

CLERK OF THE COUNCIL  
Dana Brown-Davis, C.M.C.

COUNTY COURTHOUSE  
311 Grand Avenue, Suite #105  
Bellingham, WA 98225-4038  
(360) 778-5010



*Jack Louws*  
*copy*  
*Sent July 20, 2019*

COUNCILMEMBERS  
Barbara Brenner  
Rud Browne  
Barry Buchanan  
Tyler Byrd  
Todd Donovan  
Carol Frazey  
Satpal Sidhu

## WHATCOM COUNTY COUNCIL

July 15, 2019

### MEMORANDUM

TO: Jack Louws, County Executive

FROM: Dana Brown-Davis, Clerk of the Council

SUBJ: Petition to Vacate

The Whatcom County Council received the enclosed petition requesting the vacation of Safsten Road filed by BP West Coast Products LLC, et. al. Our file number for this matter is AB20019-379.

We will schedule a hearing on the Engineer's report for September 10, 2019. The attached hearing notice needs to be posted by Public Works Engineering Services on the site where the road is proposed to be vacated on or before August 19, 2019. Please have Public Works return the original affidavit of posting to the Council Office.

Also, please ask Planning & Development Services to review the enclosed petition and submit a recommendation to the Council Office by September 3, 2019.

If you, or your staff, have any objections to the vacation of this road, please let us know as soon as possible before the hearing date. Any written materials submitted to our office relating to this petition should reference file number AB2019-379 in order to ease processing.

Thank you for your assistance.

Enc.: Petition and map  
Hearing notice  
Affidavit of posting  
Resolution

c: Jon Hutchings, Public Works Director  
Joe Rutan, Assistant Director of Public Works/County Road Engineer  
Andrew Hester, Real Estate, Public Works  
Mark Personius, Planning & Development Services Director  
John Gargett, Emergency Management Deputy Director  
AB2019-379

BEFORE THE WHATCOM COUNTY COUNCIL

IN THE MATTER OF VACATION OF	)	
THE COUNTY ROAD KNOWN AS	)	PETITION FOR VACATION
SAFSTEN ROAD	)	OF PLATTED ROAD
	)	
Petitioned for by:	)	(RCW 58.17 AND 36.87)
	)	
	)	
BP West Coast Products LLC	)	
et. al.	)	

Pursuant to Whatcom County Ordinance No. 1-72, dated February 14, 1972, the undersigned petitioner ("Petitioner") and five land owners in the vicinity of said road for which vacation is being sought who have executed this Petition (the "Adjacent Land Owners"), all of whose signatures appear herein, hereby submit this Petition to vacate the county road hearinafter described:

1. Petitioners and the Adjacent Land Owners are owners of real property in the vicinity of the road sought to be vacated.
2. The road sought to be vacated is legally described as follows:
  - a. Safsten Road – See **Exhibit A**, and
  - b. See **Exhibit B** for map identifying the location and vicinity of right-of-way described in Exhibit A.
3. The pertinent facts in support of this petition are as follows:

*Background*

- a. The Board of Supervisors of Mt. View Township, Whatcom County, Washington established Safsten Road (County Road No. 716) as a county road right-of-way on November 27, 1933.
- b. The Safsten Road Order of Establishment describes the subject right-of-way as: "*A strip of land 33 ft in width on and along the west line of the E ½ SW ¼ of Section 6, Twp. 39, R 1 E, W.M. for use only for public road purposes, same to revert to grantors herein should said grantee cease to maintain said property for road purposes.*"

*Existing Conditions*

- c. Safsten Road consists of approximately 0.5 mile of unmaintained right-of-way currently owned by Whatcom County.
- d. The subject road is gated at the Safsten/Grandview Road intersection and is paved north of Grandview Road for approximately 1,500 feet to an existing BP weather station. North of the

weather station, Safsten Road continues as an unimproved compacted dirt lane that is used for periodic farm machinery ingress/egress to lands leased by BP for agricultural management.

