

**WHITMAN COUNTY  
04/25/2019  
HEARING EXAMINER  
PUBLIC HEARING  
MINUTES**

**HEARING EXAMINER:**

Andy Kottkamp

**CLERK:**

Ginny Rumiser

Andy Kottkamp – Good evening everyone, I'm going to call this meeting to order. This is the April 25<sup>th</sup>, 2019 meeting of the Whitman County Hearing Examiner. My name is Andy Kottkamp and I have been appointed by your Board of Commissioners to serve as the Land Use Hearing Examiner. My job is to render decisions on various applications that are authorized to come before me, which include conditional use permits, which is what is on the agenda for today. We have a nice crowd out tonight. Thank you all very, very much for coming to the hearing tonight.

Let me tell you a little bit about myself. All of you are thinking, who the heck is Andy Kottkamp and what is he doing here? I'm a lawyer from Wenatchee, I've been a lawyer for 30 years. I'm the land use Hearing Examiner for eight counties in Eastern Washington and about 12 towns in Eastern Washington. I also have a private practice in Wenatchee, so this isn't all that I do, but it's probably the most rewarding thing that I do.

I hold these hearings to gather evidence. My job is to not ask questions to try to help one side or hurt one side. My job is simply to gather the evidence and then to apply that evidence to the rules and regulations and laws that you're County Commissioners have already set.

So, does Andy Kottkamp know what's best for Whitman County? No. I don't live here, I don't pretend to know what's best for Whitman County and I wasn't hired to impose my judgement about what's best for Whitman County. Your County Commissioners are the ones that have set the rules and regulations. My job is to just to conduct these hearings, to gather the evidence and then to make findings of fact based upon those evidence, apply those findings to the law and then make a decision. And that decision can be to deny the application, to approve it or to approve it with conditions. So I just wanted to kind of lay that out right now.

I try to conduct these meetings in a relaxed and informal manner, but we do have a process that we're going to use and I want everybody to be very clear about that. So for the item that we have on tonight's agenda, the first thing that will happen is that staff will

present their report, and they will make whatever recommendations that they wish to make. Then the applicant or the applicant's representative will be given an opportunity to give testimony and evidence. The applicant does have the burden of proof to show compliance with all of the applicable laws and regulations. Then if members of the public came to testify, I'll give you that opportunity. They will be testifying from this microphone up here. This isn't a question and answer period, just to be very clear about that. This is a time for you to present your testimony and your evidence, if you're here from the public, as to why the project does or does not comply with the rules and regulations. Or also, if you think that there are problems, I don't want to call it problems, if there are mitigation measures that could be imposed to lessen the impacts, then this is a great time to suggest those as well. But I just want to be very clear, it's not a time for you to get questions and answers taken care of at this time. After the public testimony I will go back to staff, generally, and ask staff if they have anything else that they want to add and then because the applicant has the burden of proof, the applicant will be given the last opportunity to present testimony and evidence. It's called rebuttal testimony. They don't get to start bringing new, they can't talk about stuff that they didn't talk about before, unless it's in rebuttal to what some testimony in opposition of the project that has been made.

So, now when you do come up to testify, if you want to, I'm going to have you come up to this podium here on the right side of the hearing room, I'm going to have you state your name and address. If you're going to give evidence and testimony, I will swear you in as a witness. I'd ask that you keep your testimony relevant to this application that we're talking about and not to other issues beyond the scope of this proposal. If you have anything in writing that you want to submit tonight, you can do so. I'd ask that you not read what you've brought into the record and then hand it to me, because that is, it just takes up time. So, either testify as to what you want to say or if you just have something that you want to submit into the record, you can do so. I don't know how many people want to testify, let's get a showing of hands. How many people from the audience think that they might want to testify tonight? (Roughly ½ dozen hands were raised). Okay, that's not as many as I had thought. But, from the public, I'm not going to call you, just feel free to get up and form a little line behind the microphone here, and we can have you move up and provide your testimony.

Now, I have the option, following this hearing, to keep the record open if I think that there is a need for additional written testimony to be submitted. But, in any event, my written decision will be made within 10 working days after I close the public record. There has been an attendance roster circulating the room, if you haven't signed in yet, that's fine, and you can sign in before you leave tonight. By coming and testifying at tonight's hearing you may obtain important legal rights, so it's important that we're able to document your presence here today. So as a courtesy to everybody else who has come here tonight, will you please check now and make sure that your cell phones are either off or in silent mode, so as not to disrupt the proceedings. Now except as provided by the Whitman County Code regarding requests for reconsideration, my decision on this matter will be final and conclusive. The exception is that it can be appealed. Now appeals on conditional use permits, those are heard by Whitman

County Superior Court, those are heard by what is called the Land Use Petition Action and one important thing about Land Use Petition Action is that you've only got 21 days from the date of the issuance of my decision to file an appeal. And if you don't timely file an appeal, your appeal is barred. So, the bottom line is, and I tell this to everybody at every hearing that I ever do, if you're considering an appeal to any decision that I make, you really should seek immediate legal advice.

Now I have reviewed the item that is on tonight's agenda. I don't have any interest in the property or the proposal to be heard today, I'll be able to fairly and objectively consider the item that is on tonight's agenda. And outside of receiving and reviewing the staff report that was sent to me, there is an executive summary of the staff report. There were Exhibits 1-12 that were referenced in the staff report and there were another seven or eight items that I'm going to list that were sent to me that are related to this item, that were emailed to me that I'm going to mark and admit as additional exhibits. Other than receiving and reviewing, essentially the entire Planning staff file, I have not had any communication regarding the item that is on tonight's agenda. So with those representations, if there is anybody here tonight who objects to my participation as the Hearings Examiner, you need to come forward and state so at this time.

Hearing none, we'll turn to the item on tonight's agenda.

**SUBJECT:** Conditional Use Permit: CUP 19-01.

**Applicant:** Pacific Northwest Farmer's Cooperative & McCoy Land Company, LLC.

This is for a conditional use permit to establish a commercial agricultural commodity warehouse in Whitman County on property that is located within Whitman County that is more specifically described in the staff report as well as in the application materials.

Now for the record, here is what I am going to admit into the record at this time by this reference. I'm going to admit what was marked in the staff report as Exhibits 1-19. Those include all the public comments that have already been submitted during the comment period for this matter. I'm going to admit as Exhibit 20, the staff report. Exhibit 21, was sent to me as code excerpts. Exhibit 22, is the Ecology SEPA register. Exhibit 23, is an aerial photograph of the site. Exhibit 24, is an April 2019 traffic analysis. Exhibit 25, is an April 22<sup>nd</sup>, 2019 letter from Attorney Drummond. Exhibit 26, is the applicant's response to the comment matrix and Exhibit 27, is an April 23, 2019 letter from Keith Becker to Alan Thomson. So, Exhibits 1-27 are admitted into the record at this by this reference. At this time I will turn this matter over to staff for their presentation.

Alan Thomson – Good evening Mr. Hearing Examiner, my name is Alan Thomson and I am the County Planner. We have received an application for a conditional use permit for Pacific Northwest Farmers Cooperative and McCoy Land Company to operate a grain storage operation, which is formerly known as, in county code, a commercial agricultural commodity warehouse.

*An audience member said that she didn't think that microphone was working, because she couldn't hear him.*

Andy Kottkamp – So if you can't hear, we can turn him around a little bit, but you're more than welcome to pick up your chair and come right up here in the front if you can't hear from there in the back or anywhere else. I don't have any problem with you coming up front.

Alan Thomson – Okay, let me try again. Maybe it's because it wasn't close to my mouth. Can you hear me now?

*Most of the audience members said yes.*

Alan Thomson – So, again this is a conditional use hearing for CU 19-01 Pacific Northwest Farmers Cooperative and this is for a commercial agricultural commodity warehouse.

Andy Kottkamp – Just a second Mr. Thomson. Once again, if you folks can't hear, come on right up here, there's one, two, three, four, five, six seats here or you can just bring your chair up. We're not going to go through this back and forth the whole night.

Alan Thomson – Maybe I'll come up here to the dais. How does that sound.

*Everyone approved.*

Alan Thomson – Okay, I'm going to have to face this way, because I am addressing the Hearing Examiner, not the audience. Again, for the record, Alan Thomson, Whitman County Planning Director. Tonight we're hearing a conditional use application from Pacific Northwest Farmers Cooperative and McCoy Land Company, LLC to operate a commercial warehouse, an agricultural commodity warehouse just south of Dusty on the intersection of Highway 26 and Highway 127. It's an approximate 66-acre parcel of land that is owned by the applicant. And the proposal is to build a commercial operation there, which is going to include ground piles, 4-ground piles, that will eventually be covered and stored there on the ground. Equipment designed for grain storage, truck scales, a small office and utilities and a new entrance way, a new access point onto Highway 127 is also proposed.

