



**DATE:** Thursday, October 22, 2021  
**RE:** Street Vacation Petition, PZ Application No. 21-47  
**LOCATION:** Southern Half of 4th Street ROW adjacent 1530 W 4<sup>th</sup> Street  
**PETITIONER:** Marc and Pat Thomsen  
**OWNER:** City of Port Angeles  
**PLANNER:** Ben Braudrick, AICP, Associate Planner

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**EXHIBIT 1: STAFF REPORT**

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**I. SUMMARY**

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A street vacation petition for the vacation of approximately 1,750 square feet of the 4<sup>th</sup> Street unimproved right of way adjacent 1530 W. 4<sup>th</sup> Street. Street vacations must be consistent with RCW 35.79.

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II. PROPOSAL

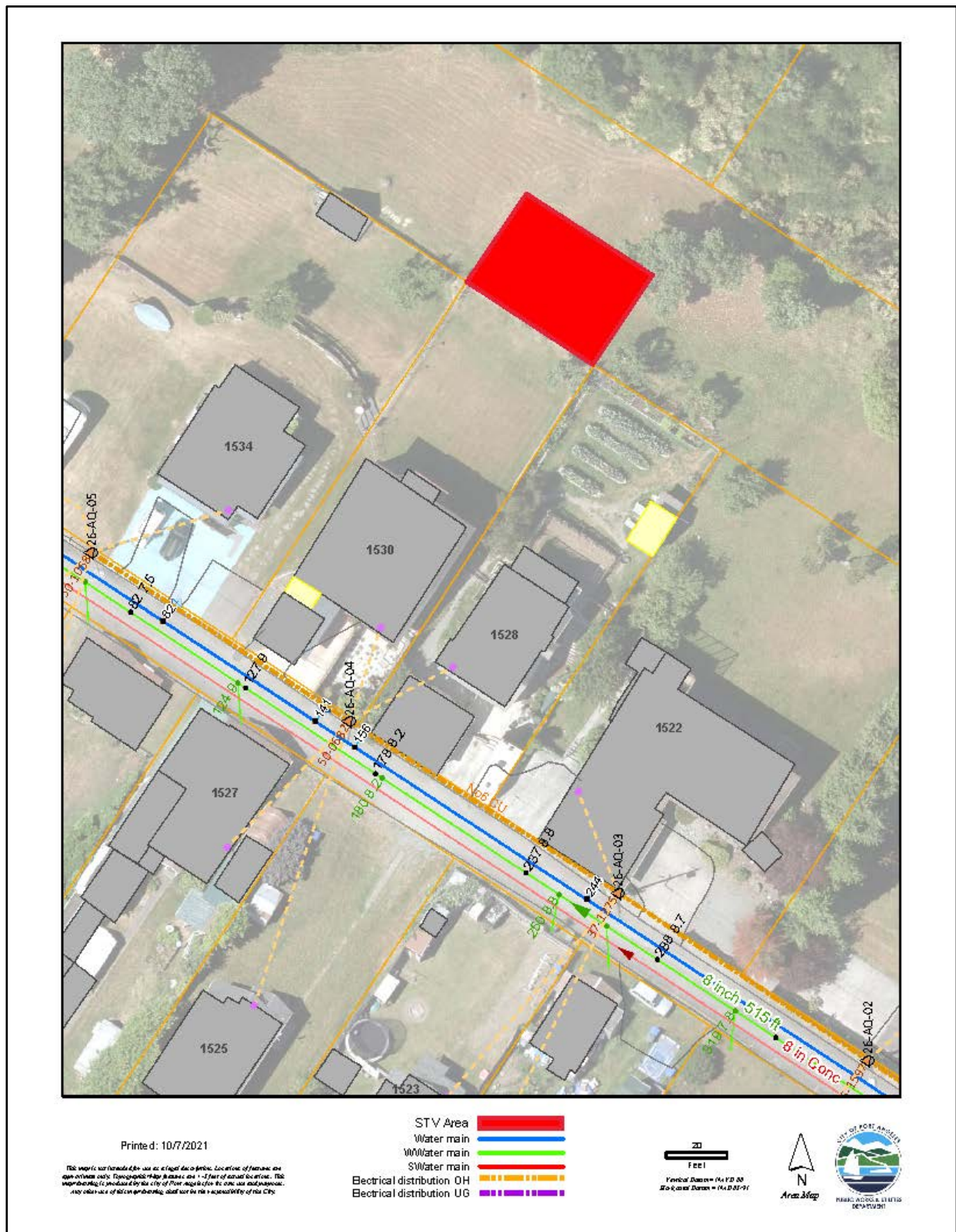


Figure 1: Site plan and location of the proposed vacation shown in red. See Exhibit 3 for a larger map

The proposal involves the petition to vacate the southern half, approximately 1,750 square feet, of 4<sup>th</sup> Street right of way adjacent 1530 W. 4<sup>th</sup> Street by a single petitioner. The petitioner owns the property directly abutting the right of way, fulfilling the necessary two-thirds of property owners needed to be listed on the petition. There are no utilities currently within the right of way. See Figure 1 for the location of the petition and existing utilities. A more detailed map is located in Exhibit 3.

### III. FACTS RELAVENT TO THE APPLICATION

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**Property Description:** Southern half of the Unimproved 4th Street right of way located adjacent 1530 W 4<sup>th</sup> Street

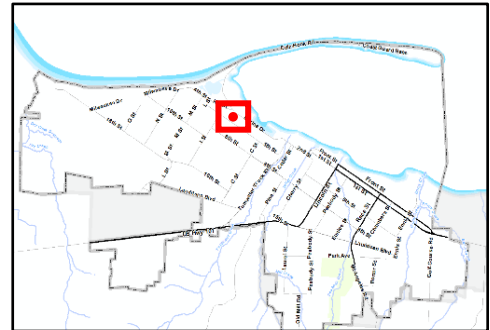
**Property ID / Tax Parcel ID:** Not Applicable

**Zoning:** No current zoning. Future zoning will be R7

**Comprehensive Plan Designation:** Low Density Residential

**Dimensions:** Approximately 70 feet by 140 feet

**Area:** approximately 1,750 square feet



### IV. PROCEDURE

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On