- e. The Safsten Road right-of-way provides indirect access to the ARCO Mitigation Area, which is located northeast of said road on a portion of Whatcom County Assessor's tax parcel number 390106-211210. The ARCO Mitigation Area is subject to a Restrictive Covenant recorded under Whatcom County Auditor File No. 2010201203 on February 12, 2001.
- f. The Safsten Road right-of-way provides direct access to the BP Brown Road Materials Storage Area (BRMSA) Mitigation Area, which is located east and west of said road on portions of Whatcom County Assessor's tax parcel numbers 390106-208076 and 390106-211210. The BRMSA Mitigation Area is subject to a Restrictive Covenant recorded under Whatcom County Auditor File No. 2060102822 on January 19, 2006.
- g. The Safsten Road right-of-way provides indirect access to the BP Compensatory Mitigation Area 2 (CMA-2), which is located east of said road on portions of Whatcom County Assessor's tax parcel numbers 390106-211210 and 390106-518137. The CMA-2 area is subject to a Restrictive Covenant recorded under Whatcom County Auditor File No. 210100781 on October 6, 2010.
- h. The Restrictive Covenants recorded on the ARCO, BRMSA, and CMA-2 mitigation areas each state: *"There shall be no development of the Property for any purpose by any entity whatsoever. There shall be no clearing, grading, or filling done on the Property except for changes required to meet mitigation requirements or for further habitat enhancements. The Property shall not be used as a depository for materials or fill as a result of any clearing, grading, or development of any other property."*
- i. The subject road does not facilitate public access to Whatcom County's shorelines nor does it provide connectivity (primary or alternate) to the Whatcom County road system.
- j. The road proposed for vacation herein does not abut a body of water.

#### *Public Benefit*

- k. The Safsten Road right-of-way provides direct access to a proposed 135.8-acre BP Advance Mitigation Project (AMP) site north of the BRMSA Mitigation Area and west of the ARCO and CMA-2 mitigation areas. Permit applications and associated documentation for the AMP were submitted for local, state, federal and tribal agency review in February 2018. The AMP includes modification of the unimproved, compacted dirt portion of Safsten Road and removal of associated ditches to allow unimpeded surface water flow across the road that will facilitate natural hydraulic conditions supportive of on-site wetland preservation, restoration and creation.
- l. Following completion, the AMP site will also be subject to a restrictive covenant containing the same or similar development restrictions as those recorded on the BRMSA, ARCO, and CMA-2 mitigation sites. Therefore, there will be no future development potential on any adjacent parcels (other than the existing BP weather station site) and the Safsten Road right-of-way will serve no future public right-of-way purpose.

- m. Vacation of the described right-of-way is one component of a variety of measures that will be implemented to provide layers of protection necessary for the long-term preservation of existing and proposed wetland mitigation and critical habitat restoration areas.
- n. Consistent with adopted land use goals and policies of the 2017 Whatcom County Comprehensive Plan, particularly Comprehensive Plan Policies 2DD-4 and 2RR-1, the public interest will be served through conservation of open space, as well as voluntary restoration and protection of wetlands and critical wildlife habitat.
- o. Safsten Road is located within a portion of the BP Unit Whatcom Wildlife Area, which is managed in conjunction with the Washington State Department of Fish and Wildlife to support habitat conservation and recreational hunting. Recreational users currently access the wildlife area from an existing parking area immediately east of Safsten Road and north of Grandview Road. Vacation of Safsten Road will not eliminate or diminish existing public access to the wildlife area.
- p. Vacation will not eliminate existing public access to the Point Whitehorn Marine Reserve or Birch Bay State Park to the west, or to other public access destinations in the greater Cherry Point area.
- q. The subject right-of-way does not facilitate public access (physical or visual) to the marine shoreline.
- r. No part of the subject road right-of-way lies within any plat, nor is any residential structure or commercial business served by this road.
- s. Vacation of said right-of-way and subsequent private ownership will reduce the County's long-term fiscal responsibility to conduct on-going maintenance and repair of the existing roadway and would reduce the overall amount of public road funds that would otherwise need to be dedicated.
- t. Vacation of said right-of-way is consistent with Whatcom County Interim Ordinance No. 2018-044.

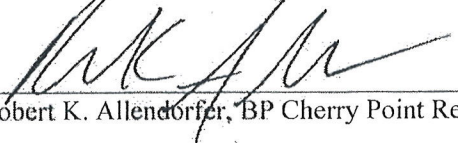
#### *Ownership*

- u. BP West Coast Products LLC (BP) owns approximately 583 acres located north of Grandview Road, east of Jackson Road, west of Blaine Road (SR 548), and south of Bay Road in Section 6, Township 39, Range 01 East, W.M.
- v. BP owns all tax parcels abutting Safsten Road and all parcels directly and indirectly served by said right-of-way.
- w. Upon vacation of Safsten Road, BP will own and maintain a portion of said vacated right-of-way for purposes of mitigation area maintenance and private security access. The remainder of said vacated right-of-way would be restored to pre-developed conditions, planted, and incorporated into the AMP.
- x. Existing utility easements within or along Safsten Road will be maintained or amended, as applicable, to facilitate continued public utility service.

