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WHATCOM COUNTY COUNCIL OFFICE

311 GRAND AVENUE, SUITE 105

BELLINGHAM, WA 98225-4038

**DOCUMENT TITLE:** PRELIMINARY ORDER OF VACATION

**REFERENCE NUMBER OF RELATED DOCUMENT:** Resolution 2019-039; AB2019-379

**GRANTOR(S):** WHATCOM COUNTY

**GRANTEE(S):** BP West Coast Products LLC

**ABBREVIATED LEGAL DESCRIPTION:** Safsten Road

**ADDITIONAL LEGAL DESCRIPTION ON PAGE(S) FOUR OF DOCUMENT.**

**ASSESSOR'S TAX/PARCEL NUMBER(S):** 3901062112100000; 3901061801610000;  
3901062080760000

## PRELIMINARY ORDER OF VACATION

IN THE MATTER OF THE PETITION for the vacation of Safsten Road, filed by BP West Coast Products LLC, et al., the Whatcom County Council finds as follows:

THAT THE PETITION for vacation was filed on January 29, 2019 along with a deposit of \$790.00, and contained the following statement of facts by the petitioner pertinent to the desired vacation:

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 33ft in width on and along the west line of the E 1/2SW1/4 of Section 6, Twp. 39, R 1 E, WM 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 20D-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 longterm 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; and

THAT A PUBLIC HEARING on the Engineer's report in this matter took place before the Whatcom County Council on September 24, 2019, and having heard and construed all testimony and documentary evidence produced, the Council was satisfied that said road(s) or portion(s) thereof is useless as part of the County road system and that the public will be benefited by its vacation and abandonment.

IT IS THEREFORE ORDERED by the Whatcom County Council that said road(s) or portion(s) thereof shall be vacated subject to the following conditions:

This vacation is subject to and/or together with all easements, covenants, restrictions, and/or agreements of record or otherwise; and 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, or planned for the future;

PROVIDED that by March 24, 2020 the petitioner has paid in full all costs and expenses incurred in the proceedings, and payment of the fair market value of the property by the petitioner(s) involved (in this case the amount due is \$28,750;

BE IT FURTHER ORDERED that the road, or portion thereof, to be vacated is legally described as follows:

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

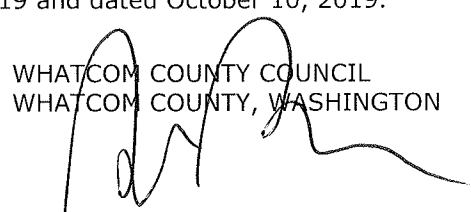
BE IT FINALLY ORDERED that the following conditions are placed upon the vacation of this road: The County reserves and retains an easement for construction, repair and maintenance of public utilities and services authorized or physically located therein; further such vacation shall not prejudice private rights, private easements, prescriptive rights, rights of access, ingress, egress or passage, which may exist apart from any interest or rights of the public under the right-of-way that is herein vacated.

Approved by the Council on September 24, 2019 and dated October 10, 2019.

ATTEST:

  
Dana Brown-Davis, Council Clerk

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

  
Rud Browne, Council Chair