



City of Tacoma  
Hearing Examiner

**CERTIFICATION**

On this day, I forwarded a true and accurate copy of the documents to which this certificate is affixed via United States Postal Service postage prepaid or via delivery through City of Tacoma Mail Services to the parties or attorneys of record herein.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED June 5, 2018, at Tacoma, WA.

Louisa Legg

June 5, 2018

FIRST CLASS MAIL DELIVERY & ELECTRONIC MAIL DELIVERY

Jordan Bader, Member Manager  
Chainring III LLC  
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**Re: HEX2018-006 (Street Vacation Petition No. 124.1387)**  
**Petitioner: Chainring III LLC**

Dear Parties:

Please find enclosed a copy of Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommendation to the Tacoma City Council entered on June 5, 2018, as the result of a public hearing held on May 3, 2018.

Sincerely,

Louisa Legg

Louisa Legg, Office Administrator

cc: City Clerk (Clerk's Jacket)

Cc: Transmitted via Electronic Mail Delivery

CenturyLink/Kerry Brent, Title Agent, SelectROW Team, Network Real Estate  
Comcast/Aaron R. Cantrel  
Puget Sound Energy, Inc./Megan Holt SR/WA, Sr. Real Estate Representative  
Pierce County Assessor-Treasurer/Darci Brandvold  
Legal/Steve Victor  
Clerk's Office, City of Tacoma/Sola Wingebach  
Tacoma Water LID/Shelly Shaffer  
Environmental Services, Science & Engineering City of Tacoma/Rod Rossi  
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**OFFICE OF THE HEARING EXAMINER**

**CITY OF TACOMA**

**REPORT AND RECOMMENDATION**

**TO THE CITY COUNCIL**

**PETITIONER:** Chainring III LLC

**FILE NO:** HEX 2018-006 (124.1387)

**SUMMARY OF REQUEST:**

Real Property Services has received a petition to vacate portions of the northwest intersection of South Tacoma Way and South "C" Street lying northerly and westerly of the improved portions of right-of-way.

**RECOMMENDATION OF THE HEARING EXAMINER:**

The request is hereby recommended for approval, subject to conditions.

**PUBLIC HEARING:**

After reviewing the Preliminary Report ("Report") of the Department of Public Works, Real Property Services Division ("RPS"), and examining available information on file with the petition, the Hearing Examiner conducted a public hearing on the petition on May 3, 2018. The record from the hearing was kept open until May 30, 2018, for submission of a revised legal description for the petitioned-for vacation area from the Petitioner.<sup>1</sup> RPS reviewed the revised legal description, and made revisions to its Report based thereon. RPS submitted its Amendment #2 to its Report, which included the revised legal description, on the above mentioned date.

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<sup>1</sup> See Finding 1. below.

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**FINDINGS, CONCLUSIONS, AND RECOMMENDATION:**

**FINDINGS:**

1. The Petitioner, Chainring III LLC, a Washington limited liability company (“Chainring” or “Petitioner”), has petitioned for the vacation of portions of the northwest intersection of South Tacoma Way and South “C” Street lying northerly and westerly of the improved portions of right-of-way. The area now proposed for vacation is legally described as follows:

A portion of the Southwest Quarter of the Northwest Quarter of Section 9, Township 20 North, Range 3 East of the Willamette Meridian, City of Tacoma, County of Pierce, State of Washington, more specifically described as follows:

Commencing at the intersection of Holgate Street and South 25th Street, as shown on the Plat of Tacoma Land Company’s First Addition to Tacoma, W.T., according to Plat filed for record July 7, 1884, in the Office of the Pierce County Auditor;

Thence North  $82^{\circ}35'31''$  East, along the centerline of said South 25th Street, 154.32 feet to the centerline of South “C” Street;

Thence South  $07^{\circ}21'08''$  East, along the centerline of said South “C” street, 455.04 feet to the intersection of the North line of Lot 17 in Block 2506 of aforementioned Plat of Tacoma Land Company’s First Addition to Tacoma, extended Easterly;

Thence South  $82^{\circ}38'52''$  West, along said Easterly extension, 40.00 feet to the Northeast corner of said Lot 17 and the Point of Beginning;

Thence South  $19^{\circ}19'05''$  East 32.89 feet;

Thence South  $10^{\circ}59'38''$  East 59.11 feet to the beginning of a 40.00 foot radius curve, concave Northwest;

Thence, clockwise along the arc of said curve, through a central angle of  $54^{\circ}38'46''$  a distance of 38.15 feet;

Thence South  $43^{\circ}39'08''$  West 129.62 feet;

Thence South  $85^{\circ}40'43''$  West 7.34 feet to the Northwesterly margin of South Tacoma Way;

Thence North  $44^{\circ}58'09''$  East, along said Northwesterly margin, 34.44 feet to the beginning of non-tangent curve, concave Northwesterly, from which point a radial center bears North  $62^{\circ}39'10''$  West 477.00 feet, said Point also being

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on the Westerly line of that certain area granted to the City of Tacoma and described in Deed file under Pierce County Auditor Fee Number 1719873;

Thence, counter-clockwise, along the arc of said curve, through a central angle of 24°14'04", a distance of 201.76 feet to the North line of said Lot 17;

Thence North 82°35'31" East, along said North line, 8.08 feet to the Point of Beginning.

