

Jefferson County
Board of Commissioners
Agenda Request

To: Board of Commissioners
Mark McCauley, County Administrator

From: Monte Reinders, P.E., Public Works Director 

Agenda Date: March 27, 2023

Subject: A Resolution adopting Hearing Examiner report and recommendations, and expressing Board's intent to vacate a portion of a County Right-of-Way known as Gustavsen Road, subject to Petitioner meeting certain conditions

Statement of Issue:

In accordance with JCC 12.10.090, the Board is asked to consider the Hearing Examiner's Report and recommendations (attached) pertaining to a petition to vacate that portion of Gustavsen Road directly north of, and adjacent to, parcel 601 061 009. Said right-of-way is legally described as *the south 40 feet of the east 100 feet as measured along the south line of the west 455 feet of the southeast quarter of the southeast quarter of Section 31, Township 27 North, Range 1 West, W.M., Jefferson County, Washington*. See attached map.

Analysis/Strategic Goals/Pro's & Con's:

A public hearing on the road vacation petition was conducted before the Jefferson County Hearing Examiner on January 17, 2023. Based upon the recommendations contained in the County Engineer's report, as well as testimony presented from other departments, agencies, and individuals, the Hearing Examiner has recommended that the road vacation be approved subject to Petitioner meeting the following conditions:

- Record a Restrictive Covenant to title on parcels 601-061-003 and 601-061-009 warranting to reserve or grant an ingress/egress/utility easement over parcel 601-061-009 for the benefit of parcel 601-061-003 in the event ownership of the two parcels is ever segregated.
- Provide a Quit Claim Deed to be recorded at the same time as a Resolution approving the vacation, conveying any interest in the subject right-of-way held by Fisherman's Point Homeowners Association to Alvord Investments LLC.
- Pay all required compensation owed to the County for the vacated right-of-way and administrative process.

Although the official public hearing was conducted by the Hearing Examiner, pursuant to JCC 12.10.130(1) the Board has the discretion to accept public testimony in support or in opposition to the proposed vacation.

Fiscal Impact/Cost Benefit Analysis:

The Petitioner will pay remaining costs, including land value compensation, associated with the road vacation prior to adoption of a final resolution officially vacating and abandoning the subject right-of-way.

Recommendation:

Department of Public Works recommends that the Board adopt the Hearing Examiner's findings and conclusions and approve the vacation of the subject right-of-way subject to Petitioner meeting the Hearing Examiner's recommended approval conditions, with the clarification that County staff shall record all of the legal instruments described above at the same time as staff records any final Resolution officially vacating the subject right-of-way. The recording fees will be included with the other administrative fees to be paid by Petitioner.

Public Works recommends that the Board sign the attached Intent to Vacate Resolution which will commit the Board to adopting a final Resolution which will officially grant the petition to vacate the right-of-way upon verification that Petitioner has met all of the required conditions within one-year. Failure to meet the conditions within that timeframe, or any extension approved by the Board, will result in termination of the vacation process, in which case Petitioner will remain liable for all administrative costs incurred by the County.

Department Contact:

Colette Kostelec, P.E., Engineer III/Right-of-Way Representative, 385-9218

Reviewed By:


Mark McCauley, County Administrator

3/22/23
Date

In the matter of }
an Intent to Vacate a portion of }
Gustavsden Road right-of-way }

APPROVED this _____ day of _____, 2023.

**JEFFERSON COUNTY
BOARD OF COMMISSIONERS**

Kate Dean, District 1

Heidi Eisenhour, District 2

Greg Brotherton, District 3, Chair

ATTEST:

Clerk of the Board



These data are provided on an "AS-IS" basis, without warranty of any type, expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for any particular purpose.

Gustavsen Road

1:2,257

Date: 6/29/2022

This map is not a substitute for accurate field surveys or for locating actual property lines and any adjacent features.



**BEFORE THE HEARING EXAMINER
FOR JEFFERSON COUNTY**

In the Matter of the Petition to Vacate a)
portion of Gustavsen Road, identified as)
County Road No. 327809, submitted by)
ALVORD INVESTMENTS, LLC,)
(NATHANIEL GERLICH, GOVERNOR))
Petitioner/Property Owner)

**FINDINGS, CONCLUSIONS, AND
RECOMMENDATION OF
APPROVAL TO THE BOARD OF
COUNTY COMMISSIONERS**

I. SUMMARY OF RECOMMENDATION.

The petition should be granted, vacating a portion of Gustavsen Road.