We've presented the staff report and all the exhibits to the Hearing Examiner and staff recommends that this proposal be approved, consideration thereof, adopt the proposed findings, conclusions and conditions of approval as presented herein and approve the CUP 19-01 and other special conditions the Hearing Examiner feels necessary to comply with the requirements of the Whitman County Code.

I have a couple of Exhibits that I need to give to you that just came in today.

Andy Kottkamp – Certainly.

Alan Thomson – This is an updated traffic analysis, there have been a couple of changes made to that just recently. And this is a letter from DOT.

Andy Kottkamp – Alright, Exhibit 28, will be marked and admitted into the record as April 2019 Traffic Analysis. This may be what I already have in the record, but if it is...

Alan Thomson – I think that is new, because it just came in and there were a couple of changes to it. So, that is the most current one that you just received.

Andy Kottkamp – Alright, and Exhibit 29, will be admitted into the record. This is an April 25<sup>th</sup>, 2019 email from Washington State Department of Transportation (WSDOT), Greg Figg to staff. Exhibits 28 and 29 are admitted in the record. Is there anything else from staff?

Alan Thomson – That is it.

Andy Kottkamp – Okay, thank you very much. I don't have any questions for staff. I should let everyone know that I have spent a substantial time reading through all the materials, all the public comments several times, so as I said before, I may or may not have questions and please do not read anything into whether I ask questions or whether I don't ask questions, or heaven forbid what kind of questions I ask. If I ask a question it's just because it wasn't clear on something that was in the materials, but I really try not to ask questions, because I think it can be perceived as me trying to help somebody develop their evidence or to attack their evidence and I just leave it to the applicants to make sure that they are able to present their testimony and evidence without my interference. So, is the applicant ready to proceed? I think what we'll do, this microphone seems to be working really well, so if you do come up to testify, I'll have you just sit here. So I'll have you come on up and I'll have you state your name and address for me and then I will swear you in as a witness.

Keith Becker – My name is Keith Becker. I am Operations Manager for Pacific Northwest Farmers Co-Op and Project Manager concerning this project.

Andy Kottkamp – Okay Mr. Becker, will you raise your right hand. Do you swear or affirm under penalty of perjury that any testimony that you give tonight will be the truth?

Keith Becker – I do.

Andy Kottkamp – Thank you very much. Sir, what would you like to tell me about this project?

Keith Becker – This project was brought to our needs by the fact that we had inadequate storage in a facility that we own at Central Ferry. A terminal that loads barges and ships that handle the grain. It's a 1970 facility that is outdated, outgrown itself. There is about \$ 3,000,000.00 worth of infrastructure needs for speed and that

didn't address any increase storage. The problems that we have had is, grain has to, at harvest time, has to be shipped out of grain facilities that we own to keep the doors open and without adequate storage it has to go to the river and then the river has to ship it into the market place and typically that is not an opportune time for marketing. And there are opportunities for the growers to get more money for their crops and the company handle things in a more timely benefit or a more timely way. When I looked to develop a project like this, once there is a need then I look at a strategic location, which is I'm looking for crossroads, I'm looking for accessibility year round, I'm looking for safe good visibility and then we see if there are opportunities to put a facility into an area like this. With the Dusty situation, we were able to, or we looked at that site as strategic. We can stage grain in that location, there is some uncertainty of the long term future of the river transportation. Without it having to go to the river, there is opportunities to go to different rail sites or to go further downstream to barge terminals that perhaps may be perhaps below dams that stay operational. We have looked through the process for three or four years now and it made sense. We are a Co-Op that is owned by 1400 patrons, we've got 1100 active farmers. We're operating in, I think, six different counties in Eastern Washington and Northern Idaho. Most of this grain is Whitman County grain that is moving on its way to, it's in destination. We felt that it would be an enhancement to agriculture with the project, it fits a need, it's in a location that appears to us to be very satisfactory in all ways. It's not out in the middle of farmland, we're not in the floodplain, there are floodplain issues, obviously, down in that area, but no part of this project is in the floodplain. And we felt that it was a good solid project. Some of the technical questions, we have brought with us today Susan Drummond, our legal counsel, I have Bill Newbry, the CEO of Pacific Northwest Farmers Co-Op, I have David Weitz, Green Division Manager, who is in charge of marketing, Andy Rushold with GeoProfessional Innovations, who has done all the ground water research, Eric and Lisa Hasenoehrl, at Keltic Engineering that have done the traffic studies and the floodplain work. So if there are technical questions, I have asked them to be here to help me with any additional questions.

Andy Kottkamp – Okay. I will have one, but I try not to direct the applicant as to what evidence they want to put on at the hearing that hasn't already been presented in the written materials. So I will leave that up to you, if you want to call on anybody to provide additional discussion. What I would like to know, because I'm not going to go through this traffic analysis word for word to find out what work has changed and so I would like to have your traffic person come up and tell me what is different from this report then the other reports that I've reviewed.

Keith Becker – We can do that, but I would also like to have, hopefully we can allow our counsel to speak on our behalf also.

Andy Kottkamp – Absolutely. Who would you like to have come up?

Keith Becker – Susan Drummond.

Susan Drummond – Thank you.

Andy Kottkamp – Are you going to be providing any testimony here tonight?

Susan Drummond – No, I do not intend to provide testimony today, I'm just providing the legal framework and background information.

Andy Kottkamp – Can you identify yourself for the record?

Susan Drummond – Yes. I am Susan Drummond, I am legal counsel for the applicant, Pacific Northwest Farmers Co-Op and McCoy Land Company. So what I wanted to do today, the record is pretty thorough, at this point. I know you have a fair amount of material before you, that material documents consistency of this project with the County's CUP criteria, which requires consistency with the public health, safety and welfare, which requires harmony with the Comprehensive Plan and consistency with the Zoning Code. That material, including attachments for you, which is the applicant's narrative, details how the project is consistent with those criteria. The staff report also details project consistency with the material. Of course, the exhibits that you identified all provide information on various points with the application. The response to comments matrix was designed to address the comments, which came in and address those issues that arise. I'm not going to repeat all the information that is in there, but it's pretty thorough and I'll rely on that. What I wanted to do tonight was to provide some context for why this proposal is a critical piece of the County's farm economy and then briefly touch on some of the impacts and how the project is addressing those impacts. They are impacts that are typical for both this facility and pretty typical for this area.

So, Whitman County's economic base is farming, Since 1978 the County has been the number one wheat producer, not just in Washington State, but in the entire United States. So, it is not surprising that the County zoning provides for permitting a commercial agricultural commodity warehouse, which is what this is, through a conditional use permit in the Agricultural Zone. If you don't have crop storage and you don't transport, there is no agricultural industry. And that is reflected in the fact that the zoning code defines agriculture to include, not simply the growing of crops, but also their storage and transport. So the project provides a key component of the County's farm based economy. Now of course the entire county code is online, but excerpts have been provided, both with the response to comment and it was also detailed in the staff report as well. So, the project itself, doesn't take much acreage out of production, roughly 10-15 acres, the remainder of it will be planted throughout the year. In fact, on April 5<sup>th</sup> it was just planted with hay barley. The project is also at an ideal location, it's approximate to the Dusty community, which is a farm support node, with commercial uses supporting the agricultural industry. Even so, in response to public comment, the project was set back about 350 feet from the community. The uses that are in that community are detailed in the project narrative as well as the various setbacks that the project has incorporated, which are pretty extensive and more than comply with the zoning code requirements. The project itself is flat, it's well drained, there are no wetlands on this site and all of this is documented in the record. Just to provide some context on how well drained the site is, it's been a very heavy snow year, Whitman

County, this area has received almost half the precipitation that it normally received for the year, and yet the site has handled the precipitation remarkably well. The aerial photo is an illustration of the lack of standing water on this site, but also the technical analysis addresses how stormwater will be dealt with as well. And all of that is in the record. There is an ephemeral stream on the site, this is intermittent, it doesn't flow throughout the entirety of the year and in fact for much of it, there aren't even defined banks along its side. Nevertheless, the water shed company visited the site with Washington State Department of Fish and Wildlife, they did a technical analysis, recommended 150-foot setbacks and the project is complying with that and a technical analysis was submitted in the record. I believe it is Exhibit 6, but anyway, you have that technical analysis that was prepared by Ms. Sandstrom. Also Washington State Department of Fish and Wildlife has issued HPA, the Hydraulic Project Approval for the culvert crossing, which was evaluated by WFDW and The Watershed Company. Alkali Creek is located off-site, but it does have an associated floodplain which crosses a portion of the site. The grain piles, however are outside that, although the culvert does cross the floodplain, so there was a question on whether a county floodplain permit would be required and the County, has in fact, issued that floodplain permit and that again was documented in the original record, which was submitted to you.