*Cornforth Testimony; Ex. 1, Ex. 1b.* Chainring's petition originally requested a larger vacation area. Due to concerns raised by Public Works Traffic Engineering ("Traffic") staff regarding proximity issues between the originally requested vacation area and the Historic Water Flume Line Trail (the "Trail"),<sup>2</sup> during the hearing, Chainring agreed to revise its requested vacation area to obviate Traffic's concerns. The above legal description is revised in accordance with Chainring's revised request, moving the requested area farther away from the Trail. *Wells Testimony; Ex. 1, Ex. 1a, Ex. 1b.*

2. The City of Tacoma acquired this corner of the right-of-way proposed for vacation in 1955 by Warranty Deed, in connection with a project for the relocation and alignment of Wakefield Drive. The deed was recorded under Auditor's File Number 1719873, records of Pierce County. Despite the area having been conveyed by Warranty Deed, it is reasonable to conclude from the other language in the deed that the conveyance was of a right-of-way interest only and not a conveyance in fee. In 2010 Sound Transit, in connection with the Sounder Commuter Rail, D to M Street, Track and Signal Project, changed grades and realigned the configuration of both South Tacoma Way and South C Street, and erected the fence that is now present on the petitioned-for vacation area. *Cornforth Testimony; Ex. 1, Ex. 6.*

3. This segment of right-of-way is partially paved and used for parking and as a drive aisle. The unimproved remainder is a grassy slope, all of which is fully enclosed in chain link fencing and gated. This segment of right-of-way is not accessible to, or traversable by, the general public, nor is it otherwise being used for street right-of-way purposes. It does however, have utilities within and across the subject area and an easement should be reserved for those utilities as recommended herein below. *Cornforth Testimony; Ex. 1.*

4. If vacated, the Petitioner intends to include this segment of right-of-way more formally in its parking area, as well as using it for a security buffer for its adjacent business. *Wells Testimony, Cornforth Testimony; Ex. 1.*

5. This vacation petition has been reviewed by a number of governmental agencies, City departments/divisions, and utility providers. Their comments and concerns have been addressed, or are being addressed through the conditions herein *Cornforth Testimony; Ex. 1.*

6. No one appeared at the hearing in opposition to the petitioned-for vacation.

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<sup>2</sup> The Historic Water Flume Line Trail is a public, pedestrian right-of-way.

7. No abutting property becomes landlocked by the proposed vacation, nor will any access be substantially impaired if this vacation is granted since the petitioned-for area is not currently being used for, nor is it needed for right-of-way purposes. Chainring is the sole abutting property owner to the petitioned-for area. *Cornforth Testimony; Ex. 1.*

8. The petitioner-for vacation area neither abuts, nor is proximate to a body of water and, thus, the provisions of RCW 35.79.035 are not implicated. *Cornforth Testimony; Ex. 1.*

9. Pursuant to *WAC* 197-11-800(2)(i), the vacation of streets or roads is exempt from the threshold determination and Environmental Impact Statement requirements of *RCW* 43.21.C, the *State Environmental Policy Act (SEPA)*.

10. RPS' Preliminary Report and two Amendments to the Preliminary Report, which are entered into the record as Exhibit 1, Exhibit 1a, and Exhibit 1b respectively, accurately describe the proposed vacation, general and specific facts about the site and area, and applicable codes. The Report, as presently amended, is incorporated herein by reference as though fully set forth.

11. Public notices were given at least 30 days prior to the hearing, as required by Tacoma Municipal Code ("TMC") 9.22.060. On March 28, 2018, a Public Notice Memo for the May 3, 2018, hearing was placed into the glass display case in the Tacoma Municipal Building outside the Finance Department, and posted on two yellow public notice signs attached to the existing fencing along South C Street and South Tacoma Way at the northwest corner of the intersection. The Public Notice Memo was advertised on the City of Tacoma web site and in the Tacoma Daily Index, as well as on Municipal Television Channel 12. Lastly, Public Notice was mailed to all owners of record within 1,000 feet of the vacation request. *Cornforth Testimony; Ex. 1.*

12. No written opposition to the proposed vacation was received in this case.

13. Any finding above, which may be more properly deemed or considered a conclusion, is hereby adopted as such.

### **CONCLUSIONS:**

1. The Hearing Examiner has jurisdiction over the parties and subject matter in this proceeding to conduct a hearing and make a recommendation to the City Council. *See TMC* 1.23.050.A.5 and 9.22.

