

**CITY OF BLAINE**  
**REQUEST FOR COUNCIL ACTION**  
**MEETING DATE:** January 9, 2006

**SUBJECT:** Right-of-Way Vacation Petition – Portion of 4<sup>th</sup> Street between Alder Street and Peace Portal Drive.

**SUBMITTING DEPT:** Public Works

**PREPARED BY:** Stephen R. Banham, Director 

**AGENDA LOCATION:** Comments/Communications  Consent  Committee Reports   
Unfinished Business  New Business  Public Hearing  Standing Committees

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**ATTACHMENTS:** 1) December 9, 2006 applicant fax  
2) Pictometry Map  
3) January 1, 2006 Gogal response to Notice of Public Hearing  
4) Road Vacation Petition Staff Report  
5) 4<sup>th</sup> Street Right-of-Way Acquisition Statutory Warranty Deed  
6) BMCs 12.16.060 – 12.16.110

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**ANALYSIS/SUMMARY:** Resolution No. 1417-05, passed by City Council at the November 25, 2005 regular meeting, scheduled a public hearing for January 9, 2006 for City Council to hear public testimony before taking action on subject right-of-way vacation petition.

On December 9, 2006, the applicant revised the description of the 4<sup>th</sup> Street right-of-way that he desired Council to vacate (see Attachment No. 1) to be the westernmost 9.5'-wide strip of that right-of-way. Staff desires to reduce this strip to nine feet (9') in width, and to limit its length to 230' southward from the southern Alder Street right-of-way edge (see Attachment No. 2).

On January 3, 2006 the City received a letter from Garry Gogal in response to the City Clerk's Notice of Public Hearing (see Attachment No. 3). This letter is for information purposes only and does not affect these proceedings.

Public Works Department staff has prepared the staff report required by BMC 12.16.050 (see Attachment No. 4). Although this report concludes that the requested vacation would not serve the "best" public interest *per se*, the vacation 1) might avoid possible litigation, 2) would definitely avert the need to demolish the permanent improvements that the applicant has already constructed within the 4<sup>th</sup> Street right-of-way, and 3) would definitely accommodate the applicant's current structure configuration and internal vehicle circulation patterns.

Per BMC 12.16.060, the vacation decision criteria that City Council uses are:

- "A. The City Council shall not vacate any street, alley or parts thereof if any portion thereof abuts any body of salt or fresh water unless the vacation is sought to enable the city or state to acquire the property for port purposes, boat moorage, or launching sites, park, viewpoint, recreational or educational purposes or other public uses.
- B. The city shall not vacate any previously dedicated right-of-way unless, upon all the facts presented in public hearing, it concludes that:
  - 1. Granting the vacation will not conflict with the general purpose and objectives of the city's comprehensive plans for land use, transportation, utilities, drainage, parks, trails and open space; and

2. The vacation will provide a public benefit or be for a public purpose; and
3. Vacation of the right-of-way will not adversely affect the street pattern or circulation of the immediate area or the community as a whole; and
4. The right-of-way to be vacated is not contemplated or needed for future public use; and
5. There is at least one alternate mode of ingress and egress meeting city standards for emergency services available to all abutting owners, even if less convenient than the existing right-of-way; and
6. Provision has been made for utility easements where needed for the right to construct, repair and maintain public utilities and services; and
7. The request for vacation was not initiated to correct a condition created by the applicant in violation of city ordinance; and
8. The vacation will maintain or create straight and continuous right-of-way lines on at least one side for the full block.”

Per BMC 12.16.080, “...At the conclusion of the Public Hearing, the City Council may take the following action:

- A. Pass a motion of intent to vacate all or a portion of the requested vacation stating that the city council will, by ordinance, grant the vacation with no conditions; or
- B. Pass a motion of intent to vacate all or a portion of the requested vacation stating that the city council will, by ordinance, grant the vacation by means of an ordinance to be effective upon payment of fees and satisfaction by the applicant of all other stated conditions within specified time periods; or
- C. Pass a motion denying the proposed vacation.”