This site is also ideally located from a transportation standpoint, because it is approximate to truck, barge and rail access points. That is documented in the narrative that was provided with the application. This is also an area with plenty of state highway capacity, Washington State Department of Transportation has been involved in the project design from the beginning and in fact, the latest traffic report, and the traffic engineer will step up to address those questions on that, but there were some minor revisions to that, I don't believe they are substantive, but I'll let the engineer speak to that. DOT reviewed that report and those were the revisions that were incorporated and then the email that was submitted from the Planning Department, which came in today, indicates that DOT is satisfied with the proposal and that it has addressed the DOT's entrance requirements and in fact, the entrance was actually approved in 2018. Just to summarize the traffic report, the reason that it was updated was, to address public comment. It was a request for an evaluation of the early August trip numbers, because the traffic number jumps up at that time period, so the report was updated to include that higher level of traffic in the area. Even then, with those higher numbers at that point, the State Route 26 and State Route 127 intersection will be at Level of Service (LOS) B with the project, otherwise all the other road segments will remain at Level of Service A. This is consistent with County policy. The County prefers that State Highways have the Level of Service C, as identified in their Comp Plan. It's also consistent with Department of Transportation's adopted Level of Service, which is also C. So, this is just a summary of how the issues have been addressed that have been raised through comment. Also the County's conditional use permitting criteria have been more than met.

I wanted to touch very briefly on the SEPA. An M-DNS was issued in August, which was not appealed so the Hearing Examiner has no jurisdiction over SEPA issues. Nevertheless, my correspondence, which has been submitted into the record, does

provide further detail on SEPA and its review. I would point the Examiner to the response to comment concerning this section, in which the applicant has proposed some additional conditions. These were designed in response to comment, they reflect what the applicant was doing anyway, but if the Examiner finds that they are appropriate for the use, the applicant is asking that they be included with this CUP.

In conclusion, this project is sited exactly where the county code and comprehensive plan contemplate this is consistent with the permitting criteria required for a CUP and it is essential to support the local agricultural industry. As it meets the County's criteria, we request approval. Thank you.

Andy Kottkamp – I saw them, but I am not going to, I don't remember where they were, where are the applicant's proposed conditions located in the materials?

Susan Drummond – Those are in the response to comment matrix, I believe they are at the bottom of page 3, just before the attachments are identified. The attachments were admitted as separate exhibits, but that is where the additional conditions are included. And they also included two of the SEPA conditions, it's not required for those to be in the CUP, but for clarity I think it helps to have all of the decisions that apply to the project in one document. So, those were included as well.

Andy Kottkamp – Alright, thank you very much. Who else would like to speak on behalf of the applicant? Your name and work address please.

Eric Hasenoehrl – Eric Hasenoehrl, Keltic Engineering, 315 Adams Lane, Lewiston, Idaho.

Andy Kottkamp – Okay, I'm going to need a lot of help. Is your first name spelled with a K or a C.?

Eric Hasenoehrl – With a C, E-R-I-C.

Andy Hasenoehrl – And how is your last name spelled?

Eric Hasenoehrl – H-a-s-e-n-o-e-h-r-l

Andy Kottkamp – Who are you with, again?

Eric Hasenoehrl – Keltic Engineering.

Andy Kottkamp – Okay Mr. Hasenoehrl, will you raise your right hand. Do you swear or affirm under penalty of perjury that any testimony that you give tonight will be the truth?

Eric Hasenoehrl – Yes.

Andy Kottkamp – Okay, thank you very much. What is your involvement with this project?

Erick Hasenoehrl – We performed the traffic analysis, also did some of the on-site design, also performed the floodplain calculations on Alkali Creek. So you had some questions regarding the traffic study and I just wanted to address those. I guess before I get to that, I'm licensed in Idaho, Washington, Oregon, California, Montana and Washington D.C. The charge of the Engineer is to insure the public safety. So, when someone has a project or wants to do a project, you see what those systems are things that are necessary to ensure that the public is protected.

So, for the traffic analysis, you had some questions as to what has changed for the one that you had seen, to what we have today.

Andy Kottkamp – Yes.

Eric Hasenoehrl – Greg Figg and Mohammad Ali, they're both engineers with WSDOT, out of Spokane, they have reviewed...

Andy Kottkamp – Is the second person on here too?

Eric Hasenoehrl – He should be, in the copy of the emails. Greg Figg is the Supervisor and Mohammed is the subordinate to Greg.

Andy Kottkamp – Okay.

Eric Hasenoehrl – They reviewed the traffic analysis and I can show you the changes that they wanted to have, in particular on page 2, at the bottom, where it talks about the turning lanes, we simply changed an east to a west and a west to an east, so that we make sure that we're discussing traffic is making left turns correctly. They also had, do you want me to do the specific line?

Andy Kottkamp – I'm assuming we're looking at, turning lanes on SR 26 to SR 127, I believe it's the last paragraph on page 2?

Eric Hasenoehrl – Correct. And so the second sentence it says, the east bound left turn, before it said the west bound, we changed from west to east. And then if you go down about 4<sup>th</sup> line, it says west bound left turn lane, it said east before and we've changed it to west. And then two sentences were struck out or removed, where it talked about the site distance, after it talked about each side, the site distance being 1200 feet with no obstructions, I had a sentence after each of those discussing what the obstructions were after the 1200 feet to the site distance. On the one side it was a sign and on the other side it was some telephone poles. They said just remove those for clarity.

Andy Kottkamp – Okay.

Erick Hasenoehrl – The other thing that was added, that they wanted to add to the report, is on the very last page, and in that, what it is, they wanted the page from the WSDOT design manual. Its Exhibit 1310-19A – Site distances at intersections. They just felt that this, and it does, this exhibit delineates what site distance is, shows the cars, talks about second delays and things, factors to be used in the engineering design.

Andy Kottkamp – Alright. Are those the only changes?

Eric Hasenoehrl – Yes.

Andy Kottkamp – Okay. Have you got any other involvement with the project or the traffic? Is there anything else you would like to add to clarify about engineering of the project?

Erick Hasenoehrl – The thing that I would like to add about the traffic, it's a little nuance, but I think it's important. The traffic study that was performed by WSDOT at the end of July, beginning of August, they noted on there that there was harvest trucks involved and so that was a good point to note. Those harvest trucks were used in our counts, in our decision and to that we added on top of it, the additional trucks that this project would have. But, we certainly recognize that those trucks that are passing by that would be going to the river to empty their loads or come back, will go into this project site. We did not discount the traffic for that, we simply made an additive, so it is in that sense conservative in numbers. Even with that, you can see just the intersection goes to a Level B. So, just to help clarify what that means, the Level of Service is like getting grades in school, A is the highest, they'll accept all the way down to a C. So, it goes to a B and it's only for the left hand turning south lane.

Andy Kottkamp – Alright, and that is off of SR 26?

Eric Hasenoehrl – Yes, that is off of SR 26, turning south onto SR 127.

Andy Kottkamp – Alright, is there anything else you would like to add?

Erick Hasenoehrl – I think that is everything at this time.

Andy Kottkamp – Okay, thank you very much. Anybody else for the applicant? Ms. Drummond?

Susan Drummond – Examiner Kottkamp, I just had one other exhibit I would like to add into the record. This is just documentation of Department of Transportation's approval of the access permit in 2018.

Andy Kottkamp – So, I'm being handed what I will mark as Exhibit 30, starts out with a November 14, 2018 email from Kevin Hee at Department of Transportation to Mr.

Becker and it includes multiple other pages. I count 18 pages all stapled together. Exhibit 30 will be admitted into the record. Is there anything else from the applicant?

Susan Drummond – No, your Honor.

Andy Kottkamp – Alright, so we'll turn this matter over to the public. If you want to testify from the public, come up to the microphone, I'll have you state your name and address. So who would like to testify? Alright, gotta break the ice, don't you. Why don't you come on up and state your name and address for me and then I am going to swear you in as a witness.

Steve Passmore – My name is Steve Passmore, P-a-s-s-m-o-r-e. 116661 SR 26, LaCrosse, WA 99143.

Andy Kottkamp – Okay, Mr. Passmore, I'm going to have you raise your right hand for me. Do you swear or affirm under penalty of perjury that any testimony that you give tonight will be the truth?

Steve Passmore – I do.

Andy Kottkamp – Okay, thank you very much. Mr. Passmore, what do you want to tell me about this project?

