

BEFORE THE WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

IN RE: STATE ROUTE 9)
LOWELL ROAD TO OVERFLOW BRIDGE)
MP 6.80 TO MP 8.90)
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 6:30 P.M. on Wednesday, March 27, 2013 in the Student Center at Snohomish High School, 1316 Fifth Street, Snohomish, Washington, before Administrative Law Judge (ALJ) Lisa Dublin.

The interested persons, organizations and media are represented as follows:

Media

THE HERALD, P.O. Box 930, Everett, WA 98206

List of Legislators

SENATOR STEVE HOBBS, 239 John A. Cherberg Building, P.O. Box 40444, Olympia, WA 98504-0444

REPRESENTATIVE HANS DUNSHEE, 370 John L. O'Brien Building, P.O. Box 40600, Olympia, WA 98504-0600

REPRESENTATIVE MIKE HOPE, 466 John L. O'Brien Building, P.O. Box 40600, Olympia, WA 98504-0600

List of Government Agencies and Local Agencies

STEVE THOMSEN, Public Works Director, Snohomish County, 3000 Rockefeller Avenue, M/S 607, Everett, WA 98201

SNOHOMISH COUNTY COUNCIL, 3000 Rockefeller Avenue, M/S 609, Everett, WA 98201

Washington State Transportation Commission

WASHINGTON STATE TRANSPORTATION COMMISSION, P.O. Box 47308, Olympia, WA 98504-7308

List of Abutting or Affected Property Owners

MARVIN AND DEBRA THOMAS, P.O. Box 370, Snohomish, WA 98291

BIG TREES NURSERY LLC, 10928 Springhetti Road, Snohomish, WA 98296

CRAIG AND JILL DE YOUNG, P.O. Box 2473, Snohomish, WA 98291

MARK AND KATHY MARZOLF, P.O. Box 2167, Snohomish, WA 98291

MIETZNER LAND CO. LLC, 11314 4th Ave. W. Ste. 203, Everett, WA 98204

MICHAEL AND RHONDA BUELER, FRANK BUELER, 8626 E. Lowell-Larimer Road, Snohomish, WA 98290

MICHAEL AND RHONDA BUELER, 8626 E. Lowell-Larimer Road, Snohomish, WA 98290

FRANK BUELER, 8626 E. Lowell-Larimer Road, Snohomish, WA 98290

MICHAEL BUELER, 8626 E. Lowell-Larimer Road, Snohomish, WA 98290

JOSEPH KAYLOR, P.O. Box 219, Snohomish, WA 98296

NATHANIEL AND LORI COON, 8929 E. Lowell-Larimer Road, Snohomish, WA 98296

DOGO DEVELOPMENT INC., 13130 93RD Ave. SE Bldg. B, Snohomish, WA 98291

TIMOTHY AND TRACY STOCKER, 11805 Springhetti Road, Snohomish, WA 98290

KANDACE HARVEY, 10424 Airport Way, Snohomish, WA 98290

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 to the hearing.

Hung Huynh, WSDOT Project Engineer in the Sno-King Area, called the meeting to order under the provisions of chapter 47.52 Revised Code of Washington (RCW). Hearing guidelines and legal requirements were provided by ALJ Lisa Dublin, 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. Based upon the oral evidence, the exhibits introduced into evidence, 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 Secondary State Highway (SSH) #1-A (now known as State Route 9) in King County, Washington and Snohomish County, Washington between Jct. Primary State Highway (PSH) 2 (now known as

SR 522) at Woodinville and Jct. SSH 1-E (now known as SR 530) at Arlington as a Limited Access Highway.

On February 19, 1957, the Washington State Highway Commission under Commission Resolution No. 452, adopted a plan entitled "Secondary State Highway No. 1-A, Lowell Road to Snohomish, Plan Showing Access," Sta. 521+00 to Sta. 738+00, Sheets 1 and 2 of 3 sheets, dated November 7, 1956, and Sheet 3 of 3 sheets, dated January 8, 1957. It was further resolved that the abutters' legal rights of access, if any, shall be acquired in a manner provided by law.

On March 5, 1957, WSDOT Assistant Director of Highways, O. R. Dinsmore, approved a plan entitled "SR 9 Lowell Road to Snohomish," Right of Way Plan, Sheets 1-7 of 7.

On March 9, 1988, Project Development Engineer, Clyde Slemmer, approved a plan entitled "SR 9 Lowell Road to Overflow Bridge," Access Hearing Plan, Sheets 1-6 of 6.

