5.) *"All three described properties are affected by the alignment of NE 16th Ave. ...The alignment as shown is to match existing conditions only. We request that a full 60 foot width of access corridor be delineated from NE 10th Ave. and the WSDOT Park and Ride extending east on NE 136th St. and North on NE 16th Ave. ...The construction of the overhead SR 5 structures as designed appears to limit this possibility..."*

The small portion of roadway on NE 16th Ave. which is being realigned is being replaced in-kind. However, the roadway is being realigned in order for it to cross under the proposed ramp structure at the angle and location necessary so as not to preclude future widening of NE 16th Ave. to meet Clark County Code requirements for Urban Industrial Roads (Local Industrial).

II. Michael J. Wynne, representing Thomas F. Meyer, DVM, and Jean L. Meyer, DVM, Parcel Nos. 4-07397 and 4-07398, on pages 23 and 24 of the Limited Access Hearing Transcript, expresses the requests and concerns catalogued below. Note that Mr. Wynne refers to 18th when the road being discussed is actually NE 16th Avenue.

1.) *"The elimination of 16th could be a problem. ...They own three separate pieces of property under three separate entities. There is one that abuts the hospital on 18th to the north which is not listed. It's referenced on page 11 of 12 of the access hearing plans, but there is no State Department of Transportation parcel number there. There is a GIS County number there."*

The property to the north of the veterinary hospital (Parcel No. 4-07398) has not been given a Department parcel number because the property does not abut the proposed limited access. Access to that property is by way of NE 16th Avenue, which is under the jurisdiction of Clark County. NE 16th Avenue will not be eliminated and limited access is not being proposed for that road.

III. Dr. and Mrs. Paul Reed, Parcel No. 4-07401, on page 23 of the Limited Access Hearing Transcript and in a letter from Ms. Erin L. Anderson, Stoel Rives, dated May 23, 2007, Exhibit No. 10, express the requests and concerns catalogued below. Following each of Dr. and Mrs. Reed's statements are the Department's responses which are also contained in a letter from the Department to Ms. Anderson attached hereto as Exhibit No. 11. For all of the following responses, NE 138th Street was referred to in Ms. Anderson's letter and work is actually proposed on NE 139th Street:

1.) *"Will any site plan approvals currently enjoyed by the Clinic Property be impacted or compromise its ability to continue as a viable conforming use?"*

The proposed Salmon Creek Interchange Project will not affect any site plan approvals for the Clinic Property, Parcel No. 4-07401, which is located just south of Parcel No. 4-07400.

2.) *"When will the access on NE 138th Street actually be eliminated and will it remain open until immediately prior to construction?*

Currently, construction is scheduled to begin in the fall of 2009 if all approvals and permits are acquired on schedule. Work in the vicinity of NE 139th Street and NE 20th Avenue will most likely occur during the first year of construction, at which time the access from NE 139th Street will be affected. Designers will work with the property owners affected by construction and will consider their needs while planning the construction staging.

3.) *"What will the traffic impacts be for the entrance at NE 20th Avenue that will result from the closure of NE 138th Street?"*

Traffic impacts for the entrance at NE 20th Avenue due to the closure of the entrance at NE 139th Street will be negligible.

4.) *"What alternatives are available to address the closure of NE 138th Street?"*

As discussed at a meeting with Dr. Reed on May 15, 2007, WSDOT is looking at various alternatives to address Dr. Reed's concerns with the closure of the NE 139th Street access point. The attached plan sheet shows the discussed alternatives, which include using excess interstate right-of-way to provide additional parking, expanding access to the west side of the property in order to improve truck circulation, and improving the driveway access from NE 20th Avenue.

5.) *"What compensation will be available to the Clinic Property* (Parcel No. 4-07401) *for this closure?"*

Federal and State laws require just compensation for purchase of property or property rights. If less than an entire parcel is acquired, just compensation also includes losses in value or damages, if any, to the remaining property. This issue will be addressed by the appraiser during the appraisal process. The various alternatives discussed in item 4 above will be reviewed and analyzed by WSDOT and be included in the consideration of compensation.

6.) *"What mitigation is available in terms of other property controlled by the WSDOT or the County which could be a consideration in resolving the problems created by this closure?"*

A consideration is already being made as part of the alternatives presented to Dr. Reed. WSDOT will continue to review and analyze these options and present them to Dr. Reed as part of the appraisal and compensation process.

7.) *"What are the potential impacts to the properties and alternatives if the access on NE 138th Street is eliminated and the NE 20th Avenue is improved with a median?"*

There is no median currently planned with this project on NE 20th Avenue in the location of the driveway access point. NE 20th Avenue is within the jurisdiction of Clark County and WSDOT would therefore have no input to future projects. However, if a median were to be placed in this

location in the future there would be no impact, as the property would continue to enjoy the same level of legal access that it currently does.