- y. BP and Adjacent Land Owners are supportive of the proposed road vacation and have no objection to subsequent ownership of the vacated roadways by BP. See signature pages included herein.
- 4. The portion of road to be vacated is useless as a part of the County road system and the public will benefit by its vacation and abandonment.
- 5. Petitioner will pay all costs and expenses incurred by the County in examination, report, notice and proceedings pertaining to this petition.
- 6. The application fee in the sum of \$790.00 accompanies this petition.
- 7. A map of the road, Safsten Road, to be vacated and surrounding properties (**Exhibit C**), with each of the Petitioner and Adjacent Land Owner's properties indicated thereon, accompanies this petition.

WHEREFORE, Petitioner requests the County Road Engineer to report upon this petition, that a hearing take place on this report, and that an order be entered vacating and abandoning said road.

**PETITIONER – REFINERY MANAGER:**

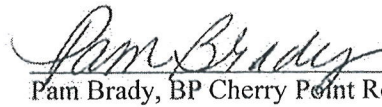
 Signed this 12 day of December, 2018.  
Robert K. Allendorfer, BP Cherry Point Refinery

**Company:** BP West Coast Products LLC

**Address:** 4519 Grandview Road  
Blaine, WA 98230

**Phone:** (360) 371-1500

**BP CONTACT PERSON:**

 Signed this 29 day of January, 2018.  
Pam Brady, BP Cherry Point Refinery

**Company:** BP West Coast Products LLC

**Address:** 4519 Grandview Road  
Blaine, WA 98230

**Phone:** (360) 371-1519

WHEREFORE, petitioners request the County Road Engineer to report upon this petition, that a hearing take place on this report, and an order be entered vacating and abandoning said road.

**BIRCH BAY WATER AND SEWER DISTRICT:**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**Company:** Birch Bay Water and Sewer District

**Address:** 7096 Point Whitehorn Road  
Blaine, WA 98230-9675

**Whatcom County Assessor parcel numbers:**

395101 066235  
395101 072128

WHEREFORE, petitioners request the County Road Engineer to report upon this petition, that a hearing take place on this report, and an order be entered vacating and abandoning said road.

**BIRCH BAY WATER AND SEWER DISTRICT – Dan Eisses**

*acknowledgement of petition*

Signature: \_\_\_\_\_

*Dan Eisses*

Printed Name: \_\_\_\_\_

*DAW EISSES - GENERAL MANAGER*

Signed this 23 day of MAY, 2018.

**Address:** 7096 Point Whitehorn Road  
Blaine, WA 98230-9675

**Whatcom County Assessor parcel numbers:**

395101 066235  
395101 072128



WASHINGTON STATE PARKS & RECREATION – Ted Morris

Signature: Ted Morris

Printed Name: TED MORRIS

Signed this 8<sup>th</sup> day of May, 2018.

**Park:** Birch Bay State Park

**Address:** 5105 Helweg Road  
Blaine, WA 98230

**Whatcom County Assessor parcel number:**

395101 152375

**BLUE HERON PROPERTIES LLC:**

Signature: Fred J. Amundson

Printed Name / Title: FRED J. AMUNDSON / PRESIDENT

Signed this 20 day of SEPTEMBER, 2018.

**Company:** Blue Heron Properties LLC

**Address:** P.O. Box 875  
Ferndale, WA 98248-0875

**Whatcom County Assessor parcel numbers:**

390108 434471  
390108 494471

FRANK AND SHALA CROW

Signature: 

Printed Name / Title: FRANK E. CROW

Signed this 24 day of January, 2019.

Address: 7193 Kickerville Rd  
Ferndale, WA 982480

Whatcom County Assessor parcel number:

390105 500377

**DOUG AND TWILA WIEBE**

Signature: 

Printed Name / Title: DOUG WIEBE OWNER

Signed this MAY day of 1, 2018.