Steve Passmore – I've already submitted my written comments. I just have one short anecdote concerning the flat. Some years ago Alkali Flat Creek jumped its banks and cut a substantial ditch in my runway. In the process of trying to fix that, we had a D-6 dozer out there. We were having minimal success, so we left it running and went to lunch. We were gone for about an hour, when we came back, it was buried to the top of the tracks and still sinking. The story goes on from there, but it's not pertinent. Thank you.

Andy Kottkamp – Mr. Passmore, thank you very much. Who else would like to offer testimony tonight?

Harmon Smith – My name is Harmon Smith, 26052 SR 127, LaCrosse, WA 99143.

Andy Kottkamp – Okay Mr. Smith, will you raise your right hand. Do you swear or affirm under penalty of perjury that any testimony that you give tonight will be the truth?

Harmon Smith – I do.

Andy Kottkamp – Thank you very much. Sir, what would you like to tell me?

Harmon Smith – I took it upon myself to get a bunch of our, I'm an adjacent landowner to the project and I went around and talked to a bunch of the other adjacent landowners and I have a couple of exhibits to give to you when I'm done. I have 100% of the

adjacent landowners that have homes on their adjacent land, in opposition to this CUP. And I have another 14 people that live in our area that are opposed to the CUP. And they are all feeling that it's going to have an adverse effect and harm on our community and not be a benefit. That's basically my testimony and I've got two sheets for exhibits.

Andy Kottkamp – Okay. Please hand them over to Ms. Rumiser. Thank you very much for coming in. So, I have two things. They're both named the same, Opposition to McCoy CUP. I'm going to mark one as Exhibit 31 and the second as Exhibit 32, these were referenced by Mr. Smith during his testimony as to the folks who are either adjacent to the project property or in the neighborhood, who are opposed and the reasons for their opposition is stated within document itself as well. Exhibits 31 and 32 are submitted into the record. Who else would like to provide testimony?

Loren Scaggs – My name is Loren Scaggs, 102 Dusty Road, Dusty, WA 99143.

Andy Kottkamp – I'm sorry, was it Loren or Lawrence?

Loren Scaggs – Loren.

Andy Kottkamp – And Scaggs is spelled how?

Loren Scaggs – S-c-a-g-g-s.

Andy Kottkamp – Okay Mr. Scaggs, will you raise your right hand. Do you swear or affirm under penalty of perjury that any testimony that you give tonight will be the truth?

Loren Scaggs – I do.

Andy Kottkamp – Thank you very much sir. What would you like to tell me?

Loren Scaggs – I live right in downtown Dusty and have since 1985. I have lived in this community all my life. I'm also the Fire Commissioner for Fire District 13 and also the Chief for Dusty's district. I've been on the Fire Department since 1979 and I've also been a Commissioner since 1994. My biggest concern to talk about, is the concern on the highways. Even though there's been lots of data for what they think is the real thing, unless you live there, there is surely no way of knowing how bad the traffic really is on highway 26. They talk about it all the time, they're looking for different ways, when the college kids are coming back and forth, when they're moving in, into July and August. It's just an awful time of year. There's also a bad sun problem right there on 26 when you're headed west, just before you turn to go onto 127, starting about the middle of July and it goes into August. They're talking about putting another 150 trucks in there, besides the ones that are already going onto the river. Sometimes, as you travel that road, you'll see, there might be half a dozen trucks on the road, which is, they're all, you can figure they're all 100 feet plus, so that adds up pretty fast. And they're all trying to make that corner. Highway 26, the approach will only stand about three trucks at the most. There's a bridge further back from that, that is hard to get people past, the room

will be short. They'll be trying to turn off of 127 into McCoy's grain terminal, plus there will be trucks coming back from the river. There's just going to be a lot of traffic going besides the college kids, their parents, going both directions, coming in, trying to get through that section of the road and it'll be just a total bottleneck. There's no way that there is going to be something, it'll be devastating when whatever happens there. When it happens, it's not if it happens, it's when it happens.

My other concern is about the dust that is going to blow all over Dusty. We're pretty well known for quite a bit of wind, most of the time. Dusty, we're down wind of all this, it's going to be trash, it's going to be weeds. We're having a weed problem right now and we're figuring out, from the straw that is coming from the upper country that is dropping off. We're picking up all kinds of oddball weeds and stuff that we didn't used to have, that we're getting now. The dust that is going to blow across Highway 26, with traffic being across there a lot, it's just going to be another big issue that nobody even knows unless you live there and see how it really works. See what really happens. I've been there lots of times when we've had dust storms bad enough that that road is closed and it closes right there at Dusty, on that corner where all this is going to happen.

Another thing that is going to be an issue is, if they put the wheat in there, is that when it comes time to pick it back up again, there will be some rotten grain, there always is. I drive truck for a living too and I haul a lot of stuff out of Central Ferry, and when they pick piles up down there, there is always a little bit of rotten wheat on the bottom of the piles that comes up, that draws up moisture from the ground, because you're putting hot wheat and it goes to cool weather and it'll draw moisture up out of the bottom. At the river there sitting on bedrock anyway, where their putting the piles now, there is a lot of water, that flat holds water 9 1/2 months out of the year if not a full 10. Its shallow water, most of the wells in Dusty are only about 20-feet, they strike water at about 20-feet and go from there. So, the water table is pretty shallow. That is a big issue and the smelly grain, for all of us to be there and have to smell that in the cool evenings, there's no place for it to go when the wind gets still.

Another concern is, it's just going to all be gravel and the only place that they are going to have any control of anything is where the wheat piles are, so everything else will be gravel, so they'll be dripping oil and everything else that is going to go into our aquifer. There's a chance of fuel and whatever else they have there, I mean, there's always issues when you have some big operation like that. There is always issues that are going to happen and it's going to have an adverse impact and harm on this community.

In closing, my biggest issue is, is that all this amounts to is just a big company, PNW and McCoy just pushing around a little town, because they can. They don't care about what goes on there, they don't have a clue what goes on, they wouldn't even come down, Keith was a big deal about that, because we wanted him to come one weekend, one football weekend and just watch traffic a little bit, and he didn't have time to come down and take a look and see how bad the traffic really is and that is only traffic going

one direction to the game and then coming back. And that wasn't a big deal and this is just a bad deal for the whole area and I think the impact of harm on our little community is going to be awful.

Andy Kottkamp – Okay, thank you for coming in tonight. Anybody else want to offer any testimony tonight?

Jan Smith – My name is Jan Smith, my address is 26052 SR 127. I'm an adjacent landowner.

Andy Kottkamp – Okay Ms. Smith, will you raise your right hand. Do you swear or affirm under penalty of perjury that any testimony that you give tonight will be the truth?

Jan Smith – I do.

Andy Kottkamp – Thank you very much. What would you like to tell me?

Jan Smith – According to the County Code, a CUP is supposed to not harm the welfare, safety of the community and I believe that this CUP and the project will. The first thing I would like to mention is in regard to the traffic report. It was discussed that the traffic report was based on an August traffic study. That study was done in 2017 and the days that were involved in that study, was July 31<sup>st</sup> to August 4<sup>th</sup>. And I have to admit that I haven't seen the most recent report that you got, just now. But I don't think that there is anything different than this, according to what he said. And during that time, yes there are some harvest trucks, that mostly from our area, where we live, what we call the lower country. But, the upper country, which would be more Colfax north, Rosalia, or Pullman, they're not into harvest yet, they are a little later than we are, so I don't think it was an accurate representation of the amount of trucks during the peak harvest time. The other thing that it did not address, is the students that are coming to school in Pullman, they usually start that first weekend of August is the beginning of it and then the following weekends until school starts, I think it's about the third week in August. So, I believe a current study is required that would be done during those peak times that would really show accurately, what the traffic load would be. I do understand that we have a LOS, Level of Safety, of A, but with this project it is already determined without this recent study that I am requesting, that it's going to drop down to a B, at least and that is an adverse effect for our community or anyone who passes through that intersection.

I'm also concerned about the air quality. That narrative, I believe, that was given, talks about a plan that will be in place to deal with the dust, the weed seeds, odor, will be put into place, but we don't know what that is. And I think it's important to know what that is ahead of time.

I think that the smell of the rotting grain when the piles are uncovered, is going to adversely affect the property values and home values at Dusty. I think that is a consideration that is an adverse effect.

Also there was talk about the County Code that was changed in 2013 and it appears that primarily McCoy Land and PNW benefitted because that accommodated their grain terminal near Rosalia. And I think that suits that location fine, there is hardly anyone around there, so it's not affecting any other community, it's not affecting the traffic, because coming south and north off of SR 195, there are exit lanes, so there is no cross traffic turning from either direction. But, that is not the same situation at the intersection of SR 127 and SR 26. So, I think, assuming that this project is in an ideal location there, is not accurate. And that is all I have. Thank you very much.