2. The Hearing Examiner's role in street vacation proceedings is quasi-judicial in nature, leading to a legislative determination by the City Council that is enacted by ordinance. *State ex rel. Myhre v. City of Spokane*, 70 Wn.2d 207, 218, 442 P.2d 790 (1967).

3. Petitions for the vacation of public right-of-way are reviewed for consistency with the following criteria:

- a. The vacation will provide a public benefit, and/or will be for a public purpose.
- b. The petitioned-for right-of-way vacation shall not adversely affect the street pattern or circulation of the immediate area or the community as a whole.
- c. The public need shall not be adversely affected.
- d. The petitioned-for right-of-way is not contemplated or needed for future public use.
- e. No abutting owner becomes land-locked or access will not be substantially impaired; i.e., there must be an alternative mode of ingress and egress, even if less convenient.
- f. The petitioned-for vacation of right-of-way shall not be in violation of RCW 35.79.035.

*TMC 9.22.070.*

4. The Petitioner must demonstrate, by a preponderance of the evidence, that its vacation petition meets the foregoing criteria. *See TMC 1.23.070.*

5. Findings entered herein, based upon substantial evidence in the hearing record, support a conclusion that the requested street vacation conforms to the criteria for the vacation of street right-of-way, provided the conditions recommended herein below are imposed and the Petitioner complies with them. The petitioned-for vacation, as revised post-hearing, will have no effect on City right-of-way needs or goals, and as such the City's right-of-way interest is easily ceded to the underlying fee owner of the property—the Petitioner. No potential for landlocking an abutting owner exists, and the provisions of RCW 35.79.035 governing areas close to bodies of water do not apply to this location.

6. Accordingly, the requested street vacation should be approved subject to the following conditions:

**A. SPECIAL CONDITIONS:**

1. PAYMENT OF FEES

The Petitioner shall compensate the City in an amount equal to the full appraised value of the area vacated. One-half of the revenue received shall be devoted to the acquisition, improvement and maintenance of public open space land and one-half may be devoted to transportation projects and/or management and maintenance of

other City owned lands and unimproved right-of-way areas. *TMC*  
9.22.010.

2. TACOMA WATER & ENVIRONMENTAL SERVICES

Tacoma Water and Environmental Services have existing infrastructure within the vacation area, and therefore requested that an easement be reserved over the petitioned-for vacation area. As a result, concurrent with the granting of the vacation, an easement for City of Tacoma utilities, including without limitation, water and stormwater/sewer shall be reserved over the following legally described area:

A strip of land, 20.00 feet in width, lying within the Southwest Quarter of the Northwest Quarter of Section 9, Township 20 North, Range 3 East of the Willamette Meridian, City of Tacoma, County of Pierce, State of Washington, the centerline of which is more specifically described as follows:

Commencing at the intersection of Holgate Street and South 25<sup>th</sup> Street, as shown on the Plat of Tacoma Land Company's First Addition to Tacoma, W.T., according to the Plat filed for record July 7, 1884, in the Office of the Pierce County Auditor;

Thence North 82°35'31" East, along the centerline of said South 25<sup>th</sup> Street, 154.32 feet to the centerline of South "C" Street;

Thence South 07°21'08" East, along the centerline of said South "C" Street, 507.74 feet;

Thence South 82°38'52" West 31.87 feet to the Point of Beginning of this described centerline;

Thence South 24°16'54" West 145.60 feet to the Terminus of this described centerline.

TOGETHER WITH a strip of land, 30.00 feet in width, the centerline of which is more specifically described as follows:

Commencing at the intersection of Holgate Street and South 25<sup>th</sup> Street, as shown on the aforementioned Plat of Tacoma Land Company's First Addition to Tacoma;

Thence North 82°35'31" East, along the centerline of said South 25<sup>th</sup> Street, 154.32 feet to the centerline of South "C" Street;



Thence South 07°21'08" East, along the centerline of said South "C" Street, 512.23 feet;

Thence South 82°38'52" West 31.59 feet to the Point of Beginning of this described centerline;

Thence South 42°28'26" West 58.03 feet to the Westerly line of that certain area granted to the City of Tacoma and described in Deed filed under Auditor Fee Number 1719783, and the Terminus of this described centerline.

The sidelines of the above described strips of land shall be lengthened or shortened to intersect with themselves or the West line of said Deed filed under Auditor Fee Number 1719783.