August 12, 2021, the petitioner submitted Street Vacation Petition (STV) Application No. 21-47 for the vacation of 1,750 square feet of unimproved 4th Street right of way located adjacent 1530 W 4th Street. On August 30, 2021, staff determined the application to be complete. Port Angeles Municipal Code (PAMC) requires the application be considered by the Hearing Examiner in a public hearing. Notice of the application was provided on the following dates and in the following manner:

- 9/13/21: Subject property, Posted signs at the intersection of “K” Street and the 8<sup>th</sup>/9<sup>th</sup> Street alley and “K” Street and 9<sup>th</sup> Street.
- 9/10/21: City Hall, Port Angeles Library, and Clallam County Notice boards
- 9/10/21: City of Port Angeles Website News and Announcements
- 9/13/21: Peninsula Daily News, Circulation

The Hearing Examiner will conduct a review of the Application and this staff report and make a recommendation to the City Council on the Street Vacation Petition Application. The City Council will make a decision within 120 days of the completeness determination.

## V. COMMENTS

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### Public Comment:

The public comment period was left open until the date of the public hearing. One written public comment was received associated with this petition. Any written comment submitted prior to the public hearing scheduled on October 22, 2021 will be incorporated as testimony in the Hearing Examiners recommendation.

The commenter voiced concern about access to 4<sup>th</sup> street being hindered by the proposal. Staff reached out and clarified the situation. The 4<sup>th</sup>/5<sup>th</sup> Street alley is signed as 4<sup>th</sup> Street, likely for mail delivery purposes. The 4<sup>th</sup>/5<sup>th</sup> Street alley provides access to homes addressed as 4<sup>th</sup> Street. The proposal is for undeveloped 4<sup>th</sup> Street right of way, which will not encumber access to any property on the 1500 Block of 4<sup>th</sup> Street.