IV. Mr. Don Holsinger, Parcel No. 4-07399, in a letter from Mr. James D. Howsley, Miller Nash, dated May 23, 2007, Exhibit No. 12, expresses the requests and concerns catalogued below. Following Mr. Holsinger's statements are the Department's responses which are also contained in a letter from the Department to Mr. Howsley attached hereto as Exhibit No. 13:

1.) "...it is our understanding that the current design has a median on NE 20th Avenue that would prohibit left-in/left-out turns at the property. This would effectively limit the ability of this property to support a viable commercial building.... We understand this is only a preliminary design, but in the event it is finalized we would expect to be compensated."

Clark County proposes to construct a median on NE 20th Avenue that would prohibit left-in/left-out turns Parcel No. 4-07399. However, there is currently no specific access right granted for left-in/left-out turns to Parcel No. 4-07399. Federal and State laws require just compensation for purchase of property or property rights. If less than an entire parcel is acquired, just compensation also includes losses in value or damages, if any, to the remaining property. Determination of compensation will be addressed by the appraiser during the appraisal process.

6. RESPONSES NOT RELATED TO ACCESS

WSDOT received testimony during the comment portion of the Access Hearing by Dr. Paul Reed, related to Parcel No. 4-07401 and No. 4-07400, that was stated to be a question and was not related to limited access; as such, a response beyond what was stated at the Access Hearing shown in the Access Hearing Transcript on pages 23 has not been included.

7. PROPOSED LIMITED ACCESS PLAN MODIFICATIONS

A. The Director, Environmental and Engineering Programs, has considered the evidence on the entire portion of the "SR 5, NE 129TH ST. TO WHIPPLE CREEK VICINITY, CLARK COUNTY" plans and finds the plan admitted into evidence, marked Exhibit No. 5, should be modified as hereinafter set forth:

1. Revise plan sheets 1 through 12 of 12 sheets to make minor revisions, to correct ownerships and parcel details, area computations, and right-of-way details.

B. The Director, Environmental and Engineering Programs, has considered the evidence on the entire portion of the "SR 205, SALMON CREEK VICINITY TO SR 5, CLARK COUNTY" plans and finds the plan admitted into evidence, marked Exhibit No. 5, should be modified as hereinafter set forth:

1. Revise plan sheets 1 through 7 of 7 sheets to make minor revisions, to correct ownerships and parcel details, area computations, and right-of-way details.

8. ORDERS

The Director, Environmental and Engineering Programs, specifically finds in the case of each abutting

ownership that the adoption of the plans making said highway a limited access facility, said plans 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 Director, Environmental and Engineering Programs, for the Department of Transportation, State of Washington,

ORDERS:

A.

That the section of State Route 5 and State Route 205 in Clark County, Washington is hereby designated as a limited access highway with Full control.

Between STA. L 358+00 P.O.C. to STA. L 446+93.14 P.O.T. as shown on sheets 1 through 12 of 12 sheets of the Right of Way and Limited Access plan entitled "SR 5, NE 129TH ST. TO WHIPPLE CREEK VICINITY, CLARK COUNTY" .

Between STA. LL 594+68.85 P.O.T to STA. LR 656+00 P.O.C. as shown on sheets 1 through 7 of 7 sheets of the Right of Way and Limited Access plan entitled "SR 205, SALMON CREEK VICINITY TO SR 5, CLARK COUNTY"

B.

That the plan set forth in Exhibit No. 5 for the modification of access control on SR 5 be revised as follows with the changes set forth in Exhibit "A" hereto attached and by this reference made a part hereof:

1. Revise plan sheets 1 through 12 of 12 sheets to make minor revisions, to correct ownerships and parcel details, area computations, and right-of-way details.

C.

That the plan set forth in Exhibit No. 5 for the modification of access control on SR 205 be revised as follows with the changes set forth in Exhibit "A" hereto attached and by this reference made a part hereof:

1. Revise plan sheets 1 through 7 of 7 sheets to make minor revisions, to correct ownerships and parcel details, area computations, and right-of-way details.

D.

That the plan entitled, "SR 5, NE 129TH ST. TO WHIPPLE CREEK VICINITY, CLARK COUNTY", sheets 1 through 12 of 12 sheets, as reflected in Exhibit "A" is hereby adopted.

That the plan entitled, "SR 205, SALMON CREEK VICINITY TO SR 5, CLARK COUNTY", sheets 1 through 7 of 7 sheets, as reflected in Exhibit "A" is hereby adopted.

ADOPTED THIS 1ST DAY OF October, 2007

DIRECTOR,
ENVIRONMENTAL AND ENGINEERING PROGRAMS

Approved as to form:

Assistant Attorney General