On March 9, 1988, Project Development Engineer, Clyde Slemmer, approved a plan entitled "SR 9 Lowell Road to Overflow Bridge," Right of Way Plan, Sheets 1-6 of 6. This plan superseded the "SR 9 Lowell Road to Snohomish," Right of Way Plan, Sheets 1-7 of 7, dated March 5, 1957. This plan was further modified on November 20, 2012, changing the limited access features and plan title to "SR 9 LOWELL ROAD TO OVERFLOW BRIDGE, Snohomish County," Access Hearing Plan, sheets 1 through 6 of 6 sheets superseding the above noted March 9, 1988 Access Hearing Plan. The November 20, 2012 plan modification is hereinafter identified as "Proposed Access Hearing Plan." This plan was admitted into evidence, marked as Exhibit No. 5, and made part of the hearing record.

The Proposed Access Hearing Plan (Exhibit 5) is the subject of this Limited Access Findings and Order. Under this plan, SR 9 will be altered to improve traffic safety and mobility.

As part of the preparation of the above-described Proposed 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 "Limited Access Report, SR 9 / SR 96 Vic. to Marsh Road Vic. MP 6.96 TO MP 8.42," dated August 2012. 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 January 24, 2013, the State Design Engineer by Order proposed said Proposed Access Hearing Plan and set a hearing date for March 27, 2013, 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) a personalized cover letter, (2) Notice of Appearance,

(3) Notice of Limited Access Control Hearing, and (4) the Proposed Access Hearing Plan. These Access Hearing materials were mailed February 28, 2013 to a list of legislators and government officials, as evidenced by the Affidavit of Service by Mailing signed by Joshua Stecker, dated February 28, 2013 and notarized by Barbara Bulzoni on February 28, 2013. These Access Hearing materials were also mailed on March 12, 2013, to a list of interested parties and abutting or affected property owners of record, as evidenced by the Affidavit of Service by Mailing, signed by Keith Sterling on March 12, 2013 and notarized by Barbara Bulzoni on March 12, 2013. The lists of the recipients of the mailings are attached as Exhibit A to the Affidavits. The signed Affidavits of Service by Mailing were admitted into evidence, marked as Exhibit No. 2, and made part of the hearing record.

On March 12, 2013, an exact copy of the "Notice of Limited Access Control Hearing" was published in The Herald, as shown by the Affidavit of Publication with printed ad copy attached, signed by Karen Ziemer, Principal Clerk of The Herald. The Affidavit of Publication was admitted into evidence, marked as Exhibit No. 3, and made part of the hearing record.

3. PRESERVATION OF THE PUBLIC INVESTMENT

SR 9 is the only north-south highway on the east side of Snohomish County and the only major alternative to Interstate 5. The Department of Transportation made a variety of safety and mobility improvements along SR 9 from SR 96 to Marsh Road between May 2008 and December 2009. The following improvements were made: 1. widened SR 9 to a four-lane highway with median barrier between the SR 96 and Marsh Road intersections; 2. reconstructed the SR 9/SR 96 Lowell-Larimer Road/Broadway Avenue intersection; 3. reconstructed the SR 9/Marsh Road intersection; and 4. realigned the Marsh Road/Airport Way/Springhetti Road intersection. A traffic analysis completed prior to the identified construction elements showed that the SR 9 corridor experienced recurring congestion during weekday morning and afternoon peak hours, with southbound commute predominating in the morning and northbound in the afternoon. Congestion results in poor SR 9 highway operations and a high percentage of rear end collisions. Without the above identified improvements, the SR 9 would have suffered further deterioration of traffic operations and continued poor safety performance.

The section of SR 9 represented by the Proposed Access Hearing Plan is an important part of the State of Washington's highway system, representing a substantial expenditure of public funds to facilitate public travel. State Route 9 is functionally classified as an Urban Principal Arterial and a non-National Highway System (NHS) route. This section of SR 9 is designated as a Limited Access Partial Control facility on the WSDOT Limited Access and Managed Access Master Plan. The proposed access control revisions within the current project limits will be established as shown on the Proposed Access Hearing Plan, 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 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.