II. JURISDICTION.

This matter came before the Hearing Examiner who is responsible for conducting a public hearing on all petitions for road vacations; reviewing such petitions, the written staff report, and applicable criteria found in JCC 12.10.110; and receiving public testimony in support of or opposing the proposed road vacation. Following the public hearing, the Examiner is tasked with providing a written recommendation to the Board of County Commissioners to grant or deny the petition, with any conditions of approval. (*See JCC 12.10.080*).

III. RECORD.

Exhibits entered into evidence as part of the record, and an audio recording of testimony provided at the public hearing, are maintained by the Jefferson County Department of Community Development, in accord with applicable law. In this Recommendation, materials included as part of the Record are numbered and identified as follows:

**RECOMMENDATION TO APPROVE PETITION FOR
ROAD VACATION – A PORTION OF GUSTAVSEN
ROAD – COUNTY ROAD NO. C327809**

Page 1 of 10

**GARY N. McLEAN
HEARING EXAMINER
FOR JEFFERSON COUNTY**

1 2022-12-28 Cover Letter to Staff Report.pdf

2 2022-12-28 Staff Report without Exhibits.pdf

3 Ex 1 to Staff Report - County Engineer's report without exhibits.pdf

4 Ex 2 to Staff Report - list and map of adjacent property owners.pdf

5 Ex 3 to Staff Report - comments received.pdf

6 Ex 4 to Staff Report - Publication notice.pdf

7 Ex 5 to Staff Report - Declaration of Posting with attachments.pdf

8 Ex A to County Engineer's report - ma...legal description of subject ROW.pdf

9 Ex B to County Engineer's report - Petition for Vacation of ROW.pdf

10 Ex C to County Engineer's report - letter from FPHA.pdf

11 Ex D to County Engineer's report - photos.pdf

12 Ex E to County Engineer's report - Dept of Comm Dev report.pdf

13 Ex F to County Engineer's report - appraisal of subject ROW.pdf

14 Below is a list of individuals called to present testimony under oath at the duly noticed
15 public hearing for this matter, held using the Zoom online meeting platform coordinated by
16 County staff on January 17, 2023:

- 17 1. Colette Kostelec, Engineer III/Right-of-Way Representative, for the County's Department of
18 Public Works, prepared the Staff Report issued for this petition, summarized her
19 recommendation of approval with limited conditions, noted that the County received no
written comments before the hearing in opposition to the requested vacation; and
- 20 2. Nathaniel Gerlich, appeared for the petitioner, one of the "Governors" listed on the Secretary
21 State's online portal for the Alvord Investments, LLC ownership entity, did not object to
22 Staff's analysis or recommended conditions, summarized reasons for seeking the road
23 vacation.

24 No one appeared during the public hearing to submit written comments or verbal
25 testimony opposing or questioning this road vacation. The Examiner has had a full and fair
26 opportunity to consider all evidence submitted as part of the record; has visited the road
vacation site and surrounding area; has reviewed and researched relevant codes, caselaw, and
ordinances; and is fully advised. Accordingly, this Recommendation is now in order.