Per BMC 12.16.090, “...If the City Council decides to grant all or a portion of the vacation, such action shall be made by ordinance with such conditions or limitations as the City Council deems necessary and proper to preserve any desired public use, benefit or interest, such as, but not limited to, reserving within the portion of the street or alley which is vacated, (1) easements for access, construction, repair and maintenance of public utilities, (2) easements for trails, and (3) easements for other public needs.”

Per BMC 12.16.100, paragraph B, “...once City Council has made findings in favor of granting the vacation request, it may adopt a motion to approve the petition conditionally, thereby directing the City Clerk to secure an appraisal of the subject property. Before the City Clerk calls for an appraisal, petitioner(s) shall post a \$500.00 deposit with the City Treasurer within 30 days of Council action following the Public Hearing to insure payment of the cost of appraisal. Within 30 days of receipt by the City Clerk of billing for the appraisal, the city shall refund any amount owed the petitioner(s) or, if the cost of the appraisal exceeds \$500.00, petitioner(s) shall pay the additional amount owed within 30 days of receipt of billing. Payment deadlines herein provided may be extended on discretion of the City Council on good cause shown in written application prior to the due date. Failure of applicant to pay either the deposit or the final amount billed for by these specified deadlines will nullify the petition.” Given that the applicant recently deeded a portion of the current 4<sup>th</sup> Street right-of-way to the City (see Attachment No. 5), Council could waive, if it so desired, this appraisal requirement and set the price per square foot at about \$9.74, which is the value that the City used in the original 3<sup>rd</sup> and 4<sup>th</sup> Street right-of-ways dedication/LID 27 debt forgiveness exchange.

On a related note, the existing 4<sup>th</sup> Street and Peace Portal Drive right-of-way alignments at the northwestern corner will present a future street improvement complication that could be eliminated as part of this vacation (i.e., deeding a ~15’ X ~22” triangular-ish section (see Attachment No. 2) to the City to facilitate opening the “throat” of the intersection.) The City would offset the value of this dedicated land against the value of the vacated strip.

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**RECOMMENDATION:**     Waive 2nd Reading: Staff recommends that City Council either:

1. Pass a motion denying the proposed vacation, or
2. Pass a motion of intent to vacate a portion of the 4<sup>th</sup> Street right-of-way as described below, and stating that the City Council will grant the vacation by means of an ordinance to become effective upon payment of fees

in the amount of \$18,583.92 (which is \$9.74/SF X (2,070 SF for the vacated right-of-way – 162 SF for the dedicated triangular-ish area)

**OR**

as determined by an appraisal of said right-of-way, which Council hereby directs the City Clerk to secure, and which value Council will offset by the value of thy triangular-ish area that applicant will dedicate to City

and satisfaction by the applicant that applicant has dedicated to City by February 10, 2006 the southeastern corner of the applicant's property that lies within 30 feet of the centerline of 4<sup>th</sup> Street as constructed in 1998 (see As-Built Plans for description of the centerline), otherwise subject petition becomes null and void.

**LEGAL DESCRIPTION:** "The northerly 230.00 feet of the westerly 9.00 feet of "Portion Number 1: 4<sup>th</sup> Street Right of Way" as described in Exhibit "A" of Statutory Warranty Deed filed April 21, 2005 under Whatcom County Auditor's File Number 2050403572."

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**FISCAL ANALYSIS:** As this qualifies as a Class 1 real property vacation per BMC 12.16.100, the City will (if Council vacates the right-of-way with the staff-recommended condition) receive compensation from applicant at 100% of the value of the vacated right-of-way, minus the value of a ~162 square foot triangular-ish section at the southeastern corner of applicant's property at 1300 Peace Portal Drive.

