



Whatcom County

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

Agenda Bill Master Report

File Number: AB2023-158

File ID:	AB2023-158	Version:	1	Status:	Adopted
File Created:	02/22/2023	Entered by:	AHester@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Ordinance Requiring a Public Hearing		
Assigned to:	Council Public Works & Health Committee			Final Action:	03/21/2023
Agenda Date:	03/21/2023	Enactment #:	ORD 2023-011		

Primary Contact Email: sdraper@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Ordinance declaring public necessity for and the authorization to acquire certain property rights by eminent domain for the E. Smith Road and Hannegan Road Intersection Improvements Project

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

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

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
03/07/2023	Council	INTRODUCED FOR PUBLIC HEARING	Council
		Aye: 7 Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner	
		Nay: 0	
		Absent: 0	
03/21/2023	Council Committee of the Whole	DISCUSSED	
03/21/2023	Council	ADOPTED	
		Aye: 6 Buchanan, Byrd, Donovan, Frazey, Galloway, and Kershner	
		Nay: 1 Elenbaas	
		Absent: 0	

Attachments: Staff Memo, Ordinance, Exhibit A, Attachment

ORDINANCE NO. 2023-011

ORDINANCE DECLARING PUBLIC NECESSITY FOR AND THE AUTHORIZATION TO ACQUIRE CERTAIN PROPERTY RIGHTS BY EMINENT DOMAIN FOR THE E. SMITH ROAD AND HANNEGAN ROAD INTERSECTION IMPROVEMENTS PROJECT

WHEREAS, Whatcom County is a charter county, under the laws of the State of Washington, and is authorized to acquire title to real property for public purposes pursuant to Revised Code of Washington 8.08; and

WHEREAS, in the interest of providing the public safe and sufficient roadways within Whatcom County, Whatcom County identified a road project known as "E Smith and Hannegan Intersection Improvements" (the "Project") in compliance with the 2022 Annual Construction Program and the 2022-2027 Six Year Transportation Improvement Program; and

WHEREAS, the Project will reconstruct the signalized intersection at E. Smith Road and Hannegan Road with a multi-lane roundabout; and

WHEREAS, the Project is also on the Washington State STIP, as the County has \$2,000,000 in federal STP and HSIP funds granted to the Project that are administered through Washington State Department of Transportation Local Programs; and

WHEREAS, for this Project, the County determined that the acquisition of certain rights and interests from real property identified as portions of Whatcom County Tax Parcel No. 3903330364870000 ("Parcel"), as legally described and depicted in Exhibit A hereto (collectively, the "Property Rights"), is necessary to accomplish and construct the Project; and

WHEREAS, the County appraised the fair market value of said Property Rights; and

WHEREAS, the County has attempted to negotiate in good faith with the owners of the Parcel for the voluntary acquisition of the Property Rights but has been unable to get all of the owners to respond and negotiate with the County; and

WHEREAS, the County has complied with the notice requirements set forth in RCW 8.25.290 by providing notice to the owners of the Parcel of the planned final action adopting this Ordinance, and through publication once per week for two weeks, prior to the passage of this Ordinance; and

WHEREAS, the County Council is exercising its independent discretion to authorize eminent domain proceedings in order to secure such property for a public purpose and to settle the amount of compensation, if any, owing the property owners; and

NOW, THEREFORE, BE IT ORDAINED that the Whatcom County Council adopts the following:

Section 1. Incorporation of Recitals. The recitals set forth above are hereby adopted and incorporated herein as if set forth in full.

Section 2. Public Use and Necessity Declared. The Whatcom County Council finds and declares that: i) the Project is for public use ii) the acquisition of the Property Rights is

1 necessary for the construction of the Project; and iii) the acquisition of the Property Rights
2 and the construction of the Project are in the best interests of the residents of Whatcom
3 County.
4

5 Section 3. Acquisition. The Whatcom County Council authorizes the acquisition,
6 condemnation and taking of the Property Rights. The County Council authorizes the
7 acquisition of the Property Rights under threat of condemnation or by initiation of legal action
8 for condemnation to acquire the Property Rights as necessary for the commencement and
9 completion of the Project, subject to making or paying of just compensation to the owners
10 thereof in the manner provided by law.
11

12 Section 4. Reservation of Rights. Nothing in this ordinance limits the County in its
13 identification and acquisition of property and property rights necessary for this public purpose.
14 The County reserves the right to acquire additional or different properties as needed for the
15 Project.
16