RECOMMENDATION TO APPROVE PETITION FOR
ROAD VACATION - A PORTION OF GUSTAVSEN
ROAD - COUNTY ROAD NO. C327809

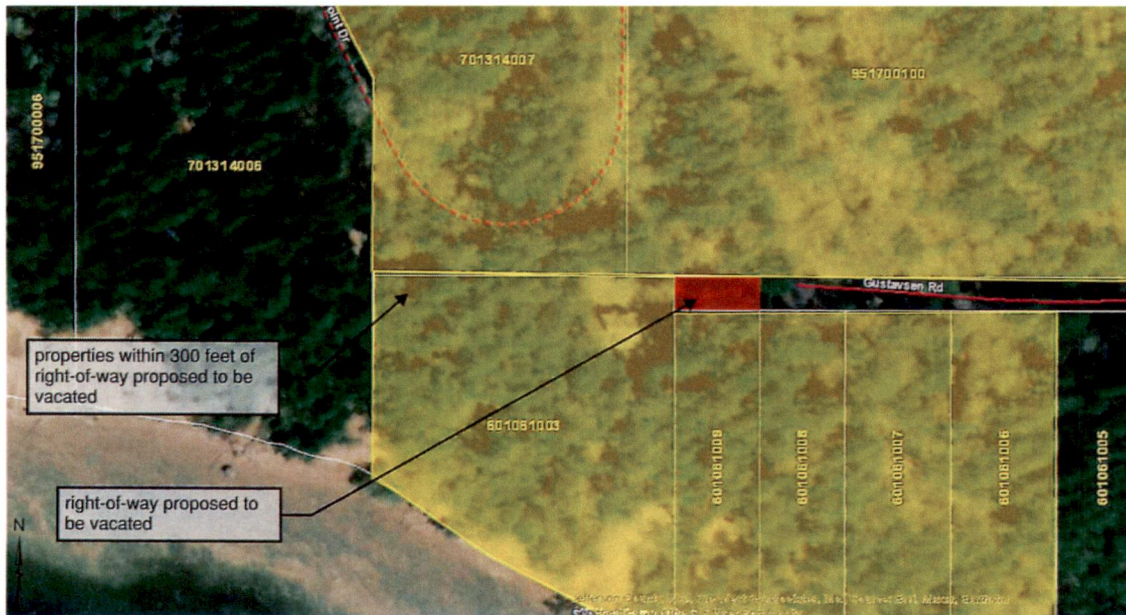
Page 2 of 10

GARY N. McLEAN
HEARING EXAMINER
FOR JEFFERSON COUNTY

IV. FINDINGS OF FACT.

1. Any statements of fact or findings set forth in previous or subsequent portions of this Recommendation that are deemed to be findings of fact are hereby adopted and incorporated herein as such. Captions are used for some groups of findings but should not be construed to modify the language of any finding, as they are only provided to make it easier for readers to identify some of the key topics addressed in this Recommendation.

2. The segment of Gustavsen Road at issue in this road vacation petition is located on the southern end of the Bolton Peninsula, southeast of Quilcene, Washington, and is shown in red in the following screen shot taken from *Exhibit A*, attached to the County Engineer's Report:



3. Alvord Investments, LLC, as the current owner of the parcel of land located immediately south of, and abutting, a portion of Gustavsen Road right-of-way, shown above, and identified as tax parcel no. 601-061-009, is the petitioner in this matter. (*Staff Report, page 1: Ex. B, Petition*).

4. The petitioner asks that the County vacate the westernmost 100-feet of the 40-foot wide right-of-way known as Gustavsen Road. (*Staff Report, page 1; Ex. B, petition*).

5. Fisherman's Point Homeowners Association is the current owner of the parcel of land located immediately north of, and abutting, the portion of Gustavsen Road right-of-way that

1 is the subject of this petition, identified as tax parcel no. 951-700-100. (*Staff Report, page*
2 *1*).

3 6. The property owners of the two abutting tax parcels (i.e. the “Principal Petitioner”,
4 Alvord Investments, and the Fisherman’s Point HOA) have both signed a Petition to Vacate
the segment of Gustavsen Road that is at issue in this matter. (*Staff Report, page 1; Ex. C,*
attached to County Engineer’s Report).

5 7. As provided in WAC 197-11-800(2)(i), road vacation matters are exempt from SEPA
6 review.

7 8. Staff confirmed that all public notices were provided in accord with applicable law,
8 and that no one submitted any comments or questions that would serve as a basis to deny the
9 requested petition. (*Staff Report; Exhibits 2, 3, 4, and 5, related to notice and comments;*
Testimony of Ms. Kostelec).

10 9. As noted above, no one submitted any written comments or testimony during the
11 public hearing process opposing the pending road vacation petition.

12 ***How this segment of right-of-way was established, and why it matters.***

13 10. The County Engineer’s Report explains that the 40-foot wide segment of Gustavsen
14 Road right-of-way at issue in this petition was originally reserved by Jefferson County when
15 it deeded the southeast quarter of the southeast quarter of Section 31, Township 27 North,
16 Range 1 West in July 1946, and was formally established as a county road by Resolution 30-
17 74 on June 24, 1974. This right of way segment is not subject to what is sometimes called
Washington’s “non-user statute”, found at RCW 36.87.090, so it has never been vacated and
continues to be County right-of-way until or unless the County chooses to grant any petition
to do so.