**Address:** 6947 Karber Road  
Blaine, WA 98230

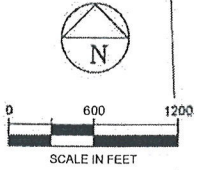
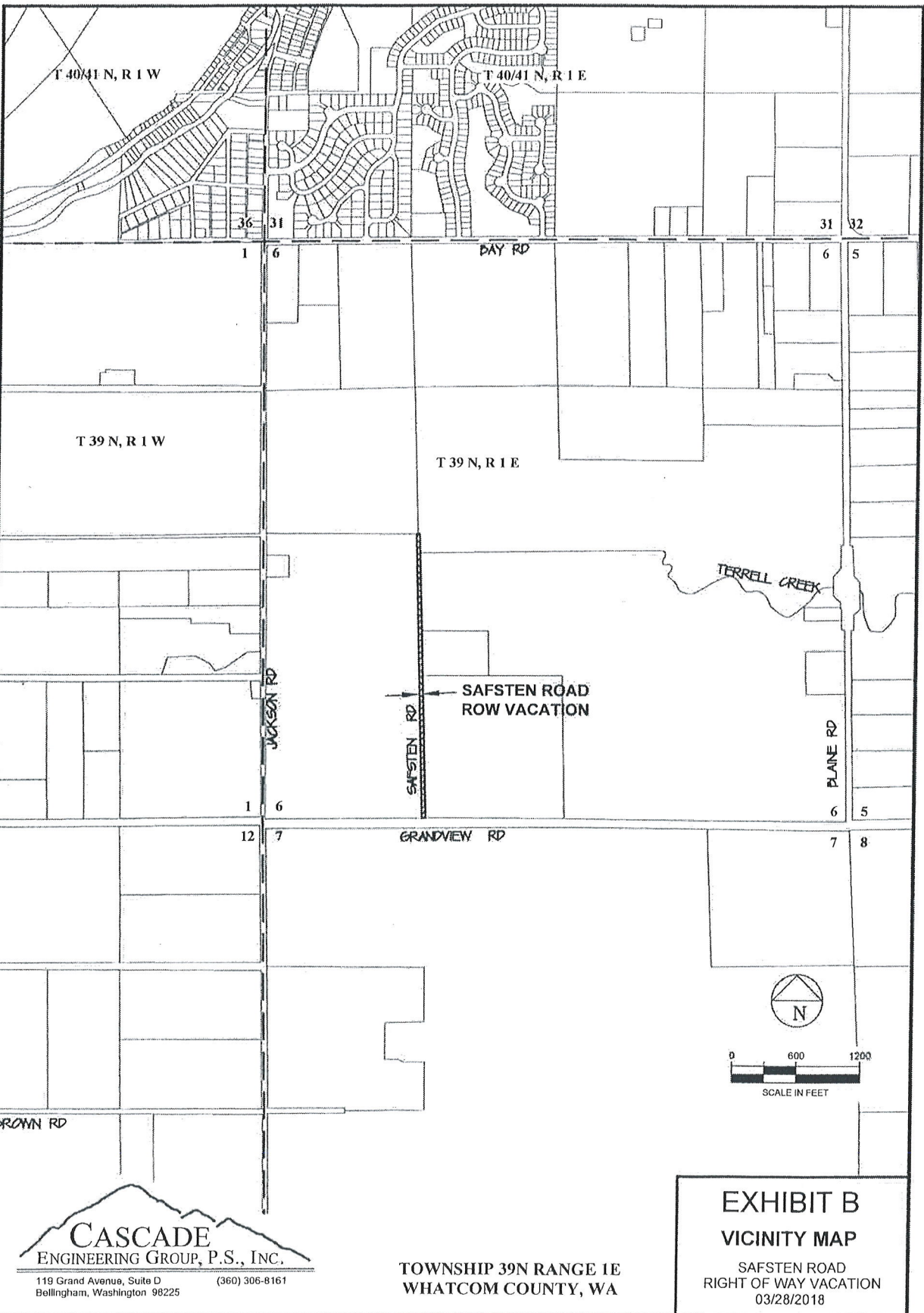
**Whatcom County Assessor parcel number:**

395101 094050

**EXHIBIT A**

**SAFSTEN ROAD**

A strip of land 33 feet in width on and along the west line of the E  $\frac{1}{2}$  SW  $\frac{1}{4}$  Section 6, Township 39 North, Range 1 East, W.M. Situate in Whatcom County, Washington.



**CASCADE**  
 ENGINEERING GROUP, P.S., INC.  
 119 Grand Avenue, Suite D  
 Bellingham, Washington 98225 (360) 306-8161

TOWNSHIP 39N RANGE 1E  
 WHATCOM COUNTY, WA

**EXHIBIT B**  
**VICINITY MAP**  
 SAFSTEN ROAD  
 RIGHT OF WAY VACATION  
 03/28/2018







**PUBLIC HEARING NOTICE**

The Whatcom County Council will have a public hearing, consider adopting, and may amend the following at its September 10, 2019, meeting, or at a later date:

**RESOLUTION VACATING SAFSTEN ROAD, FILED BY BP WEST COAST PRODUCTS LLC ET.AL. (AB2019-379):** Petitioners seek to vacate the county's legal rights to open the road or portion of the road described as follows: A strip of land 33 feet in width on and along the west line of the E 1/2 SW 1/4 Section 6, Township 39 North, Range 1 East, W.M. Situate in Whatcom County, Washington.