17 Section 5. Authority of County Executive. The County Executive, by and through
18 his designees, is authorized and directed to continue negotiations for the acquisition of
19 property rights and prosecute actions and proceedings in the manner provided by law to
20 condemn, take, damage and appropriate the Property Rights necessary to carry out the
21 provisions of this Ordinance. In conducting said negotiations and condemnation proceedings,
22 the Whatcom County Prosecuting Attorney, by and through their designee, is hereby
23 authorized to enter into stipulations for the Property Rights. Settlement of any actions by the
24 County Executive shall be made only upon the recommendation of legal counsel.
25

26 Section 6. Compensation. The compensation to be paid to the owners of the
27 Property Rights acquired through this condemnation action shall be paid from the County's
28 Road Fund or from such other monies that the County may have available or attain for the
29 acquisition.
30

31 Section 7. Severability. If any provision of this Ordinance or its application to any
32 person or circumstance is held invalid, the remainder of this Ordinance or the application of
33 the provision to other persons or circumstances shall not be affected.
34

35 Section 8. Effective Date. This Ordinance shall be in full force and effect fifteen
36 days after its final passage, except as otherwise provided in the Whatcom County Charter.
37

38
39 **ADOPTED** this 21st day of March, 2023.
40

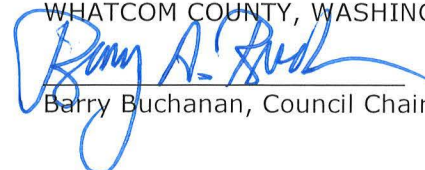
41
42 ATTEST:

43 
44 _____
45 Dana Brown-Davis, County Clerk
46
47

48 APPROVED AS TO FORM:

49 Christopher Quinn
50 Senior Civil Deputy Prosecuting Attorney
51 (authorized via email 02/22/2023)
52

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON



Barry Buchanan, Council Chair



Satpal Sidhu, County Executive

Approved () Denied

Date Signed: 3/27/23

Exhibit A

After recording return document to:

Whatcom County Public Works
Real Estate Coordinator
322 N. Commercial, Suite 210
Bellingham, WA 98225

Document Title: RIGHT-OF-WAY DEED
Reference Number of Related Documents: None
Grantors: Hal G. Arnason III, et al
Grantee: Whatcom County
Legal Description: PTN of NW ¼ NW ¼, S33, T39N, R3E
Additional Legal Description is on Exhibit A
Assessor's Tax Parcel Number: 390333 036487 0000

RIGHT-OF-WAY DEED

E. Smith & Hannegan Road Intersection Improvements

The Grantors, **HAL G. ARNASON III and DARLA J. ARNASON, husband and wife, as to a 50% interest as community property; HAL G. ARNASON III, as to a 10% interest; TREVER ARNASON, a married man as to his separate property, an undivided 1/3 of 1/10th interest; ALYSSA BROOKS, a married woman as her separate property, an undivided 1/3 of 1/10th interest; JORDAN ARNASON, a single man, an undivided 1/3 of 1/10th interest; SHELLI J. LENTZ, as to a 10% interest; KATHY J. BERRY, as to a 10% interest; KIM S. ARNASON, as to a 5/7 of 10% interest; JENNIFER ARNASON, as to a 1/7 of 10% interest; and KELLI ARNASON, as to a 1/7 of 10% interest; each as their separate estate, for and in consideration of the sum of TEN AND NO/100 (\$10.00) Dollars, and other valuable consideration, under the imminent threat of the Grantee's exercise of its right of Eminent Domain, do grant, bargain, sell and convey as right-of-way, and for all purposes and uses consistent therewith, to **WHATCOM COUNTY, A WASHINGTON MUNICIPAL CORPORATION**, the following described real property, and any after acquired interest therein, situated in Whatcom County, in the State of Washington:**

For legal description see Exhibit A and for a depiction see Exhibit B attached hereto and made a part hereof.

RIGHT-OF-WAY DEED

PLEASE MAKE NO MARK IN THE MARGIN SPACE - RESERVED FOR COUNTY AUDITOR'S USE ONLY.

It is understood and agreed that delivery of this deed is hereby tendered and that the terms and obligations hereof shall not become binding upon Whatcom County unless and until accepted and approved hereon in writing for the County by the County Executive.