18 11. Tax parcel 601-061-009 (the “Alvord parcel”) is entirely within the northeast quarter
19 of Section 6, T26N, R1W. Although parcels abutting both sides of Gustavsen Road currently
20 benefit from that right-of-way, in the event that right-of-way is extinguished through a road
21 vacation, the entire right-of-way would revert to the successor owner of the property to the
22 north (within Section 31, T27N, R1W), from whom the right-of-way was reserved in 1946.
In other words, upon vacation, none of the Gustavsen Road right-of-way would attach to the
Alvord parcel by operation of law. Instead, it would attach to the abutting Fisherman’s Point
HOA property in the southeast quarter of the southeast quarter of Section 31. (*Engineer’s*
Report, page 2).

23 12. According to the Petition, the purpose of the requested vacation is to increase the size
24 of the Alvord parcel to make it buildable. The County has received a letter from the
25

1 Fisherman's Point HOA, confirming that, upon approval of the current vacation request, it
2 will quit claim its interest in that right-of-way to Alvord Investments (see *Exhibit C*). With
3 such quit claim deed, the Principal Petitioner will be the sole owner of the vacated right of
4 way. (*County Engineer's Report, page 2*).

5 13. The County Engineer explains that the subject right-of-way has not been improved to
6 public road standards and has never been opened as a public road or been maintained by
7 Jefferson County. The county-maintained portion of Gustavsen Road, which is a 14-foot wide
8 gravel road, ends at milepost 0.4, just short of the Alvord parcel (see photos in *Exhibit D*).
9 The proposed section of right-of-way to be vacated is the westernmost section of Gustavsen
10 Road right-of-way, beyond the County-maintained portion. The subject right-of-way meets
11 the definition (in JCC 12.10.020) of "Class A" road, namely a road "established, dedicated
12 to, deeded to, or otherwise established by the county for which no public expenditures have
13 been made in the acquisition, improvement, or maintenance of same except those roads
14 platted prior to March 12, 1904, which remained unopened for public use for a period of five
15 years after authority was granted for opening them." (*County Engineer's Report, page 2*).

16 14. The subject right-of-way, located at the southern tip of the Bolton Peninsula, does not
17 provide for overall area or neighborhood circulation for the general public, nor is there any
18 anticipated future need for this right-of-way to serve the general public. The road is a dead
19 end. (*County Engineer's Report, page 2*).

20 15. RCW 36.87.040 and JCC 12.10.050(2)(e) require the County Engineer to give an
21 opinion as to whether the public will benefit by the vacation; however, neither provide
22 guidance as to what might be considered a "public benefit" when vacating a public right-of-
23 way. The legislative body is held to be the proper entity to weigh public benefit, and there is
24 a presumption that an ordinance approving a street vacation was validly enacted for a public
25 purpose (*London v. Seattle*, 93 Wn.2d 657 (1980)). In the absence of any need for a road
26 right-of-way for the benefit of the general public (circulation, trails, utilities, etc.), typically
any benefit would accrue to the property owners with frontage on the vacated right-of-way.
These benefits might include additional building space, room for septic systems, green-belt
buffer, the ability to keep the public from trespassing on their property, or other benefits.
Benefits to the public and County could include reduced road maintenance costs, reduced
liability for managing public right-of-way (such as garbage dumping, timber theft, danger
trees, or abandoned vehicles), and increased property tax. All of these reasons have been used
in the past to support road vacations and could support a finding of public benefit for the
vacation of the subject right-of-way. (*County Engineer's Report, pages 2 and 3*).

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2 ***Review criteria for all road vacation petitions, found in JCC 12.10.110.***

3 16. JCC 12.10.110, captioned "Review Criteria", mandates that road vacation petitions
4 shall be reviewed according to the following criteria, numbered 1-7. Additional findings by
the Hearing Examiner are provided in italics below each of the criteria:

5 (1) The proposed road vacation complies with the Jefferson County comprehensive
6 plan and any other applicable plans, policies, or ordinances.