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**REVIEWED BY:** City Manager \_\_\_\_\_ Finance Dir. \_\_\_\_\_ City Clerk \_\_\_\_\_

**COUNCIL ACTION:**

Approved     Denied     Tabled/Deferred     Assigned to: \_\_\_\_\_

**COUNCIL ACTION:** \_\_\_\_\_

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COPY

Box 1  
City  
+ map

TO: Fax # (360) 332-8330

RE: Harbor Lands Vacation Request (Seascape Project - 1300 Peace Portal Drive)

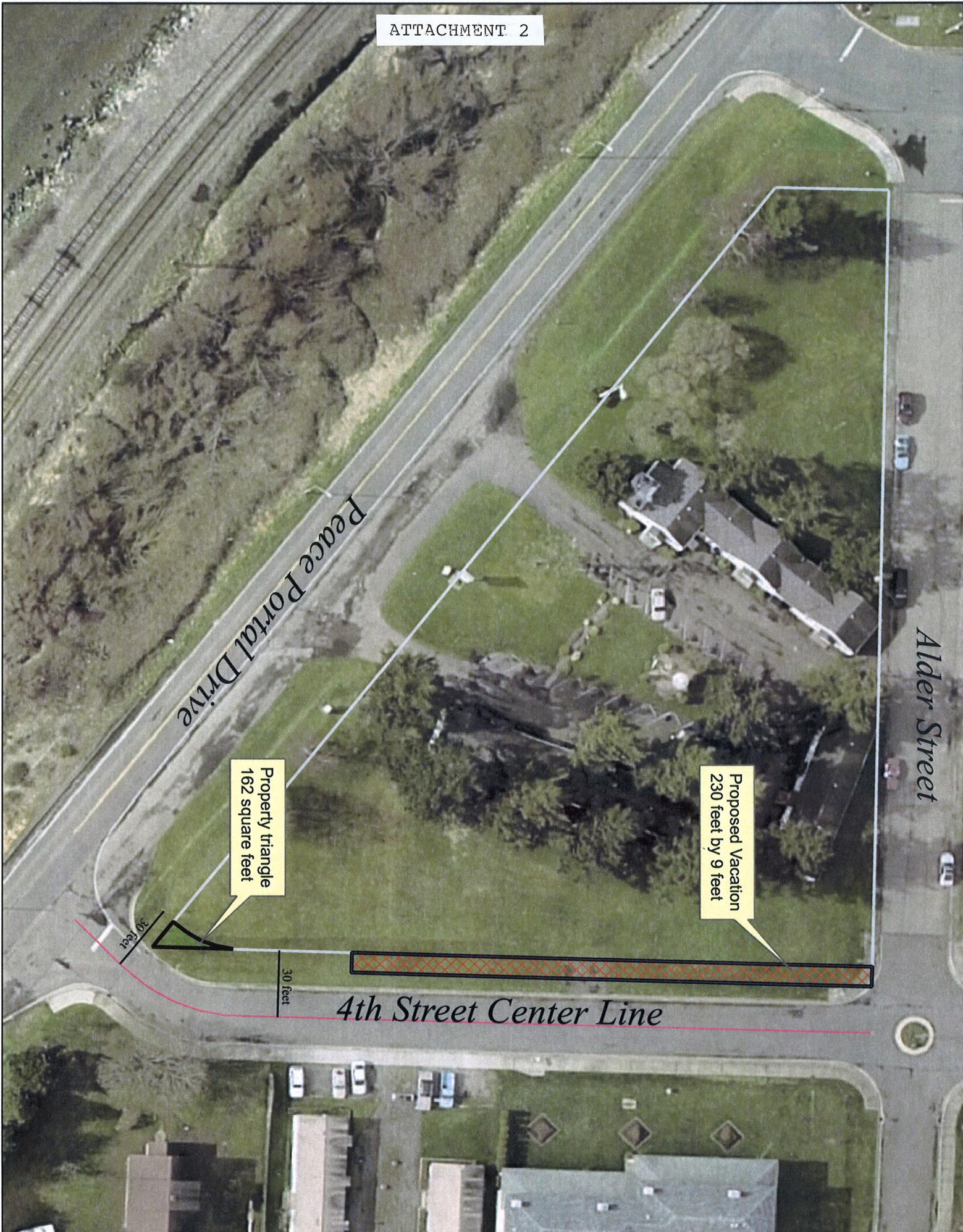
Sheri Sanchez, City Clerk, City of Blaine:

Please limit our vacation request to the 9.5 feet west portion which was taken by error or accident – that is the westerly 9.5 feet of a 30 ft. strip lying westerly of the centerline of 4<sup>th</sup> St.