### City of Port Angeles Departmental Comments:

Comments received from City of Port Angeles Departments have been incorporated into this report's findings and conditions.

## VI. FINDINGS OF FACT & STAFF ANALYSIS

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Analysis and findings of fact from Department of Community and Economic Development (DCED) staff are based on the application materials, Port Angeles Municipal Code (PAMC), standards, plans, public comment, and other relevant materials available during the review period. The findings and analysis section of this report is a summary of the completed review by DCED staff.

### City of Port Angeles Comprehensive Plan

All Conditional Use applications must be consistent with the Port Angeles Comprehensive Plan. The following Port Angeles Comprehensive Plan policies are identified by Planning Staff to support the proposal in STV Petition Application No. 21-47:

Growth Management Element	
Goal: G-2A	To manage growth in a responsible manner that is beneficial to the community as a whole, is sensitive to the rights and needs of individuals, and is consistent with the State of Washington's Growth Management Act.

	<p>Policy: P-2A.01</p>	<p>In all its actions and to the extent consistent with the provisions of this comprehensive plan, the City should strive to implement the following goals of the State Growth Management Act:</p> <p>L. Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.</p> <p>M. Public facilities and services. Ensure that those public facilities and services necessary to support development should be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.</p>
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*Staff Analysis: STV Application No. 21-47 is consistent with the goals, policies, and intent of the Growth Management Element by following a public process in petitioning for the vacation of right of way that is currently unimproved on a steep slope. Staff recommend conditions on the vacation to include easements for the protection of existing electric utilities and the possible development of future water utilities and stipulation that no structures other than fencing may be allowed on the vacated property.*

Land Use Element		
<p>Goal: G-3B</p>	<p>To ensure residential land use and development is compatible with the environment with existing uses and residents, and with desired urban design.</p>	
	<p>Policy P- 3B.02</p>	<p>Ensure that single family lots are of reasonable shape and have access provided by a collector arterial, local access street or alley.</p>

*Staff Analysis: CUP Application No. 21-47 is consistent with the goals, policies, and intent of the Land Use Element by proposing the vacation of unimproved right of way that meets the City’s minimum urban service requirements and is not prohibiting access for any existing uses and residents. All properties on 4<sup>th</sup> Street along 1500 Block are provided access by the 4<sup>th</sup> /5<sup>th</sup> Street alley. The 4<sup>th</sup> Street right of way travels east/west directly along or on the Marine Bluff, making development of the right of way for transportation not feasible in this neighborhood.*

Utilities and Public Services Element		
<p>Goal: G-5A</p>	<p>To provide or allow the opportunity for services and facilities which enhance the quality of life for Port Angeles citizens of all ages, characteristics, needs, and interests and to achieve the desired urban design of the City.</p>	
	<p>Policy: P-5A.03</p>	<p>Comprehensive service and facility plans should be consistent with the City's Comprehensive Plan and should be implemented through applicable land use approvals and construction permits.</p>
<p>Goal:</p>	<p>To provide utility services in an efficient and cost-effective manner.</p>	

G-5D	Policy: P-5D.05	Promote coordination, consistency, and concurrency at all stages of utility development in the Port Angeles Urban Growth Area.
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*Staff Analysis: STV Application No. 121-47 is consistent with the goals, policies, and intent of the Utilities and Public Services Element by petitioning for the vacation of right of way that is currently unimproved. Staff has conditioned easements on the property to ensure the decision to vacate does not preclude coordination, consistency, and concurrency of the City’s comprehensive utilities and public services.*

Capital Facilities Element		
Goal: G-8A	To provide and maintain safe and financially feasible urban services and capital facilities at or above stated levels of service to all City residents and the general public.	
	Policy P-8A.08	The City should require concurrency and standards be met at the time of new development for the following utilities and services: <ul style="list-style-type: none"> <li>• Paved streets, curbs, and sidewalks, • Water service,</li> <li>• Sanitary sewer service, • Electrical service</li> <li>• Solid waste collection, • Stormwater management,</li> <li>• Telecommunications services, and • Emergency services (police, fire and emergency medical response).</li> </ul>