Grantors:

Date: _____

Hal G. Arnason, III

Darla J. Arnason

Trevor Arnason

Shelli J. Lentz

Alyssa Brooks

Jordan Arnason

Kathy J. Berry

Kim S. Arnason

Jennifer Arnason

Kelli Arnason

Accepted and Approved
WHATCOM COUNTY

By: _____
Satpal Singh Sidhu, County Executive

Date: _____

Approved as to form:
Prosecuting Attorney's Office

Date: _____

Christopher Quinn, Deputy Prosecuting
Attorney – Civil Division

RIGHT-OF-WAY DEED

PLEASE MAKE NO MARK IN THE MARGIN SPACE - RESERVED FOR COUNTY AUDITOR'S USE ONLY.

STATE OF _____)
: ss
County of _____)

On this _____ day of _____ 2022, before me personally appeared Hal G. Arnason, III and Darla J. Arnason to me known to be the individuals described herein and who executed the foregoing instrument and acknowledged that they signed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year last above written.

Notary Public in and for the State of
Washington,
residing at _____
My commission expires _____

STATE OF _____)
: ss
County of _____)

On this _____ day of _____ 2022, before me personally appeared Trevor Arnason to me known to be the individual described herein and who executed the foregoing instrument and acknowledged that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year last above written.

Notary Public in and for the State of
Washington,
residing at _____
My commission expires _____

RIGHT-OF-WAY DEED

PLEASE MAKE NO MARK IN THE MARGIN SPACE - RESERVED FOR COUNTY AUDITOR'S USE ONLY.

STATE OF _____)
: SS
County of _____)

On this _____ day of _____ 2022, before me personally appeared Kathy J. Berry to me known to be the individual described herein and who executed the foregoing instrument and acknowledged that she signed the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year last above written.

Notary Public in and for the State of
Washington,
residing at _____
My commission expires _____

STATE OF _____)
: SS
County of _____)

On this _____ day of _____ 2022, before me personally appeared Alyssa Brooks to me known to be the individual described herein and who executed the foregoing instrument and acknowledged that she signed the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year last above written.

Notary Public in and for the State of
Washington,
residing at _____
My commission expires _____

RIGHT-OF-WAY DEED

PLEASE MAKE NO MARK IN THE MARGIN SPACE - RESERVED FOR COUNTY AUDITOR'S USE ONLY.

STATE OF _____)
: SS
County of _____)

On this _____ day of _____ 2022, before me personally appeared Jordan Arnason to me known to be the individual described herein and who executed the foregoing instrument and acknowledged that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year last above written.

Notary Public in and for the State of
Washington,
residing at _____
My commission expires _____

STATE OF _____)
: SS
County of _____)

On this _____ day of _____ 2022, before me personally appeared Jennifer Arnason to me known to be the individual described herein and who executed the foregoing instrument and acknowledged that she signed the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year last above written.

Notary Public in and for the State of
Washington,
residing at _____
My commission expires _____

RIGHT-OF-WAY DEED

PLEASE MAKE NO MARK IN THE MARGIN SPACE - RESERVED FOR COUNTY AUDITOR'S USE ONLY.

STATE OF _____)
: SS
County of _____)

On this _____ day of _____ 2022, before me personally appeared Kelli Arnason to me known to be the individual described herein and who executed the foregoing instrument and acknowledged that she signed the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year last above written.

Notary Public in and for the State of
Washington,
residing at _____
My commission expires _____

STATE OF _____)
: SS
County of _____)

On this _____ day of _____ 2022, before me personally appeared Shelli J. Lentz to me known to be the individual described herein and who executed the foregoing instrument and acknowledged that she signed the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year last above written.

Notary Public in and for the State of
Washington,
residing at _____
My commission expires _____

RIGHT-OF-WAY DEED

PLEASE MAKE NO MARK IN THE MARGIN SPACE - RESERVED FOR COUNTY AUDITOR'S USE ONLY.

STATE OF _____)
: SS
County of _____)

On this _____ day of _____ 2022, before me personally appeared Kim Arnason to me known to be the individual described herein and who executed the foregoing instrument and acknowledged that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year last above written.

Notary Public in and for the State of
Washington,
residing at _____
My commission expires _____

RIGHT-OF-WAY DEED

PLEASE MAKE NO MARK IN THE MARGIN SPACE - RESERVED FOR COUNTY AUDITOR'S USE ONLY.