Sincerely,



Joel Douglas



*Peace Portal Drive*

*Alder Street*

Property triangle  
162 square feet

Proposed Vacation  
230 feet by 9 feet

*4th Street Center Line*

30 feet

30 feet

January 1, 2006

City of Blaine  
344 H Street  
Blaine, Wa  
98230

By Fax: (360) 332-8330  
Attention: Ms Sanchez (City Clerk)

Re: Notice of Public Hearing/ January 9, 2006  
City of Blaine City Council

Dear Ms Sanchez,

Please be advised that I am in receipt of your Notice of Public Hearing on Jan. 9<sup>th</sup>, 2006 @ 7:00 p.m. and by way of certified mail.

As you are aware, I am the owner of the property located at 1368 4<sup>th</sup> Street, Blaine, which is located across the street (4<sup>th</sup> Street) and to the rear of Mr. Douglas' development.

Your notice is in fact the first time that I am hearing that Mr. Douglas is proposing to have a portion of 4<sup>th</sup> Street vacated.

It is my understanding that a street vacation process normally precedes the developmental stage of an application and especially prior to any subsequent development relating thereto being approved.

Nonetheless, I would ask that I as a property owner am afforded the same opportunity or concession as Mr. Douglas and I request that the City of Blaine extend the application before you to include the eastern 9 1/2 foot wide portion of 4<sup>th</sup> Street as well.

Yours sincerely,



Garry Gopal  
PO Box 588  
Blaine, WA 98231

cc: William Knudsen (Attorney at Law)

## Right-of-Way Vacation Petition Staff Report

As required by BMC 12.16.050, Public Works Department staff has prepared the following report and recommendations in response to a petition to vacate a portion of 4<sup>th</sup> Street. This right-of-way segment is located between Alder Street and Peace Portal Drive. Staff has repeated BMC 12.16.050 evaluation criteria below, together with Staff responses, to facilitate Council deliberations:

- A. *Ownership of the property abutting on the street or portion sought to be vacated. Proof of ownership of abutting property by the title insurance or certificates may be required, such proof to be furnished by, and at the expense of, the petitioners upon request of the City Clerk;*
  - a) **All abutting property owners of record have signed the vacation petition.**
  
- B. *Whether and in what respect the public may be benefited or harmed by the vacation;*
  - a) **The public will lose access to this portion of right of way for future utilities and sidewalk amenities.**
  - b) **The public should benefit from increased taxes and stormwater fees realized by vacation of this right-of-way.**
  - c) **If the right of way is vacated, the public may be benefited by the avoidance of litigation associated with the issuance of the building permit for the site that may be filed by the applicant if the vacation is not granted.**
  
- C. *Whether the public benefit of the area's use is insufficient to justify the cost of maintenance;*
  - a) **This right-of-way is adjacent to a fully constructed road. The City does not maintain this portion of the right of way. The cost of maintenance (mowing the grass or weeding) is born by the abutting property owner.**
  
- D. *Which property or properties will be directly benefited or adversely affected by the vacation, and in what way.*
  - a) **The abutting property will be directly benefit by the increased property area and expanded building setback. Demolition of improvements constructed within the right of way will not be required.**
  - b) **No adverse affect to any other property is foreseen.**
  
- E. *What effect the vacation will or may have upon property served or which might be served by said vacated street, and whether said street has been opened or constructed, and if so, to what standard;*
  - a) **The current improved roadway is 14.5 feet on either side of the centerline (per residential street standards) with the sidewalk on the East side.**
  - b) **The effect of the vacation will be to eliminate space for roadside amenities on the west side and possibly force any future road improvements to shift to the east side of the right-of-way.**