*Staff Analysis: STV Application No. 21-47 is consistent with the goals, policies, and intent of the Capital Facilities Element by proposing the vacation of unimproved right of way that will not prohibit the development of feasible urban services if they are required. Conditions have been placed on the vacation to include easements for conservation of the existing environmentally sensitive area for the possible development of future utilities.*

RCW 35.79 Criteria

The City of Port Angeles relies on the Revised Code of Washington (RCW) sections that speak to street vacation and includes the requirements for petition, public noticing, public hearing, limitations, ordinance of vacation and title to vacated street or alley. These sections are within Chapter 35.79, RCW and are listed below:

35.79.010 – Petition by owners – Fixing time for hearing.

The owners of an interest in any real estate abutting upon any street or alley who may desire to vacate the street or alley, or any part thereof, may petition the legislative authority to make vacation, giving a description of the property to be vacated, or the legislative authority may itself initiate by resolution such vacation procedure.

The petition or resolution shall be filed with the city or town clerk, and, if the petition is signed by the owners of more than two-thirds of the property abutting upon the part of such street or alley sought to be vacated, legislative authority by resolution shall fix a time when the petition will be heard and determined by such authority or a committee thereof, which time shall not be more than sixty days nor less than twenty days after the date of the passage of such resolution.

*Staff Analysis: A petition for the vacation of 4<sup>th</sup> Street right of way was received on August 12, 2021. A public hearing with the City of Port Angeles Hearing Examiner has been scheduled and noticed for October 22, 2021.*

35.79.020 – Notice of hearing. Objections prior to hearing.

Upon the passage of the resolution the city or town clerk shall give twenty days' notice of the pendency of the petition by a written notice posted in three of the most public places in the city or town and a like notice in a conspicuous place on the street or alley sought to be vacated. The said notice shall contain a statement that a petition has been filed to vacate the street or alley described in the notice, together with a statement of the time and place fixed for the hearing of the petition.

In all cases where the proceeding is initiated by resolution of the city or town council or similar legislative authority without a petition having been signed by the owners of more than two-thirds of the property abutting upon the part of the street or alley sought to be vacated, in addition to the notice hereinabove required, there shall be given by mail at least fifteen days before the date fixed for the hearing, a similar notice to the owners or reputed owners of all lots, tracts or parcels of land or other property abutting upon any street or alley or any part thereof sought to be vacated, as shown on the rolls of the county treasurer, directed to the address thereon shown:

PROVIDED, That if fifty percent of the abutting property owners file written objection to the proposed vacation with the clerk, prior to the time of hearing, the city shall be prohibited from proceeding with the resolution.

*Noticing procedures meeting the above code are provided in Section IV of this report. The sole petitioner owns 100% of the abutting property to the petitioned right of way to be vacated.*

35.79.030 – Hearing – Ordinance of vacation.

The hearing on such petition may be held before the legislative authority, before a committee thereof, or before a hearing examiner, upon the date fixed by resolution or at the time the hearing may be adjourned to. If the hearing is before a committee the same shall, following the hearing, report its recommendation on the petition to the legislative authority which may adopt or reject the recommendation.

If the hearing is held before a committee it shall not be necessary to hold a hearing on the petition before the legislative authority. If the hearing is before a hearing examiner, the hearing examiner shall, following the hearing, report its recommendation on the petition to the legislative authority, which may adopt or reject the recommendation:

PROVIDED, that the hearing examiner must include in its report to the legislative authority an explanation of the facts and reasoning underlying a recommendation to deny a petition. If a hearing is held before a hearing examiner, it shall not be necessary to hold a hearing on the petition before the legislative authority.

If the legislative authority determines to grant the petition or any part thereof, such city or town shall be authorized and have authority by ordinance to vacate such street, or alley, or any part thereof, and the ordinance may provide that it shall not become effective until the owners of property abutting upon the street or alley, or part thereof so vacated, shall compensate such city or town in an amount which does not exceed one-half the appraised value of the area so vacated. If the street or alley has been part of a dedicated public right-of-way for twenty-five years or more, or if the subject property or portions thereof were acquired at public expense, the city or town may require the owners of the property abutting the street or alley to compensate the city or town in an amount that does not exceed the full appraised value of the area vacated.