Andy Kottkamp – Thank you very much for coming in. Does anyone else want to offer testimony tonight?

Justin Rice – My name is Justin Rice. I am with GeoEngineers and we're located 523 E. 2<sup>nd</sup>, Spokane, WA.

Andy Kottkamp – So, Justin Rice?

Justin Rice – Correct.

Andy Kottkamp – And who are you with?

Justin Rice – GeoEngineers.

Andy Kottkamp – Okay Mr. Rice, will you raise your right hand. Do you swear or affirm under penalty of perjury that any testimony that you give tonight will be the truth?

Justin Rice – I do.

Andy Kottkamp – Thank you very much. So, what would you like to tell me about this project?

Justin Rice – So, GeoEngineers, we reviewed the applicant's plan, focusing on the potential impacts to surface and ground water at this site. In our opinion there is a potential to have surface water and ground water contamination to likely occur as a result of the applicant's proposed warehouse. I think, as was mentioned before, it's inevitable that there is going to be leaks and spills from the trucks coming onto this site and the asphalt pavement is going to accumulate this and surface runoff is going to transport that into the gravel areas. The Department of Ecology has specific, they have recommendation criteria for managing stormwater, which we felt was not addressed in the applicant's plan and does not mitigate the risk for contamination of the surface water and ground water at this site. It's very likely that the surface water is going to carry contaminants into the pervious gravel or directly into one of the tributaries, or into Alkali Creek. Within the plan, they did offer some retention ponds to manage the surface water runoff, however we thought there were some concerns with these locations and site MV's within the floodplain of the unnamed tributary, the named creek. And also

within a low end area of the site, which is likely to be inundated with ground water, ground water at that site occurs within 1 – 7 feet below ground surface, (inaudible) particularly right now during high water season, so the ground water is actually at the surface, it's ponded. Very easy for contaminates to transport from the site to the ground water and to the surface water. As mentioned, there is really no mitigation in these plans to protect the surface water, ground water from contamination.

We also reviewed the wetlands delineation, the wetlands report, which stated that there are no wetlands on the property. Argue of that document, we cannot draw that same conclusion. We felt that it was an inappropriately done wetlands report. We actually felt that the conclusion is contradicted there, their statement that there are no wetlands there.

Andy Kottkamp – Did you go out to the site and look for wetlands?

Justin Rice – Right now it's probably under water and actually when they went and did the wetlands report they didn't dig any of their test pits in places that we would typically dig them, because it was under water.

Andy Kottkamp – Okay, so you've only been involved with this project for a very short time?

Justin Rice – We didn't actually go to the site. Yes, and we just reviewed the documents that were submitted. So, we have not had a wetlands specialist go out to the site, he reviewed the wetlands report that was submitted.

Andy Kottkamp – Okay. Sorry to interrupt you, what else would you like to add?

Justin Rice – As I mentioned, there is a floodplain within that site. There is the Alkali Creek floodplain and there is also one that is a zone A, special flood hazard area, which is where the culvert, proposed culvert crosses. And it's also where the proposed retention ponds are located within this floodplain area. We think that would be problematic, A) Because low ground water where those retention ponds are and retention ponds within a flood hazard, doesn't seem like a very effective or appropriate site for those.

So just in conclusion, it's our opinion that the plans that we reviewed, the warehouse that they propose, there is a potential to contaminate surface and ground water at this site. And those measures haven't properly been addressed or mitigated.

Andy Kottkamp – Do you have any suggested mitigation?

Justin Rice – Not at this time.

Andy Kottkamp – Alright. Thank you very much for coming in. Anybody else wish to offer testimony from the public tonight?

Linda Hennigar – My name is Linda Hennigar. I live at 202 Dusty Road, Dusty, WA.

Andy Kottkamp – How do you spell your last name ma'am?

Linda Hennigar – H-E-N-N-I-G-A-R.

Andy Kottkamp – Okay Ms. Hennigar, will you raise your right hand. Do you swear or affirm under penalty of perjury that any testimony that you give tonight will be the truth?

Linda Hennigar – I do.

Andy Kottkamp – Thank you very much. What would you like to tell me?

Linda Hennigar – Well I hadn't planned on speaking tonight, but I just want to reiterate, I've been a lifelong resident of downtown Dusty and I agree with everything that Jan Smith presented and also Loren. Dusty isn't our legal name, it got its name because it is dusty and we don't need any more of it. And I just think that everything that was mentioned, that Jan mentioned with the water, the water level that Steve mentioned, the dust, the smell, rodents, birds, a lot of things that are going to affect and also they said that it was an ideal location, not according to us residents. We hear screeching of brakes all the time at that intersection and with trucks there, it's going to be a lot worse. There are enough trucks, the way it is. There's a lot of traffic, there's kids on that traffic. There have been lives lost on that intersection. One of the things that I read was that traffic was already slowing down because of the intersection, if you live there, you know that nobody slows down. So, with the slower truck traffic, which obviously they are traveling slower when they turn, would create a bigger hazard than what is already there. That is all.

Andy Kottkamp – Thank you very much for coming in.

Mischelle Fulgham – I'm a land use attorney in Spokane. It's F-U-L-G-H-A-M.

Andy Kottkamp – Alright, will you be providing testimony tonight?

Mischelle Fulgham – Yes, sir.

Andy Kottkamp – Okay Ms. Fulgham, will you raise your right hand. Do you swear or affirm under penalty of perjury that any testimony that you give tonight will be the truth?

Mischelle Fulgham – I do.

Andy Kottkamp – Thank you very much.

Mischelle Fulgham – The first thing is an objection that I had filed, did not apparently make it to you. It wasn't listed as one of the exhibits at the beginning of this hearing.

So, I want to clean up the record and put in an April 11, 2019 objection to McCoy Land Company/ Pacific Northwest CUP.

Andy Kottkamp – Okay, I had your letter.

Mischelle Fulgham – From the 11<sup>th</sup>?

Andy Kottkamp – I mean I read a letter from you. It was in the public comment portion, I would imagine.

Mischelle Fulgham – And then I have materials and exhibits that I will address tonight. Should I hand those to you or to the clerk?

Andy Kottkamp – You can hand them to me. I do have your April 11, 2019 letter.

Mischelle Fulgham – Okay, I didn't hear it listed at the beginning and I just wanted to make sure that you had it.

Andy Kottkamp – It was in the public comment section of the exhibits. Okay, but since you handed them up, I have your April 11, 2019 letter which will be exhibit 32,

Ginny Rumiser – Exhibit 33, 32 was the opposition.

Andy Kottkamp – Okay, exhibit 33, oh there it is. And exhibit 34 will be your April 25, 2019 letter with attachments to the Hearing Examiner.

Mischelle Fulgham – Okay, thank you. And the place I really want to start with this opposition is, that this is essentially a Light Industrial use. It's a commercial commodity warehouse and they had previously applied for a zone change to a Light Industrial use and are in fact using the same SEPA that was submitted with the zone change for Light Industrial use. And the applicants claim that it's proper to use the same SEPA because the use hasn't changed. It is a Light Industrial use and it doesn't belong in this Agricultural Zone. A Light Industrial use, commercial commodity warehouse should be located in a Light Industrial zone, in another location. Because it doesn't fit within the Comp Plan designation, the zoning designation, the conditional use should be denied and we're respectfully requesting that your honor do that.

The first objection contained in my written notes goes to the SEPA and it's our position that the SEPA should be redone. This application for this conditional use permit didn't even exist, wasn't even submitted until February of 2019, yet they are using a SEPA document from 2018, that predates this application. The SEPA that they are relying on was committed, completed and submitted in May of 2018, this application didn't even exist and the conditions and the details didn't exist. The SEPA that was submitted states that the project, and this is on page 1 of 14, of the SEPA, the project is Dusty Limited Heavy Industrial Re-zoning, that's not this. That's not this application that we are here for, so I submit that is an example of why this SEPA should, the old SEPA that

was used for the re-zone should be left with that and a new SEPA for a CUP should be required, particularly when it states the project is a Heavy Industrial RE-zone on its first page.

On page 5 of the SEPA it states, could waste materials enter ground or surface waters and the answer is no. That is what the applicant wrote in obtaining their SEPA M-DNS decision and we've heard evidence from Justin Rice, GeoEngineers Water Quality study that given the very, very high ground water, given the floodplain and the surface waters, contaminates, leaks, materials are likely to be transported and migrate and contaminate surface and ground waters. But, the SEPA said no, waste materials would not enter the ground or surface waters and based upon this SEPA and this, I submit false answer on page 5 of 14 of the SEPA, based on that information, they received an M-DNS, which is in error, they shouldn't have received that when they are dealing with high ground water, a floodplain and standing surface water as we speak. Additional environmental controls need to be implemented and studied. There is no specific plan for controlling runoff migration. It says replanting of exposed soil would limit the long term threat of runoff. Again we have a conflict between this old May 2018 SEPA, which says replanting of exposed soils will limit runoff and the application that we're here on tonight sir, is talking about holding ponds, holding ponds are going to control the runoff. Now those holding ponds, and they are located in the floodplain, which is a problem, they shouldn't be there, but that is different than what they said in their SEPA. They didn't talk about those holding ponds in the floodplain in their SEPA, they said replanting of soils would control the detrimental runoff. So again a criticism of using this old SEPA and the M-DNS that they received.