EXHIBIT "A"

A RIGHT OF WAY ACQUISITION AREA LYING OVER, UNDER AND ACROSS A PORTION OF THE FOLLOWING DESCRIBED PARCEL:

(PER WHATCOM LAND TITLE COMPANY, SUBDIVISION GUARANTEE NO. W-142082)

THAT PART OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 39 NORTH, RANGE 3 EAST OF W.M., WHICH IS BOUNDED AND DESCRIBED AS FOLLOWS, ACCORDING TO SURVEY MADE BY E.C. LYLE, TO- WIT:

COMMENCING AT A POINT WHICH IS 30 FEET SOUTH AND 30 FEET EAST OF THE NORTHWEST CORNER OF SAID QUARTER QUARTER SECTION; RUNNING THENCE SOUTH 976.55 FEET TO A POINT ON THE NORTH LINE OF LAND DEEDED TO GEORGE KARSTETTER BY DEED RECORDED UNDER AUDITOR'S FILE NO. 183444; THENCE EAST AND PARALLEL WITH THE NORTH LINE OF SAID QUARTER SECTION TO THE POINT OF INTERSECTION WITH THE WEST LINE OF THE OLD TELEGRAPH ROAD; THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID OLD TELEGRAPH ROAD, TO THE POINT ON THE SOUTH LINE OF ROAD, 30 FEET SOUTH OF THE NORTH LINE OF SAID QUARTER QUARTER SECTION; THENCE WEST ALONG THE SOUTH LINE OF SAID ROAD TO THE PLACE OF BEGINNING;

EXCEPT HANNEGAN AND SMITH ROADS;

AND EXCEPT ALL THAT PORTION CONVEYED TO WHATCOM COUNTY FOR RIGHT- OF-WAY PURPOSES BY DEED RECORDED JUNE 20, 1997, UNDER AUDITOR'S FILE NO. 1970602677, RECORDS OF WHATCOM COUNTY, WASHINGTON.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

RIGHT-OF-WAY DEED

PLEASE MAKE NO MARK IN THE MARGIN SPACE - RESERVED FOR COUNTY AUDITOR'S USE ONLY.

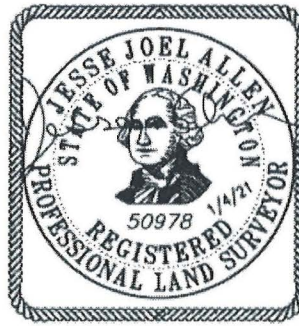
EXHIBIT "A" CONTINUED

RIGHT OF WAY ACQUISITION AREA DESCRIPTION

COMMENCING AT THE NORTHWEST CORNER OF SECTION 33, TOWNSHIP 39 NORTH, RANGE 3 EAST W.M; THENCE ALONG THE WEST LINE OF SAID SECTION SOUTH 01°29'59" WEST 64.66 FEET; THENCE DEPARTING SAID WEST LINE SOUTH 88°30'01" EAST 40.00 FEET TO THE EASTERLY RIGHT OF WAY MARGIN OF HANNEGAN ROAD (CO. RD. NO. 384) AND THE POINT OF BEGINNING; THENCE ALONG SAID RIGHT OF WAY MARGIN NORTH 46°15'25" EAST 35.50 FEET TO THE SOUTHERLY RIGHT OF WAY MARGIN OF EAST SMITH ROAD (CO. RD. NO. 58); THENCE ALONG SAID SOUTHERLY RIGHT OF WAY MARGIN SOUTH 88°59'08" EAST 55.34 FEET; THENCE DEPARTING SAID RIGHT OF WAY MARGIN SOUTH 46°15'25" WEST 35.98 FEET; THENCE SOUTH 01°29'59" WEST 210.47 FEET; THENCE SOUTH 15°32'32" WEST 226.67 FEET TO SAID EASTERLY RIGHT OF WAY MARGIN; THENCE ALONG SAID RIGHT OF WAY MARGIN NORTH 01°29'59" EAST 735.03 FEET TO THE POINT OF BEGINNING.

CONTAINING 19,012 SQUARE FEET, MORE OR LESS.

SITUATE IN WHATCOM COUNTY, WASHINGTON



2021.01.04 06:16:22 -08'00'

RIGHT-OF-WAY DEED

PLEASE MAKE NO MARK IN THE MARGIN SPACE - RESERVED FOR COUNTY AUDITOR'S USE ONLY.