The above description for a City easement to be reserved, should be incorporated as a formal grant of the easement in the vacation ordinance, if approved. RPS notes that the easement reservation should include the depiction of the easement area found at Exhibit "B" to Amendment #2 of the Report, which is Exhibit 1b to this Recommendation. The Examiner concurs in this inclusion although the depiction is not separately included here.

4. TACOMA PUBLIC WORKS/TRAFFIC ENGINEERING

Traffic's pre-hearing concerns were resolved by the Petitioner voluntarily agreeing to reduce the area for which it is seeking the vacation. No requirement.

5. PUGET SOUND ENERGY, INC.

Puget Sound Energy has requested that it be granted an easement for existing infrastructure as referenced in Exhibit 12.

6. CENTURYLINK COMMUNICATIONS, LLC

CenturyLink has requested that it be granted an easement for existing infrastructure as referenced in Exhibit 13.

**B. USUAL CONDITIONS:**

1. The recommendation set forth herein is based upon representations made and exhibits, including any development plans and proposals, submitted at the hearing conducted by the Hearing Examiner. Any material change(s) in any such development plans, proposals, or conditions of approval imposed

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shall potentially be subject to the review of the Hearing Examiner and may require additional review and hearings.

2. The approval recommended herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition precedent to the recommendation herein made, and is a continuing requirement of any resulting approvals. By accepting any resulting approvals, the Petitioner represents that the development and activities facilitated by the vacation will comply with such laws, regulations, and ordinances. If, during the term of any approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the Petitioner agrees to promptly bring such development or activities into compliance.

7. Accordingly, the vacation petition should be granted, subject to the conditions set forth in Conclusion 6 above.

8. Any above stated conclusion, which may be more properly deemed or considered a finding, is hereby adopted as such.

**C. ADVISORY NOTE:**

Public Works LID Section has no objection to the petitioned-for vacation. LID has, however, provided this Advisory Comment for the Petitioner that there will be an in-lieu of assessment due for this vacation area that can be voluntarily paid at time of purchase or will be required at time of future permitting or development.

**RECOMMENDATION:**

The vacation petition is hereby recommended for approval, subject to conditions contained in Conclusion 6 above.

**DATED** this 5<sup>th</sup> day of June, 2018.



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**JEFF H. CAPELL, Hearing Examiner**

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## NOTICE

### RECONSIDERATION/APPEAL OF EXAMINER'S RECOMMENDATION

#### RECONSIDERATION:

Any aggrieved person or entity having standing under the ordinance governing the matter, or as otherwise provided by law, may file a motion with the office of the Hearing Examiner requesting reconsideration of a decision/recommendation issued by the Examiner. A motion for reconsideration must be in writing and must set forth the alleged errors of procedure, fact, or law and must be filed in the Office of the Hearing Examiner within 14 calendar days of the issuance of the Examiner's decision/recommendation, not counting the day of issuance of the decision/recommendation. If the last day for filing the motion for reconsideration falls on a weekend day or a holiday the last day for filing shall be the next working day. The requirements set forth herein regarding the time limits for filing of motions for reconsideration and contents of such motions are jurisdictional. Accordingly, motions for reconsideration that are not timely filed with the Office of the Hearing Examiner, or that do not set forth the alleged errors shall be dismissed by the Examiner. It shall be within the sole discretion of the Examiner to determine whether an opportunity shall be given to other parties for response to a motion for reconsideration. The Examiner, after a review of the matter, shall take such further action as he/she deems appropriate, which may include the issuance of a revised decision/recommendation. (*Tacoma Municipal Code 1.23.140*)

#### APPEALS TO CITY COUNCIL OF EXAMINER'S RECOMMENDATION:

Within 14 days of the issuance of the Hearing Examiner's final recommendation, any aggrieved person or entity having standing under the ordinance governing such application and feeling that the recommendation of the Examiner is based on errors of procedure, fact or law shall have the right to appeal the recommendation of the Examiner by filing written notice of appeal with the City Clerk, stating the reasons the Examiner's recommendation was in error.

**Appeals shall be reviewed and acted upon by the City Council in accordance with *TMC 1.70*.**

#### GENERAL PROCEDURES FOR APPEAL:

The Official Code of the City of Tacoma contains certain procedures for appeal, and while not listing all of these procedures here, you should be aware of the following items which are essential to your appeal. Any answers to questions on the proper procedure for appeal may be found in the City Code sections heretofore cited:

1. The written request for review shall also state where the Examiner's findings or conclusions were in error.
2. Any person who desires a copy of the electronic recording must pay the cost of reproducing the tapes. If a person desires a written transcript, he or she shall arrange for transcription and pay the cost thereof.