The ordinance may provide that the city retain an easement or the right to exercise and grant easements in respect to the vacated land for the construction, repair, and maintenance of public utilities and services. A certified copy of such ordinance shall be recorded by the clerk of the legislative authority and in the office of the auditor of the county in which the vacated land is located. One-half of the revenue received by the city or town as compensation for the area vacated must be dedicated to the acquisition, improvement, development, and related maintenance of public open space or transportation capital projects within the city or town.

*Staff Analysis: Per PAMC Section 02.18.060(C)(2), The Hearing Examiner is hereby authorized and directed to conduct a hearing and make findings, conclusions, and recommendations to the City Council. In accordance with RCW 35.79.030, staff requests a utility easement in favor of the City to be retained over the entire vacated area with the preclusion of any structures other than fencing. In addition, staff requests a conservation easement in favor of the City to be provided for open space preservation of the environmentally sensitive area in that portion of the 4th Street public right of way.*

35.79.035 – Limitations on vacations of streets abutting bodies of water – Procedure.

1. A city or town shall not vacate a street or alley if any portion of the street or alley abuts a body of fresh or saltwater unless:



- a. The vacation is sought to enable the city or town to acquire the property for port purposes, beach or water access purposes, boat moorage or launching sites, park, public view, recreation, or educational purposes, or other public uses;
- b. The city or town, by resolution of its legislative authority, declares that the street or alley is not presently being used as a street or alley and that the street or alley is not suitable for any of the following purposes: Port, beach or water access, boat moorage, launching sites, park, public view, recreation, or education; or
- c. The vacation is sought to enable a city or town to implement a plan, adopted by resolution or ordinance, that provides comparable or improved public access to the same shoreline area to which the streets or alleys sought to be vacated abut, had the properties included in the plan not been vacated.

Staff Analysis: : *The portion of right of way being petitioned for vacation is not abutting a fresh or saltwater body.*

2. Before adopting a resolution vacating a street or alley under subsection (1)(b) of this section, the city or town shall:
  - a. Compile an inventory of all rights-of-way within the city or town that abut the same body of water that is abutted by the street or alley sought to be vacated;
  - b. Conduct a study to determine if the street or alley to be vacated is suitable for use by the city or town for any of the following purposes: Port, boat moorage, launching sites, beach or water access, park, public view, recreation, or education;
  - c. Hold a public hearing on the proposed vacation in the manner required by this chapter, where in addition to the normal requirements for publishing notice, notice of the public hearing is posted conspicuously on the street or alley sought to be vacated, which posted notice indicates that the area is public access, it is proposed to be vacated, and that anyone objecting to the proposed vacation should attend the public hearing or send a letter to a particular official indicating his or her objection; and
  - d. Make a finding that the street or alley sought to be vacated is not suitable for any of the purposes listed under (b) of this subsection, and that the vacation is in the public interest.

*Staff Analysis: The right of way to be vacated does not abut a body of water.*

3. No vacation shall be effective until the fair market value has been paid for the street or alley that is vacated. Moneys received from the vacation may be used by the city or town only for acquiring additional beach or water access, acquiring additional public view sites to a body of water, or acquiring additional moorage or launching sites.

*Staff Analysis: The right of way to be vacated is not abutting a body of water.*

35.79.040 – Title to vacated street or alley.

If any street or alley in any city or town is vacated by the city or town council, the property within the limits so vacated shall belong to the abutting property owners, one-half to each.

*Staff Analysis: The right of way to be vacated consists of only half the right of way and will be wholly provided to the petitioner property.*

35.79.050 – Vested rights not affected.

No vested rights shall be affected by the provisions of this chapter.

*Staff Analysis: The applicant has no permit applications currently requiring vested rights.*

### **Port Angeles Municipal Code**

The following PAMC provisions are seen as relevant to this application. Planning Staff provides comments under each provision as demonstration of the analysis that has occurred with the application review process and the findings of fact relevant to the application.