- F. *How said street relates to other streets and highways, and whether other portions of the subject street or alley have already been vacated;*  
a) **4<sup>th</sup> Street connects Peace Portal Drive with F Street through the R/O, SDR and CB Zones. None of 4<sup>th</sup> Street is vacated, however the north end is cut off from the south end by I-5.**
- G. *Whether the substitution of an alternate way would be more useful to the public;*  
a) **An alternate route is not proposed.**
- H. *Whether future changes in conditions may increase public use or need;*  
a) **The increased population density expected by completion of the applicants project and other development within the RO zone will increase public use and need for this right of way, especially for on street parking and pedestrian circulation.**
- I. *How the street or alley sought to be vacated became a public right-of-way;*  
a) **The City exchanged LID indebtedness (lien against the property) for additional right-of-way by agreement with the applicant recorded April 21, 2005. This property transfer was to provide a corridor for future utilities or road widening. The amount of the transfer was based on the amount of the indebtedness and a reasonable amount of right-of-way for any anticipated future needs.**
- J. *Whether any utilities now exist in said street, or whether such street may be reasonably necessary for future utility uses;*  
b) **A City water main, City storm drain and a gas main are located in the street right of way. Future need for utilities is questionable, however there is public benefit in retaining some or all of this right-of-way for future sidewalk, road widening, turn lanes, or utility infrastructure.**
- K. *The necessity or desirability of the city retaining an easement or the right to exercise and grant easements for emergency vehicle access and construction, repair and maintenance of public utilities and services over the land sought to be vacated.*  
a) **City utilities are not located with in the portion of right of way proposed for vacation. If vacated, an easement would not be required nor would it be desirable, rather full compensation at full land value is desirable.**



2050403572  
Page: 1 of 3  
4/21/2005 9:27 AM  
DEED \$21.00  
Whatcom County, WA

Request of: BLAINE CITY OF

**Return to:**

**City of Blaine  
344 H Street  
Blaine, WA 98230**

*Document Title:* Statutory Warranty Deed  
*Grantor(s):* Joel Douglas et al/Harbor Lands LP  
*Grantee:* The City of Blaine  
*Legal Description:* Ptn Gov L2 1-40N-1W  
*Additional Legal Description is on:* Page 2 Attached Exhibit "A"  
*Assessor's Tax Parcel Numbers:* 405101560321

**STATUTORY WARRANTY DEED**

**IN THE MATTER OF: Parcel No. 405101 5603210000  
CITY OF BLAINE, WASHINGTON**

THE GRANTORS, Joel Douglas/Harbor Lands LP, under threat of condemnation, and for consideration of Twenty Dollars (\$20.00) and mutual benefits, receipt of hereby acknowledged, convey(s) and warrant(s) to the GRANTEE, the **CITY OF BLAINE, WASHINGTON**, the following described real property:

**Legal Description: Ptn Gov L2 1-40N-1W; See Page 2**

All situate in the City of Blaine, Whatcom County, Washington

## EXHIBIT "A"

## LEGAL DESCRIPTION

Two portions of the following described parcel

A TRIANGULAR PARCEL OF LAND IN GOVERNMENT LOT 2, SECTION I, TOWNSHIP 40 NORTH, RANGE 1 WEST OF W.M., SAID PARCEL BEING BOUNDED ON THE EAST BY THE EASTERLY BOUNDARY OF SAID LOT 2, ON THE NORTH BY THE SOUTHERLY MARGIN OF ALDER STREET, AS SHOWN ON PLAT OF MILLERS PARK ADDITION TO BLAINE, FILED FOR RECORD APRIL 8, 1890, AND ON THE SOUTHWEST BY THE NORTHEASTERLY BOUNDARY OF THE RIGHT-OF-WAY FOR A HIGHWAY WHICH WAS GRANTED BY THE GREAT NORTHERLY RAILWAY COMPANY, UNDER DATE OF FEBRUARY 28, 1928, TO THE CITY OF BLAINE, WASHINGTON, AND BEING A LINE DRAWN PARALLEL TO AND DISTANT 45.0 FEET NORTHEASTERLY FROM THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT IN THE CENTER LINE OF BLAINE AVENUE IN THE SAID CITY OF BLAINE, DISTANT 95.0 FEET NORTHEASTERLY, MEASURED AT RIGHT ANGLES FROM THE CENTER LINE OF THE RAILWAY OF SAID RAILWAY COMPANY AS NOW LOCATED AND CONSTRUCTED; THENCE NORTH 71°00'00" WEST, 260.1 FEET TO A POINT; THENCE NORTHWESTERLY ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 955.0 FEET AND TANGENT TO THE LAST DESCRIBED COURSE 441.1 FEET TO A POINT; THENCE NORTH 44°57'00" WEST, 2008.1 FEET TO A POINT; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 1146.0 FEET AND TANGENT TO THE LAST DESCRIBED COURSE 280.0 FEET TO A POINT; THENCE NORTH 58°57'00" WEST, 246.1 FEET TO A POINT; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 818.6 FEET, AND TANGENT TO THE LAST DESCRIBED COURSE 848.6 FEET TO A POINT IN THE CENTER LINE OF WASHINGTON AVENUE, IN SAID CITY OF BLAINE; THENCE NORHTERLY ALONG SAID CENTER LINE OF WASHINGTON AVENUE 104.0 FEET TO THE INTERSECTION THEREOF BY THE CENTER LINE OF CHERRY STREET, BEING THE END OF THIS DESCRIPTION. ALL ACCORDING TO THE PLAT OR PLATS OF SAID CITY OF BLAINE ON FILE AND OF RECORD IN THE OFFICE OF THE AUDITOR OF WHATCOM COUNTY, WASHINGTON, EXCEPT THAT PORTION OF THE PROPERTY HEREIN DESCRIBED, IF ANY, LYING WITHIN FOURTH STREET, ALDER STREET OR PEACE PORTAL DRIVE.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

More particularly described as follows:

Portion Number 1: Fourth Street Right of Way

All of the above described parcel lying east of a line thirty feet (30') west of and parallel to the centerline of Fourth Street as shown on Record of Survey filed January 8, 1993 under Auditor's File No. 930108148, records of Whatcom County, Washington.

ALSO:

Portion Number 2: Third Street Right of Way

A triangular parcel being the westerly fifty-nine feet (59'), more or less, of the Parcel described above. The east boundary of this parcel is the easterly right-of-way line of Third Street as shown on the plat of Miller's Park Addition to Blaine, filed for record April 8, 1890, extended south to the northeasterly right-of-way line of State Route 548 (Peace Portal Drive).



**12.16.060 Criteria for council decision.**

A. The city council shall not vacate any street, alley or parts thereof if any portion thereof abuts any body of salt or fresh water unless the vacation is sought to enable the city or state to acquire the property for port purposes, boat moorage, or launching sites, park, viewpoint, recreational or educational purposes or other public uses.

B. The city shall not vacate any previously dedicated right-of-way unless, upon all the facts presented in public hearing, it concludes that:

1. Granting the vacation will not conflict with the general purpose and objectives of the city's comprehensive plans for land use, transportation, utilities, drainage, parks, trails and open space; and

2. The vacation will provide a public benefit or be for a public purpose; and

3. Vacation of the right-of-way will not adversely affect the street pattern or circulation of the immediate area or the community as a whole; and

4. The right-of-way to be vacated is not contemplated or needed for future public use; and

5. There is at least one alternate mode of ingress and egress meeting city standards for emergency services available to all abutting owners, even if less convenient than the existing right-of-way; and

6. Provision has been made for utility easements where needed for the right to construct, repair and maintain public utilities and services; and

7. The request for vacation was not initiated to correct a condition created by the applicant in violation of city ordinance; and