On page 10 of the SEPA is states that what views in the immediate vicinity would be altered or obstructed, and the applicant states that the project would be visible from SR 26 and SR 127, also from homes and businesses in Dusty. That's the surrounding property owners, Harmon and Jan Smith. They reside directly across the highway. This facility is going to be visible, it's going to destroy the rolling farmland view that they see, currently, from their home, that has been in Jan's family for generations. The immediate vicinity, they're going to see the grain piles for the conveyors and 150 trucks per day, coming and going, back-up beepers, brakes, compression, all of that. It's not disclosed regarding the view, but not only will it be the grain piles and the conveyors, but the trucks and the traffic, not listed in the SEPA and definitely a negative impact to adjacent property owners that are adversely impacted by. Item 11, light and glare. What type of light or glare would the proposal produce? What time of day would it occur? This facility will include illumination lighting fixtures, these would be in use at night. That is an adverse impact to the adjacent property owners who don't have a commercial warehouse light and glare at night, right out in front of their home. It's an adverse impact that the adjacent property owners don't want.

Now I'm getting to the biggest deficiency of the SEPA, and frankly the biggest deficiency of the entire CUP and that is dealing with transportation. In the SEPA, on page 11, the applicant was supposed to identify and describe, will the proposal require any new improvements to existing roads, streets, facilities, not including driveways? The answer

is, the proposed project would construct a new private gravel access to the site, approximately 60-feet wide to allow safe access to the site for delivery trucks and facility personnel. This is incomplete and outdated data. They were supposed to disclose, and this is why the old SEPA shouldn't be used, they were supposed to describe the improvements to existing roads that they are going to make. They don't mention it in their SEPA, but in the traffic study, attachment #3, 150-foot taper on Highway 127. That is a good idea, they need to have something to control 150 loaded, slow, heavy, fully loaded grain trucks pulling out onto a busy highway, they need to have, and pulling in, they need to have taper and they need to make adjustments on the highway, but they didn't put it in the SEPA that they were going to make these improvements to existing roads, streets or highways. And they are, they are going to make this improvement. So, this SEPA is not accurate in dealing with transportation and dealing with environmental and dealing soils and even in dealing with the name of the project, which is no longer Heavy Industrial Re-Zone. So, we think a new SEPA should be required. And the M-DNS that they received was based on information that is no long accurate or contained in the CUP materials, it's the old zone change materials. The traffic objection that I reference in my letter and Mrs. Smith, Jan Smith addressed briefly too, the Washington DOT Developmental Services Manager, Greg Figg, stated, a week ago, April 17<sup>th</sup>, that given the, this is an email attached as Exhibit A to my materials, Mr. Figg stated that given the time of the year the counts were collected, it would not be representative of a high grain movement type. I was hoping that Mr. Hasenoehrl could add the development traffic to these counts, so that we could have a count both with and without the project, and what he did two days ago, which I haven't really had time to digest, but what he did two days ago, was to ratioed (sic), he ratioed (sic) for harvest time and added project values. That's on page 5 of Exhibit E of his materials. And it's still not a high grain movement time. The traffic counts that this traffic study used, are from 2017, nearly two years old, and WSDOT is calculating 2019 spring traffic counts very soon. So they are using nearly 2-year old data and the data was July 31<sup>st</sup> – August 4<sup>th</sup>. That's not a high grain movement time and that is not a high student movement time. And that is the time, I think, the citizens are concerned about, is mid to late August, high grain movement time and high student movement time, to WSU and U of I. That's when this traffic count should have been conducted. And I think when Mr. Figg was saying the count was not representative of a high grain movement time that is a very good criticism, it's not and it's not a true analysis of the impact that this project will have in a high grain movement time when the students are on the road, as well. Four days in late July and early August in 2017 are not good indicators or indicative of the traffic impact. While we're on traffic, we have to be very focused, and I know, based on your experience and expertise, you absolute are, so please don't take this as any sort of sign of disrespect, the conditional use permit standard, under the County Code 19.06.01, as you know, is that the conditional use will not adversely affect the public health, safety and welfare. That is what they have to prove. And so it's not sufficient for them to say, State highways can function at a Level of Service C. You're not going to get down to a Level of Service C, so we're good to do, we're compliant. That's not the standard. The standard is, that this conditional use will not adversely affect the public health, safety and welfare. So what if the State allows you to get as low as level C before they have to go in and rebuild the roads, that is not the standard. Adversely

affect the public health, safety and welfare is the standard and when you drop from a Level of Service A to a Level of Service B, which they admittedly will do, that adversely affects the public health, safety and welfare. It's like, I think their own traffic engineer said, it's like the grade in school, you're at an A and you go down to a B, that's an adverse impact, that's an adverse drop. So what if you're going to still graduate, because you get a C, that's not the standard whether you're going to graduate with a C, the standard is, are you going to have an adverse impact, yep, because you're going from A to B.

The applicant focused on that this is more money for crops, more money, it's a good place for development. Mr. Becker said it's not in a farmland and it's not in a floodplain, this is a good place for this development. Well it is in a floodplain, it is on land that was being farmed, it is in an Agricultural Zone, it is in an Agricultural Comp Plan designation and the fact that it's going to generate more money is not one of the criteria under the conditional use standards, 19.06.01. It's not compliant and in harmony with the Comprehensive Plan, because it's a commercial warehouse. This is an industrial facility with machinery, and trucks and traffic coming and going, bright glaring lights at night and noise, smell, dust, it's not in compliance with the Comp Plan and a zoning agricultural use. So, factor #2, under the conditional use permit 19.06.10 sub-section A2, is also not met. It's not in harmony with the agricultural uses set out in the Comp Plan and the Zoning Ordinance. It's not an agricultural use, it's an industrial warehouse.

One hundred percent of the residents adjacent to the property are opposed. That is a significant factor. I won't revisit Mr. Rice's environmental contamination issues that certainly is evidence that there would be adverse impacts to the public health, safety and welfare and the environment. In the objection, I talked a little bit about the lack of specific information regarding controlling the dust, rodents and birds, these four grain piles are going to be exposed for months at a time. I can't remember, I'm sorry, the tons of grain that will be there, it's a huge volume for each pile, which will be a different crop, a different species, but when those piles are uncovered, birds, rodents, dust, everything is generated and that is not going to be a short period of time, that's for weeks on end. And there is nothing in the materials, they say, we will develop a plan to mitigate that, but we don't have that plan, we don't know if it's going to work. We do know that dust, rodents and birds will be drawn in and that will adversely affect the neighbor, it'll adversely affect the airport nearby. Airplanes and birds are not a good adjacent combination to have and we don't have anything to meet their burden of proof that is will not adversely impact the surrounding property owners. And because of that, I did attach some pictures that show the high level of standing water, as well, which relates to the ground water, or the contamination issues. But, because they have not met their burden, that no adverse impact will occur and that it is in harmony with the agricultural uses, we're respectfully requesting that the CUP be denied. Do you have questions that I should address?

Andy Kottkamp – No, thank you very much.

Mischelle Fulgham – Thank you sir.

Andy Kottkamp – Does any other member of the public wish to testify tonight? Alright, is there anything further from staff?

Alan Thomson – No.

Andy Kottkamp – And is there anything further from the applicant?

Susan Drummond – Yes, we do have a number of points to make. Would it be possible to take a short 5-minute break?

Andy Kottkamp – No, we're going to keep going.