Any taxpayer may speak for or against the proposal at the hearing, which will be held during the regular Council meeting which begins at 7 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington. Official documents relating to this request are available for review during regular office hours in the Council Office, 311 Grand Avenue, and the Public Works Office, 322 N. Commercial Street, Suite 210, Bellingham.

Council introduced the above at its July 9, 2019, meeting. People with special needs who will be attending this meeting are asked to please contact our office (360-778-5010) at least 96 hours in advance so we can make any needed accommodations. If interpretive services or transportation is needed, please call more than two days ahead of time.

Dated July 15

**WHATCOM COUNTY COUNCIL**  
**WHATCOM COUNTY, WASHINGTON**  
Rud Browne                      Dana Brown-Davis  
Council Chair                      Clerk of the Council

Publish August 18 and 25



## AFFIDAVIT OF POSTING

***IN THE MATTER OF VACATING A WHATCOM COUNTY ROAD KNOWN AS SAFSTEN ROAD***, filed in the Whatcom County Council Office under AB2019-379:

I, \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, posted two notices of hearing concerning the proposal to vacate a road as described above.

The notices were posted at the following locations:

1.

2.

Signature: \_\_\_\_\_

***\*Please return original to the Council Office when completed.***

SPONSORED BY: \_\_\_\_\_

PROPOSED BY: Public Works

INTRODUCTION DATE: \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION VACATING SAFSTEN ROAD

WHEREAS, on January 29, 2019, BP West Coast Products LLC submitted a petition for the vacation of Safsten Road lying within the unincorporated area of Whatcom County, accompanied by the penal sum of \$790.00; and,

WHEREAS, as described in RCW 36.87.010, when a county road or any part thereof is considered useless, the Whatcom County Council may declare by resolution its intention to formally consider vacation; and

WHEREAS, the County Council voted 7-0 on May 7, 2019, to consider this vacation request and directed the County Engineer's office to report; and

WHEREAS, the County Engineer's office has reviewed the portion of the street which is a Class B-1 right-of-way, wherein no public expenditures were made or they are non-ascertainable from records, and no part thereof lies in any plat, and in the exercise of his judgment has determined that the public will benefit from said vacation; and

WHEREAS, it is unknown if there are public utilities located within the portion of the right-of-way to be vacated, but an easement for said utilities will be retained by the County, and

WHEREAS, the fair market value has been determined to be \$0.33 per square foot for the approximately 87,120 square feet of Safsten Road, making the total value of the area to be vacated \$28,750.00; and

WHEREAS, the County Engineer has reviewed said compensation and determined it to be fair value; and

WHEREAS, the petitioner has met all of the petition requirements, as set forth by Chapter 12.20 Whatcom County Code, and all other applicable laws; and

WHEREAS, the applicant has six calendar months from the date of the Preliminary Order of Vacation to pay any remaining fees to the Whatcom County Council office, which checks should be made payable to the Whatcom County Treasurer, prior to the vacation becoming effective, including but not limited to the appraised value of the area sought to be vacated; and

WHEREAS, this vacation does not become effective until the fees are paid and the Final Order and Resolution are recorded with the County Auditor;

NOW, THEREFORE, BE IT RESOLVED that it is the intention of the Whatcom County Council to vacate the following described right of way:

A strip of land 33 feet in width on and along the west line of the E ½ SW ¼ Section 6, Township 39 North, Range 1 East, W.M. Situate in Whatcom County, Washington.

SUBJECT TO and/or together with all easements, covenants, restrictions, and/or agreements of record or otherwise; and

SUBJECT TO an easement retained by the County in respect to the vacated portion of right-of-way for the construction, repair, and maintenance of any and all public utilities and services, now located on or in the vacated portion.

BE IT FURTHER RESOLVED that upon applicants' completion of payment for the property and of all other fees, a Final Order of Vacation shall be prepared by Council Staff, signed by the appropriate parties, and recorded with the County Auditor; and

BE IT FURTHER RESOLVED that if the conditions set forth above are not fulfilled within six months from the date of the passage of this Resolution, the Preliminary Order of Vacation which is hereby authorized shall be withdrawn, and the right-of-way shall not be deemed to have been vacated.

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2019

ATTEST:  
WASHINGTON

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY,

\_\_\_\_\_  
Dana Brown-Davis, County Clerk

\_\_\_\_\_  
Rud Browne, Council Chair

APPROVED AS TO FORM:

\_\_\_\_\_  
Civil Deputy Prosecutor