7 *County staff from the Public Works and Community Development reviewed the*
8 *petition, and expressed no concerns regarding the requested vacation. Community*
9 *Development staff generated a report, summarizing their review of County codes and*
10 *policies, noting several mapped critical areas in the vicinity (Ex. E), recommending*
11 *approval of this petition. (Engineer's Report, page 3).*

12 (2) Roads should not be closed, vacated, or abandoned when land uses or
13 development plans, or occurring patterns, indicate their usefulness for area
14 circulation. Prior to a vacation decision, an examination should be made of its
15 probable effect on overall area circulation in the neighborhood. Single or multiple
vacations should be considered a positive tool toward improving neighborhood
circulation and accesses.

16 *The segment of roadway at issue is a dead-end and provides no circulation*
17 *opportunities in the affected area.*

18 (3) The effectiveness of fire, medical, law enforcement, or other emergency services
19 should not be impaired by the closure, vacation, or abandonment of county roads.
20 Appropriate authorities should be consulted with respect to this policy.

21 *The effectiveness of emergency services will not be impaired by this road vacation. It*
22 *is a dead-end roadway serving only the Alvord and FPHA parcels. No opposition to*
23 *the Notice of Intent to Vacate the subject right-of-way was received from the Sheriff's*
24 *office, Fire District #2 or JeffCom911, nor was any opposition evidence provided*
25 *through the entire public hearing process. (Engineer's Report, page 3; Staff Report,*
26 *Ex. 3, copies of agency comments received).*

(4) Roads should not be closed, vacated, or abandoned when such routes can
effectively be used for utility corridors. Suitable utility easements could be retained
as a means of satisfying this policy. Public and private utility companies and their
plans should be consulted with respect to this policy. In compliance with

1 RCW 36.87.140, the board of county commissioners may retain an easement within
2 the subject vacated area for the construction, repair, and maintenance of public
utilities and services.

3 *No opposition from public or private utility companies or providers was received in*
4 *response to the Notice of Intent to Vacate the subject right-of-way. However, if*
5 *necessary, and in compliance with RCW 36.87.140 and JCC 12.10.130(2)(a), the*
6 *Board of County Commissioners may retain an easement within the subject vacated*
7 *area for the construction, repair, and maintenance of public utilities and services.*

8 (5) Roads should not be closed, vacated, or abandoned when such routes can be
9 effectively used for trails or pathways. Suitable trail easements could be retained as a
10 means of satisfying this policy. The Jefferson County parks, recreation, and open
11 space plan should be used as a guide to determine trail needs.

12 *Since the road is a dead-end, does not provide direct public access to water or a*
13 *beach, and the fact that there are no Jefferson County Parks located within or*
14 *currently proposed in the area, the subject right-of-way is not a prime candidate for*
15 *a public trail.*

16 (6) In compliance with RCW 36.87.130, no county road or part thereof should be
17 vacated that abuts on a body of salt or fresh water, unless the vacation is to enable
18 any public authority to acquire the vacated property for port purposes, boat moorage,
19 or launching sites or for park, viewpoint, recreational, educational, or other public
20 purposes, or unless the property is zoned for industrial purposes.

21 *The subject right-of-way, although close to Quilcene/Dabob Bay, does not abut the*
22 *water, so this statutory prohibition does not apply.*

23 (7) The proposed vacation will not land lock any parcel of property.

24 *The subject right-of-way provides the only current legal access to parcel 601-061-*
25 *003, also owned by Alvord Investments, LLC (see maps, Exhibit A). As long as that*
26 *parcel and parcel 601-061-009 continue to be under the same ownership, parcel 601-*
27 *061-003 will not be landlocked. However, as a condition of approving any vacation,*
28 *Alvord Investments has expressed a willingness to record a Restrictive Covenant to*
29 *both parcels, warranting that an ingress/egress/utility easement will be reserved or*
30 *granted over parcel 601-061-009 to benefit parcel 601-061-003 if ownership of those*
31 *two parcels is ever segregated.*

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1 ***Compensation required for Class A and Class B rights-of-way.***

2 17. Again, for reasons explained above, the County Engineer determined that this
3 segment of roadway is a "Class A" right-of-way. (*County Engineer's Report, on page 2,*
4 *finding no. 6*). JCC 12.10.120 requires the Principal Petitioner to compensate the County for
5 all Class A and Class B vacated rights-of-way in compliance with RCW 36.87.120.
Accordingly, any resolution approving vacation of the subject right-of-way shall not be
effective until compensation is provided as described in the following findings.