Susan Drummond – I do have a number of points to address. Good evening Examiner Kottkamp, Susan Drummond again for the applicant. There are a number of comments that were raised that I would like to briefly address. I believe all of these comments are previously addressed in the record, so I'll point to where each of these issues has been addressed throughout. Mr. Passmore, first up, had a little anecdotal story about water on the site. The soil volumes were completed for this project to assess the ground soil instability to have this project at this particular location and the geotechnical analysis on that can be found in Exhibit 1, Attachment 11, which is the application for this project. Also a stormwater analysis was done and that can be found in Exhibit 1, Attachment 10. I think Mr. Smith had mentioned about, address the issue of incompatibility or harm to the community. The staff report does a good job of summarizing the zoning in the area, on pages 2-3. For example, the RCC-2, which is adjacent to the project, this facility would be permitted outright and in the RCC-1, it would be through a conditional use permit. In fact there is a smaller grain storage facility that is in the community of Dusty. So, there is nothing particularly unusual about this particular project. And of course, it's specifically provided for in the CUP. A traffic issue was raised, traffic of course is measured through Level of Service and if the County wished to do so, it could have adopted a different Level of Service. Its Comprehensive Plan identifies Level of Service C, as its preferred Level of Service for State highways and DOT's Level of Service is C and the project will operate well above that. Even in a worst case scenario, the applicant did, in response to public comment, did provide updated numbers. I would point out that the applicant is not actually generating the new traffic, because those trucks, a lot of them would happen anyway and the traffic report does this. What the traffic report does is, essentially a worst, truly worst case analysis on impacts from trucks going to and from its facility. But many of those trucks are going to be carrying grain anyway, the project is not creating new grain fields or new source of grain, but it is providing a new place for storage and transport, which is critical for the farm community here in Whitman County. So, just a note on the traffic analysis and it is conservative in nature and it was updated to address public comment.

With respect to dust, a number of measures have been addressed and to detail those, those are outlined in the response to comment matrix that have been provided. Pacific Northwest is their local Co-Op, in fact their office is about a block away, right down the

street. The ground water issues that were mentioned, these are dealt with on page 2 of the matrix, that the project has been designed to avoid those issues and they are certainly not issues with drainage at this particular site. That has been documented well in the record. There are no wetlands in the site. A report on that was done by a qualified professional, there is not anything that was pointed out in terms of that analysis. In terms of how it exactly is in error doesn't comply with code requirements for preparing that analysis, which has to be done by a qualified professional. The flood hazard areas has been addressed, by Keltic Engineering, they issued a no rise certificate and the County has issued permits for the project, which are Exhibits 17 and 18, that have been submitted into the record. With regard to the comment about this should be sited in the industrial zone, this was a policy choice that was made by the County to site this particular type of facility, a commodities agricultural commercial warehouse, which is what this is, to allow for siting as a conditional use within the Agricultural Zone. This is a use that is not uncommon to the County and you see throughout the County and is specifically allowed within this zone. With respect to the SEPA, as I mentioned earlier, there is no jurisdiction over the SEPA issues, because no appeal was filed. The opposing counsel actually commented on SEPA and that comment was responded to by the County Planning Department and that is documented in the response to comments that Whitman County submitted to the Department of Ecology that is attached to their staff report. And there are also some excerpts from the SEPA register that include the M-DNS which was issued and was publicized. The SEPA was done on this specific project and there have not been substantial revisions that necessitate a change to that previous SEPA analysis. I mentioned my letter earlier this evening and that was attached to the response to comment that I prepared, providing additional detail on SEPA. And Ecology, as a part of this, reviewed the SEPA and they had no issues and their letter is attached to the response to comment and that was received as part of the SEPA review.

Very briefly on the transportation analysis, as I noted earlier, and as is documented by the email that was submitted into the record this evening, Department of Transportation has reviewed the most recent analysis and they are fine with the that analysis. And the project has been reviewed for access and that access route has been approved by Department of Transportation as was addressed earlier. I emphasize that this is a storage and transport use, it's not a processing facility, they're not manufacturing product here, this is for storage and transport of grain, as I mentioned earlier in the evening, which is a use that is typical and standard for the County and specifically provided for in the County Code.

There were some comments on dust, rodents and birds and so forth. This site will be managed for that. There are a number of conditions that staff has proposed and also that the applicant proposed, at the bottom of page 3, on the response to matrix to address all of those issues. So, in summary, this project has been extensively reviewed, more so than would be typical for a project of this type. It is specifically provided for in the Zoning Code and the applicant has certainly met its burden to demonstrate consistency with the County's CUP criteria. And we would ask that it be

approved with the conditions that have been proposed and any other that the Examiner feels would be appropriate.

Andy Kottkamp – Let me ask you this, does the applicant have any objection to any of the proposed conditions of approval?

Susan Drummond – No, the applicant does not object to the proposed conditions of approval.

Andy Kottkamp – Sometimes when I approve a Conditional Use Permit, I will add a condition that calls for a review period by County staff and take in additional information that may result in the matter being referred back to the Hearing Examiner for consideration of additional conditions or revision of imposed conditions. Would the applicant have any objections to that sort of a condition?

Susan Drummond – So, there would be...

Andy Kottkamp – Normally it says that the project will be subject to an administrative review at the administrators discretion based upon either complaints for the activities going on. It's a Planning staff decision and whether or not they are going to take action or refer it back to the Hearing Examiner or not.

Susan Drummond – Oh, I see. As a mechanism to ensure compliance with the conditions?

Andy Kottkamp – Or to add, if somethings weren't as the applicant thought they were going to turn out to be.

Susan Drummond – Right, so this would be a condition that would be added to the CUP.

Andy Kottkamp – And I'm not prejudging anything.

Susan Drummond – I understand, but what you are articulating, I think is, conditional along those lines, that would be spelled out.

Andy Kottkamp – Like I said, I'm not prejudging that, but if I did approve it, my thought is that I would, certainly strongly consider a condition that I routinely use that requires for administrative review of the permit, not just for compliance of the conditions that have been imposed, but to see whether or not those conditions are adequate.

Susan Drummond – Yeah, I don't see that the applicant, let me verify with my client, but I'm sure that a condition along those lines... Yeah, there would not be an objection.

Andy Kottkamp – Okay. Thank you very much. Just one second please. For the record, your name again please. Sir, you are still under oath, what did you want to respond to.

Eric Hasenoehrl – I just wrote down a few comments here and I just wanted to bring a little bit of clarity to them. There was a comment made that trucks would be backing up and there would be not enough room for them at the turn lanes, and I think they are referring to the intersection of SR 26 and SR 127. The traffic analysis shows that there is enough room on those turn lanes that they will not be backing up beyond the stacking length of the turn lane, which is a result of the Level of Service being B. That analysis was performed by WSDOT and is included in the traffic report, which in fact has the summary analyzation that they did in the report. There was some discussion about, that surface and ground water contamination and that the plan does not address contaminates. So, in our stormwater pollution prevention plan (SWPPP), the SWPPP, which is in conformance to the State Runoff Water Manual in the State of Washington. In fact, do address those with grassy swales. In fact that is what they call a best management practice. Best management practice is those practices which the State deems are good enough to be used at sites for the purpose that is needed. A grassy swale is the way to deal with contaminates, such as oils and those kinds of things that could be in the water, and in fact the entire site drains into these grass swales and then even beyond that, goes to a retention pond, it's a retention and not a detention, excuse me, it's a detention pond not a retention pond, which means it has a release rate that is less than what the calculated pre-development runoff rate is. So, that is controlled by the culverts that the water drains out of the storm drainage ponds. I just wanted to make that point clear.

And Kottkamp – I think the concern, as least as I heard it from Mr. Rice, was and I'll just make up a scenario here, that one of the big trucks has got an oil leak and is sitting in one spot for 20 minutes or a half hour as it takes care of its business and creates a big oil spill underneath it, that will then eventually make it into the ground water. Is that something that has been addressed in your stormwater plan?

Eric Hasenoehrl – Yes I believe it has.

Andy Kottkamp – How?

Eric Hasenoehrl – And again, by using the grassy swales, which is a best management practice, which is addressed in the State runoff manual as a way to address oils that could be in runoff water.

Andy Kottkamp – So, the runoff is not going to go down, it's going to go across the property into the detention ponds?

Eric Hasenoehrl – Correct, and as it goes down to the grass swales, that is what the grass swales are for, that is why it's a best management practice. The vegetation cleans or strips the oils out of the water.

Andy Kottkamp – Alright, I'll take a look at that again.

Eric Hasenoehrl – There was some discussion that the wetlands, excuse me that the detention ponds were in the floodplain. There is a regulatory FEMA, as delineated on the FIRM map, floodplain. We did a HEC-RAS analysis, which is the analysis as delineated by FEMA on how to determine what a floodplain is. The floodplain that is on the FIRM map, those are delineated by Michael J. Baker Jr., it's an engineering firm out of Virginia, they did them all over the United States, excuse me, the west side of the Mississippi. When they took the flows that they determined by regression analysis, sorry big words here, but using engineering calculations, they use the best topo's that they had and sometimes those were cod(?) sheets, sometimes they were at 50-foot elevation marks and they used that to interpret where the floodplain was. They recognized that those were not exact, those weren't so detailed that you could walk out there and say this is the exact spot. And they allow for, and in the FEMA guidelines in determining floodplains, they offer for you to go out and do specific topography of the site and to determine where the floodplain would occur and how would that be as opposed to where it is delineated on a FIRM map. What you see on the Temporary Erosion and Sediment Control Plan, that heavy mark that is marked out, the 100-year Alkali Flat Creek floodplain that is the calculated one by HEC-RAS. On the site plan we delineated both of them so that you could see where the FIRM map is and we even sited the FIRM map by community impairment and as well as put on what was determined by the HEC-RAS analysis. What that shows is that the floodplain is much less of an area and that much less of the site is in the floodplain. I think the thing that has changed that, is that there appears to have been a dike or a levee placed on the west side of the stream, kind of down by the, along where the landing strip is. There is a levee or a dike there. It looks too shaped, you know what I mean, to look like its natural. It's trapezoidal in shape, it has a flat top, I just don't have any background, but I can say, by the calculations that we performed, that really protects the property and protects the stream from coming out of the, or expanding the floodplain to what the FIRM shows.