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 January 24, 2013.
- Exhibit No. 2 Affidavits of Service by Mailing, February 28, 2013 and March 12, 2013.
- Exhibit No. 3 Affidavit of Publication, dated March 12, 2013
- Exhibit No. 4 Limited Access Report, SR 9 / SR 96 Vic. to Marsh Road Vic., MP 6.96 to MP 8.42, dated August 2012.
- Exhibit No. 5 Proposed Access Hearing Plan entitled "SR 9, LOWELL ROAD TO OVERFLOW BRIDGE, Snohomish County," as shown on sheets 1 through 6 of 6 sheets, approved March 9, 1988 and modified on November 20, 2012.
- Exhibit No. 6 Revisions, as a result of the Limited Access Hearing process, to the Proposed Access Hearing Plan entitled "SR 9, LOWELL ROAD TO OVERFLOW BRIDGE, Snohomish County," as shown on sheets 1 through 6 of 6 sheets, approved March 9, 1988 and modified on November 20, 2012.
- Exhibit No. 7 Printed copies of the presentation slides used during the access hearing.

5. RESPONSES RELATED TO A CHANGE IN ACCESS

The Assistant Secretary of Engineering and Regional Operations 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. Mike Mietzner, Parcel 1-23008, in oral testimony on pages 27-28 of the Access Hearing Transcript, requested clarification of whether an access would be allowed closer to 190 ft. from the intersection of SR 9 and Broadway Avenue, where the limited access, partial control will be acquired on the north side of Broadway Avenue. Following Mr. Mietzner's question is the Department's response:

"...the property we have is Highway 9 and Broadway, at the north – northeast corner there. And I think – you guys went ahead and acquired right of way along Highway 9, so I think at

that time there was limited access rights were acquired along Highway 9. So now we're talking the side street along Broadway..." "I think you mentioned 190 feet along that stretch would be limited access. So to clarify, a person wouldn't be allowed to have any access closer than 190 feet to the intersection."

The Department responded during the hearing, that Mr. Mietzner is correct, access would not be authorized within 190 feet of the intersection. Upon further review, the Department has determined that limited access rights have been previously acquired between SR 9 Sta. 532+98.40 RT and Sta. B 1+54 LT along the north side of Broadway Avenue, approximately 100 ft. Under the Proposed Access Hearing Plan, acquisition of limited access rights will occur between Sta. B 1+54 LT and Sta. B 3+29 LT, approximately 175 ft. parallel to the B Line. Therefore, the total distance of limited access, partial control along the property line of Parcel 1-23008, abutting Broadway Avenue, will be approximately 275 ft. Access will not be allowed within 275 ft. of the intersection.

2. Mr. Mark Marzolf, Parcel No. 1-23004, in oral testimony on pages 30-32 of the Access Hearing Transcript, inquired if, in the future, the house on Parcel 1-23004 was removed and a pumping station for a water or sewer system was constructed on the parcel, would the 30 ft. Type A access approach still be good for a maintenance access to the pumping station? Following Mr. Marzolf's question is the Department's response:

"So if that house disappears and there's a pumping station there, do they have access to that?" "...but if the house was taken out and a pumping station was put in, would that be in the wording?" "I don't think it will be hard to put wording in, if a pumping station – a water pumping station or sewer pumping station could have the same 30-foot access as the single family residence"

The Department has determined that if the house was removed and a pumping station was constructed on Parcel 1-23004, a change in use for the access approach from a Type A approach (single family residence) to a Type C approach (maintenance access to a pumping station) would need to be negotiated with the Department prior to removal of the house and installation of the pumping station.

6. RESPONSES NOT RELATED TO A CHANGE IN ACCESS

1. Mr. Mark Marzolf, Parcel 1-23004, in oral testimony on page 29 of the Access Hearing Transcript, inquired if WSDOT has been working with the County as it prepared the Proposed Access Hearing Plan. Following Mr. Marzolf's question is the Department's response as given during the hearing:

"My question is, have you been working with the County, since the County has jurisdiction over the land that we own. Because what is their plans for the property – like the farmland, we pretty well know that, but when you get up on that hillside, the County does have plans to improve all that property sooner or later. So if you're working with them, asking them what their projections are in the next 20 years, that would be interesting to me."

The Department has been working with the County in developing the Proposed Access Hearing Plan to acquire access rights. The Proposed Access Hearing Plan has been shared with the County Public Works Director and the County Council, so they are aware of the Department's plans.

2. Mr. Mark Marzolf, Parcel 1-23004, in oral testimony on page 32 of the Access Hearing Transcript, inquired if there is a difference in the appraisal process between farm parcels and residential parcels. Following Mr. Marzolf's question is the Department's response as given during the hearing and a follow-up response:

"How do you appraise? Because farmland is different than residential land, how do you make their appraisals on the value of this access?"