6 18. JCC 12.10.120(1) provides: "*Base Payment. The Principal Petitioner shall pay, with*
7 *respect to the vacation of either or both Class A and Class B roads or rights-of-way a sum*
8 *equal to one-half of the current fair market value (as of the date of the petition) of the area*
9 *so vacated if the county holds title through a dedication, or the full current fair market value*
10 *(as of the date of the petition) if the county acquired the subject rights-of-way other than by*
11 *dedication, e.g., fee simple interest.*"

12 19. The County did not acquire the subject right-of-way through dedication – instead, it
13 reserved the right-of-way when it deeded the remainder of SE1/4 SE1/4 Section 31, T27N,
14 R1W in 1946. Therefore, if the vacation is approved, the Principal Petitioner shall be required
15 to compensate the County for the full fair market value of the property, which has been
16 determined to be \$20,000.00 based upon an appraisal commissioned by the Principal
17 Petitioner (see Appraisal Report, included in the record as *Exhibit F*).

18 20. JCC 12.10.120(2), imposes an "Additional Payment" requirement with respect to
19 vacation of a Class A road or rights-of-way, reading in relevant part as follows: "*...in*
20 *addition to the base payment described above [in subsection (1)], the principal petitioner(s)*
21 *shall pay to the county any and all other administrative costs incurred by the county in*
22 *vacating the road.*" The County Engineer's report explains that, to-date, the Principal
23 Petitioner has paid a total administrative fee of \$1,396.75, which was the 2021 fee for
24 vacating road, although the Petition was submitted in 2022. The 2022 fee is \$1,477.08. The
Petitioner shall be required to pay the difference (\$80.33) plus any fees and costs incurred
which exceed the 2022 fee, whether or not the vacation is ultimately approved. These would
include, without limitation, the 2022 and 2023 costs associated with preparing for and
conducting a hearing with the Hearing Examiner, preparation and issuance of the Hearing
Examiner's report, reviewing documents submitted by the Petitioner, document recording
fees, and other associated expenses incurred by the County.

25 21. Based on consideration of all evidence in the record, subject to the recommended
26 conditions of approval, and subject to payment of all compensation due, the Hearing
Examiner finds and concludes that the petition satisfies all approval criteria and should be
granted by the Board of County Commissioners.

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V. CONCLUSIONS OF LAW.

1. The Hearing Examiner has jurisdiction and responsibility to consider issues presented in this petition and issue this detailed report and recommendation to the Board of County Commissioners.
2. Based on findings provided above, the pending request to vacate a portion of Gustavsen Road as described in the County Engineer's Report satisfies all review criteria provided in JCC 12.10.110.
3. The proposed conditions of approval included in the Engineer's Report are supported by a preponderance of evidence in the record, consistent with applicable law, and in the public interest.
4. Any legal conclusions or other statements made in previous or following sections of this document that are deemed conclusions of law are hereby adopted as such and are incorporated herein by this reference.

VI. RECOMMENDATION.

Based upon all evidence in the record, and all findings and conclusions provided above, the Hearing Examiner respectfully recommends that the Board of County Commissioners should formally vacate the following segment of County right-of-way, subject to Conditions of Approval set forth below:

A portion of Gustavsen Road, County Road No. 327809, identified as the westernmost 100-feet of Gustavsen Road right-of-way on the southern end of the Bolton Peninsula, southeast of Quilcene, Washington, and legally described as: *the south 40 feet of the east 100 feet as measured along the south line of the west 455 feet of the southeast quarter of the southeast quarter of Section 31, Township 27 North, Range 1 West, W.M., Jefferson County, Washington. (See County Engineer's Report, Ex. A, maps and legal description).*

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VII. CONDITIONS OF APPROVAL.

Before the requested road vacation can take effect, the Principal Petitioner shall:

A. Record a Restrictive Covenant to title on parcels 601-061-003 and 601-061-009, warranting to reserve or grant an ingress/egress/utility easement over parcel 601-061-009 for the benefit of parcel 601-061-003 in the event ownership of the two parcels is ever segregated;

B. Provide a Quit Claim Deed to be recorded at the same time as a Resolution approving the vacation, conveying any interest in the subject right-of-way held by Fisherman's Point Homeowners Association to Alvord Investments, LLC; and

C. Pay all required compensation owed to the County for the vacated right-of-way and administrative process.

ISSUED this 1st Day of March, 2023



Gary N. McLean
Hearing Examiner