#### Title 2 – Administration and Personnel

Per PAMC Section 2.18.060(C)(2), the Hearing Examiner has the review authority and is authorized and directed to hear and provide a recommendation to City Council.

*Staff Analysis: The petition requires a public hearing before the Hearing Examiner, whose recommendation to City Council is based upon the application materials, public comments, Port Angeles Municipal Code, Urban Service Standards and Guidelines, and information available during the application process. City Council will make a decision in a future closed hearing.*

#### Title 17 – Zoning

17.94.050 – Vacated Streets

Vacated streets, alleys, places and cul-de-sacs shall assume the zone classifications of the property that adjoined such street, alley, place or cul-de-sac prior to vacation. Where zone classification differs from one side to the other the boundary line shall be at the former center line of such vacated street, alley, place, or cul-de-sac.

*Staff Analysis: The adjoining property to the petitioned right of way to be vacated are R7, Low Density Residential.*

### **Environmental Review**

In accordance with WAC 197-11-800(2)i, this land use action has been determined to be categorically exempt from Washington State SEPA threshold determination rules, requirements, and procedures.

## Consistency

In preparation and submission of a Street Vacation Petition (STV) application, the applicant has demonstrated that all standards can be met in accordance with the City's Comprehensive Plan, the Port Angeles Municipal Code, and RCW 35.79. Conditions placed on the permit in Section VII of this report ensure easements are created in order to maintain access to existing utilities..

## Recommendation

It is the recommendation of Department of Community and Economic Development Staff that the Hearing Examiner forward a recommendation of approval to City Council of Street Vacation Petition Application No. 21-47 with the conclusions and conditions in Section VII of this staff report below. This recommendation is based on staff review of the application materials, the Revised Code of Washington, and Port Angeles Municipal Code standards.

## VII. DECISION, CONCLUSIONS, & CONDITIONS

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Having reviewed and considered the staff report, application materials, public comment, and all the information presented, the City Planning Division recommends **approval, with conditions**, Application No. 21-47 for a Street Vacation Petition and makes the following conclusions:

1. Analysis and findings of fact from Staff are based on the entirety of the application materials, municipal code, City standards, plans, public comment, and all other materials available during the review period. Collectively the information contained in the staff report is the record of the review. The analysis and findings section of this report is a summary of the complete City Staff review and the specific findings of fact.
2. Section 2.18.060 of the Port Angeles Municipal Code (PAMC), provides the Hearing Examiner the authority to conduct a hearing and make findings, conclusions, and recommendations to the City Council on the street vacation petition.
3. There is no public access provided by way of 4<sup>th</sup> Street and therefore, the portion of the public right of way requested for vacation does not diminish public access. Furthermore, the requested vacation does not vacate a street that abuts a body of fresh or salt water.
4. The proposal is consistent with the goals and policies of the City's Comprehensive Plan.

## Recommended Conditions of Approval

After a thorough staff analysis of Street Vacation Petition Application Nos. 21-47, it has been identified that all proposed vacation will be in accordance with the Port Angeles Municipal Code, State RCW 35.79, and the Port Angeles Comprehensive Plan. The following **3 conditions** are recommended to ensure the proposed vacation is consistent with the City's Comprehensive Plan and RCW 35.79:

1. The ordinance shall provide a utility easement in favor of the City shall be retained over the entire vacated area with the preclusion of any structures other than fencing
2. The ordinance shall provide a conservation easement in favor of the City and acceptable to the City Attorney for open space preservation of the environmentally sensitive area in that portion of the Fourth Street public right of way.
3. Preparation of the easement instrument and associated recording fees shall be the responsibility of the petitioner(s).

#### **VIII. ADDITIONAL EXHIBITS**

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**Exhibit 2:** STV Petition Application No. 21-47

**Exhibit 3:** Completeness Letters

**Exhibit 4:** Site Map

**Exhibit 5:** Noticing Materials

**Exhibit 6:** Public Comment