The Department suggested that Mr. Marzolf contact Lisa Shawver of WSDOT Real Estate Services after the hearing in order for her to explain the acquisition program. Mr. Marzolf stated that he would call Lisa later. The Department does not distinguish between farm parcels and residential parcels when determining the extent of the establishment of limited access control; however, the valuation of limited access rights will be addressed for both farm and residential parcels during the appraisal process.

The above noted comments and responses in this Section 6, although appreciated, either (1) do not directly pertain to the Proposed Access Hearing Plan for the acquisition of limited access rights which was the subject of the Access Hearing or (2) are general comments about the project, not related to the establishment of limited access. Therefore, these responses will not be reflected in the Findings and Order.

7. PROPOSED LIMITED ACCESS PLAN MODIFICATION

The Assistant Secretary of Engineering and Regional Operations has considered the evidence on the entire portion of the "SR 9, LOWELL ROAD TO OVERFLOW BRIDGE, Snohomish County" Proposed Access Hearing Plan (Partial Control), sheets 1 through 6 of 6 sheets, dated March 9, 1988 as modified on November 20, 2012, and finds that the plans as admitted into evidence, marked Exhibit No. 5, should be further 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 6 sheets to add the identification label for Parcel 1-23011; correct the location of the identification label for Parcel 1-22418 by adding two arrows; add the two parcel boundaries of Parcel 1-22418; and change the boundary of Parcel 1-23011 as requested and recommended by the Department.
2. Revise plan sheet 2 of 6 sheets to change the Type A-1 approaches for Parcels 1-2003, 1-2004, and 1-2005 to Type A residential approaches as requested and recommended by the Department. The Access Approach Schedule, Note No. 1 designation for the three Type A-1

approaches does not apply since the station of the approach on the roadway and the station where each property is to be entered are the same.

3. Revise plan sheet 3 of 6 sheets to correct the parcel number for Parcel 1-23013 as requested and recommended by the Department.
4. Revise plan sheet 4 of 6 sheets to make a minor revision to correct a typographical error as requested and recommended by the Department.
5. Revise plan sheet 5 of 6 sheets to add a second arrow for the Parcel 1-22418 identification label; change the parcel boundary for Parcel 1-23011; and revise the Type C-* note to delete the word "operation" and to insert "sole purpose" in its place as requested and recommended by the Department.

8. 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 9 in Snohomish County, Washington is hereby designated as a limited access highway of the Partial control type:

Between Sta. 523+02.05 P.O.T. and Sta. 634+00 P.O.T. as shown on sheets 1 through 6 of 6 sheets of the Access Hearing Plan entitled "SR 9 LOWELL ROAD TO OVERFLOW BRIDGE, Snohomish County," dated March 9, 1988 as modified on November 20, 2012.

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 on Exhibit A hereto attached and by this reference made a part hereof:

1. Plan sheet 1 of 6 sheets has been revised to add an identification label for Parcel 1-23011, to correct the location of the identification label for Parcel 1-22418 by adding two arrows, to add the two parcel boundaries of Parcel 1-22418, and to change the boundary of Parcel 1-23011.

2. Plan sheet 2 of 6 sheets has been revised to change the Type A-1 approaches for Parcels 1-2003, 1-2004, and 1-2005 to Type A residential approaches.
3. Plan sheet 3 of 6 sheets has been revised to correct the parcel number for Parcel No. 1-23013.
4. Plan sheet 4 of 6 sheets has been revised to make a minor revision to correct a typographical error.
5. Plan sheet 5 of 6 sheets has been revised to add a second arrow for the Parcel 1-22418 identification label, to change the parcel boundary for Parcel 1-23011, and to revise the Type C-* note to delete the word "operation" and to insert "sole purpose" in its place.

C.

That the Access Hearing Plan (Partial Control) entitled "SR 9, LOWELL ROAD TO OVERFLOW BRIDGE, Snohomish County," Sta. 523+02.05 to Sta. 634+00, sheets 1 through 6 of 6, as reflected in Exhibit A, is hereby adopted.

ADOPTED THIS 14th DAY OF JUNE, 2013

ASSISTANT SECRETARY OF ENGINEERING
AND REGIONAL OPERATIONS



KEITH METCALF, CHIEF ENGINEER (INTERIM)

APPROVED AS TO FORM:



ANN E. SALAY
ASSISTANT ATTORNEY GENERAL