8. The vacation will maintain or create straight and continuous right-of-way lines on at least one side for the full block. (Ord. 2474 § 1, 2000; Ord. 2106 § 1, 1993)

**12.16.070 Deleted.**

*Deleted by Ord. 2474. (Ord. 2106 § 1, 1993)*

**12.16.080 City council decision.**

At the conclusion of the public hearing, the city council may take the following action:

A. Pass a motion of intent to vacate all or a portion of the requested vacation stating that the city council will, by ordinance, grant the vacation with no conditions; or

B. Pass a motion of intent to vacate all or a portion of the requested vacation stating that the city council will, by ordinance, grant the vacation by means of an ordinance to be effective upon payment of fees and satisfaction by the applicant of all other stated conditions within specified time periods; or

C. Pass a motion denying the proposed vacation. (Ord. 2106 § 1, 1993)

**12.16.090 Granting – Conditions.**

If the city council decides to grant all or a portion of the vacation, such action shall be made by ordinance with such conditions or limitations as the city council deems necessary and proper to preserve any desired public use, benefit or interest, such as, but not limited to, reserving within the portion of the street or alley which is vacated, (1) easements for access, construction, repair and maintenance of public utilities, (2) easements for trails, and (3) easements for other public needs. (Ord. 2106 § 1, 1993)

**12.16.100 Appraisals – Classes of right-of-way for purposes of appraisal, call for appraisal, posting of bond, payment required.**

A. Determination of appraised value shall be made by appraisal by a state-certified appraiser of the portion of the street or alley to be vacated with valuation based on current fair market value. Such appraisals shall take into account any retained right of the city for future use which would restrict the private use of the property. For purposes of appraisal, all properties within the city primarily used or reserved for use as public ways, including streets and alleys, are declared to be within one of three

classes:

1. Class I: Real property on which city holds fee simple title and which was acquired at public expense; or
2. Class II: Real property on which the interest of the city is limited to a public easement or right of use for particular purposes and not qualifying under Class III below; or
3. Class III: Easements conveyed to or held by the city for which no public funds have been expended in the acquisition, and which would otherwise be classified as Class II, except for the fact that the grantor has applied for vacation of the same.

B. Call for Appraisal, Posting of Bond, Payment Required. In the case of Class I or II properties, once city council has made findings in favor of granting the vacation request, it may adopt a motion to approve the petition conditionally, thereby directing the city clerk to secure an appraisal of the subject property. Before the city clerk calls for an appraisal, petitioner(s) shall post a \$500.00 deposit with the city treasurer within 30 days of council action following the public hearing to insure payment of the cost of appraisal. Within 30 days of receipt by the city clerk of billing for the appraisal, the city shall refund any amount owed the petitioner(s) or, if the cost of the appraisal exceeds \$500.00, petitioner(s) shall pay the additional amount owed within 30 days of receipt of billing. Payment deadlines herein provided may be extended on discretion of the city council on good cause shown in written application prior to the due date. Failure of applicant to pay either the deposit or the final amount billed for by these specified deadlines will nullify the petition. (Ord. 2106 § 1, 1993)

#### **12.16.110 Amount of compensation by class of right-of-way, payment required.**

A. The amount of compensation required to be paid to the city as a condition precedent to the vacation of a public way shall be determined according to the following criteria:

1. Class I property shall be considered a sale of a capital asset and shall be compensated for at 100 percent of its fair market value.
2. Right-of-way over Class II property shall be compensated for in the amount of 50 percent of the fair market value of said property.
3. Vacation of Class III rights-of-way shall not require compensation in excess of filing fees.

B. Upon notification that the amount of required compensation has been established, the petitioner(s) shall have 60 days to deposit such amount, together with other costs of processing not previously paid, with the city treasurer. Upon notification by the city treasurer of the receipt of all sums due, the city council shall, in accordance with its prior motion of approval, adopt an ordinance vacating Class I, II or III property. All funds received as compensation pursuant to this chapter shall be deposited in the city's street fund or such other fund as council may designate. (Ord. 2106 § 1, 1993)