



# Memorandum

**To:** The Honorable Satpal Singh Sidhu, Whatcom County Executive, and Honorable Members of the Whatcom County Council

**Through:** Jon Hutchings, Director

**From:** James P. Karcher, P.E., County Engineer  
Joshua L. Cihak, P.E., Engineering Manager

**Date:** February 22, 2023

**Re:** E. Smith Road & Hannegan Road Intersection Improvements Project; CRP No. 914002  
**Ordinance Authorizing Acquisition by Eminent Domain**

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Enclosed for your review and consideration is an ordinance to authorize the acquisition of certain property rights by eminent domain for the County's E. Smith Road & Hannegan Road Intersection Improvements Project (the "Project").

## **I. Requested Action:**

Public Works recommends that the County Council entertain a motion and approve the ordinance authorizing the commencement of legal action to acquire, by eminent domain, the remaining property interests needed to construct the Project.

## **II. Background and Purpose:**

The proposed ordinance would 1) declare public necessity for certain property rights needed to construct the Project and 2) authorize the commencement of legal action in Whatcom County Superior Court to acquire, by eminent domain, these certain real property interests. The required property interests consist of right-of-way (ROW). The County is authorized under Chapter 8.08 RCW to acquire private property necessary for public use by the exercise of eminent domain powers.

### **A. The Project**

The project is listed as item R2 on the 2022 Annual Construction Program. The project will reconstruct the E. Smith Rd. and Hannegan Rd. intersection with a multi-lane roundabout. This work includes reconstruction of the roadway alignments, multi-modal improvements, installation of stormwater infrastructure, and intersection illumination.

The County has obtained two sources of federal funding for the Project. The first is Surface Transportation Block Grant (STBG) funds in the amount of \$1,000,000 and the second is Highway Safety Improvement Program (HSIP) funds in the amount of \$1,000,000. All federal funds on the project are administered by the Washington Department of Transportation (WSDOT).

### **B. Right-of-Way Acquisition Process**

The use of federal funds on the Project means that any additional right-of-way needed to construct the Project must be acquired with the following policies and procedures (collectively, "ROW Procedures"), with oversight by WSDOT and the Federal Highway Administration (FHWA):

- The County's WSDOT-Approved Right of Way Procedures
- Chapter 25 of WSDOT's Local Agency Guidelines
- WSDOT's Right of Way Manual

The STBG and HSIP funds will not be released to the County until the County acquires all additional property rights needed for the Project and such acquisitions have been certified by WSDOT and FHWA as having met all the applicable ROW Procedures.

The ROW Procedures require the County to make a good faith effort to acquire the necessary properties through negotiations with the affected property owners. The County cannot offer less than fair market value for the properties as part of those negotiations. If negotiations are unsuccessful, the County staff's next step is to obtain County Council approval to commence legal action to acquire the properties through eminent domain.

### **C. Eminent Domain**

Eminent domain is the power of government to acquire private property necessary for a public use following due process of law and payment of just compensation. Proceedings to take property under eminent domain are referred to as "condemnation" proceedings. The property that governments may condemn includes fee titles as well as lesser interests in real property, such as easements.

Under long-standing case law, for a proposed condemnation to be determined by a court to be lawful, the condemning authority (i.e. local government) must prove that:

1. The proposed use for the property is really public;
2. The public interest requires it; and
3. The property appropriated is necessary for that purpose.

This first step in the formal eminent domain process is for the Executive to obtain County Council authorizations by ordinance to commence legal action to acquire, by eminent domain, the required property interests.

### **III. Evaluation:**

Design of the Project is 90% complete and the final alignments for the Project have been established. Additional right-of-way width is necessary for the construction of the Project. This additional width requires the acquisition of fee owned right-of-way and temporary construction easements from multiple property owners.

In accordance with the applicable ROW Procedures, the County has appraised the fair market value of the proposed property acquisition areas and has negotiated in good faith with the property owners. The County has reached agreements to acquire the majority of the required property interests needed for the Project through successful negotiations. The property interests that still need to be acquired are identified as follows:

<b>Owner</b>	<b>Assessor's Parcel Number</b>	<b>Property Interest</b>
<u>Arnason, Lentz, and Berry</u>	3903330364870000	<u>ROW</u>

In order to move forward with acquisition of the necessary property and proceed with the construction of the Project in a timely manner, the County has prepared an ordinance authorizing the Executive to commence legal action to acquire, by eminent domain, the remaining property interests necessary to construction the Project. Acquisition by eminent domain will result in the property owners being paid just compensation for the property acquired to facilitate the Project.

### **IV. Questions:**

Please contact Andrew Tischleder at extension 6224 if you have any questions or concerns regarding this ordinance.