There was some discussion about adverse impacts as far as the traffic. I think there is a little different definition by engineering, what we consider adverse impacts. If we put an extra car on the road by the turn that was talked about being an adverse impact, I could see that would make adverse impact, in the terms of engineering, we look at the analysis and we say, does it meet a certain level? So, we have levels that we say are acceptable and in terms of the traffic, that is where they have done these gradings, I think, to make it easier to understand. The A, B, C, D, E, F categories, because if you have an adverse impact in the engineering side, it would need a mitigation. So, we can go from an A to a B and a B to a C yet there is no mitigation that is required in the engineering terms because it's still acceptable levels. But once it gets below a level C, then mitigation should take place. Again, whatever would make it appropriate to bring the level up to a C or higher, as far as being able to facilitate the traffic.

There was some discussion about the traffic study using old data. So, traffic studies, by the time you go out and take the traffic counts and bring them forward it just takes them some time. Not only is this the freshest data we could have, which would be 2017, there is an additional study that was done half way through 2017, which WSDOT is saying to use that data, because that is even newer and more current than their annual counts or their counts that they put out on the roadway... We've done studies with much, much older data, and even WSDOT would tell you that this is the freshest or the quickest you can get data turned around by the time it gets reviewed, categorized and classified by cars and then the different sizes of trucks that could be on the road. So I think that addresses all of the things that I had, just to make sure that the points were corrected or a little clearer.

I do want to make one other point. There was a discussion that these contaminants could get to the aquifer. I think we recognize that we have best management practices, it's why this stormwater manual was produced. We even have a west side and an east side in the State of Washington, because we have different stormwater characteristics on the west side than what we do on the east side. The manual was developed and the best management practices were picked and are being utilized for the very fact of that to make that the stormwater that should hit some property and then leave that property would become cleaner. It's part of the Clean Water Act that was passed by Congress quite a few years ago. This is the State's response. It's not only in the State of Washington, it's across the country. In some countries EPA is the head person who takes it over, in some other states, the State takes supremacy. In the State of Washington, the State of Washington has taken supremacy, the Department of Ecology has taken care of it, they came up with the manual, they came up with practices, they held classes so that you could go and learn about these practices or best management practices so that you would implement them in your plans to protect the waters of the State. They recognize that they are valuable, we recognize, certainly across the country that good clean water is something that we all want and have, otherwise we spend a lot more money later trying to make it clean. So, I think, the manual certainly gets updated, I think they are getting ready to come out with just a few more updates and so it's reviewed by municipal engineers, private engineers all give input as to how to make the manual more usable, make it better, that kind of thing. But, the manual in and of itself has minor changes. To give it numbers, you know, 1% - 2% kind of changes. What they have currently is a very good manual, it works very well, contractors have responded to it and it's practical. I think that is all I have unless you have any questions for me.

Andy Kottkamp - I don't, thank you very much. Anything further from the applicant? Mr. Becker you are still under oath, what would you like to say?

Keith Becker – Just to finish up and I know that there has been a lot of information and it's getting late. The patrons of PNW and the staff of PNW, there is no intentions to be a poor neighbor, to be a nuisance to cause harm to the area. We're looking to enhance the agricultural opportunities, we didn't get up this morning wanting to cause people problems. Hopefully we have addressed a lot of the areas of concern, we've gone from

the rezone we've changed out of the rezoning application to the CUP, because we felt that it left more oversight over time. The rezoning process, if it had been granted allowed us a lot more flexibility, a lot more opportunity to do our own things, as long as we stayed within regulations, but not as much oversight. The CUP will leave oversight, there will be conditions that we will have to abide by. Lighting was an issue, it has always been in any of the CUPs that I have been involved in, the lighting has been full cutoff lighting. We don't have glare, we don't want to affect the highway and we don't want to affect the neighbors, not that you won't be able to see it, but the cutoff lighting ends at our property. The ground piles are, typically we fill a ground pile in approximately 15 days and we cover it just as soon as possible. We don't want bird contamination and we don't want the wind blowing it away. We don't want rain on it and we need to get it protected, so we're covering it in 15 days or covering it as soon as possible after the 15 days. Pick up, we tend to pick these up in about 10 days on smaller piles, 15 days on the larger piles and the grounds are cleaned up. If there is any loss, it's minimal. We have several locations where we do this same type of thing and we feel that we're getting very good at it, there is very little loss and loss is not a money maker. So, we have no interest in having a loss. Traffic counts, I know we've talked about 150 trucks onto the site, the question that I was asked in the SEPA was how many trucks enter your site? Well, approximately 150 trucks will enter the site. That wasn't 150 additional trucks on the highway that was trucks entering the site. We estimate that there could be a 10% - 15 % increase in truck traffic that is not there right now, so 15 - 20 trucks a day could be an increase in traffic on the highways. As the grain is picked up, that's traffic that is not there today, we add that traffic toward whatever direction it goes, those ground piles will be picked up as fast as possible, so we line up the trucks and we try to get it done as quick as possible. It's daytime and it's typically a short days, we don't run after dark, we run daylight hours and so on short days in the winter time, you're shut down at 4:00 o'clock in the afternoon. Contamination, as far as the conditions, we have stated that we would have spill kits on site and trained personnel to help with that. It doesn't solve all the problems, but we will have that equipment there and ready in case there is an issue. Today the asphalt is planned for underneath the ground piles and that is there so water is not pulled up into the grain piles, into the grain. The rest of it is gravel, but it could be, if that was the best way to solve some of those conditions that are concerns, then we could look at that. Some of these issues can't be dealt with until we get one step taken care of. If we are granted a CUP on this then we will go onto the next step. We can't go to a building permit, we can't get a building permit until we've gone past this step. We can't go through the Health Department for septic systems until we've gone through this step. We can't get an operational air quality program for operations until we get through this part of the process. We can describe the technologies and the operating systems that go into these types of things, but specifically that has to be looked at by DOE. All of our equipment run food grade oils in them, we do that to help with contamination, in case we have an onsite equipment problem. The majority of the trucks entering the site do not have hydraulics on them, that doesn't keep antifreeze or motor oil or these types of things from leaking out, but typically in our grain elevator operations, hydraulics that run truck hoists and things like this tend to be more problematic than other systems. Most of the trucks do not have truck hoists, they're hopper bottoms, so that helps with dust

control and it helps with, in the larger trucks, so you're not just dumping as many trucks. These types of things, we're willing to look at certain conditions, I would like to be involved in the discussion on conditions, if there are concerns that we still haven't addressed. Bottom line is, we have no intentions to be poor neighbors. In fact, you would see an operation as tidy, we have these operations, you can look at these operations and we look at the ground conditions, is one other that I looked at, there is no standing water on this site today, on the property that we've proposed to have the project on, and that is with nearly half the yearly annual rainfall in the last four months. So, we feel that is not an issue that we can't resolve. Standing water will not be an issue for us and that should help with contamination problems. Other than that, we hope that you see fit to grant us the CUP. Thank you.

Andy Kottkamp – Alright, thank you very much. Alright everyone, what I am going to do at this time is, I am going to close the public record portion of this hearing. I will have a written decision made within the next 10 working days. I sincerely appreciate everybody who took time out of your lives to come to this hearing to participate in this process, to tell me your concerns, based upon your observations. The public participation in this hearing examiner process is really vital. I mean it's what gives legitimacy to the whole process, when people come out and testify about a particular project. So, I appreciate each and every one of you coming out and staying until the end. I do sincerely appreciate that and I did listen to you and I don't know where I'm going to go on this decision. Again I have to take it back and spend some time with it. My decision will not be made, I'm certain I'll take the full 10 days in order to get my decision out on this. So once again, thank you very much. There are no other items on today's agenda, so what I will do now is I will adjourn this April 25, 2019 meeting of the Whitman County Hearing Examiner.

**8:56 p.m. – Adjourned.**