



City of Tacoma  
Hearing Examiner

August 4, 2015

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**Re: File No. HEX2015-011 (Street Vacation Petition File No. 124.1350)**  
**Petitioner: Puyallup Tribe of Indians**

To the Parties,

In regard to the above referenced matter please find enclosed a copy of the Tacoma Hearing Examiner's (HEX) Report and Recommendation to the Tacoma City Council entered on August 4, 2015.

Sincerely,

Louisa Legg  
Office Administrator

Enclosure (1) – HEX Report and Recommendation

cc: See Transmittal List (page 2)

**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 August 4, 2015, at Tacoma, WA.

August 4, 2015

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HEX 2015-011 (124.1350) Puyallup Tribe of Indians)

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Solid Waste Management, City of Tacoma (Richard Coyne)

Tacoma Water, Water Distribution (Tony Lindgren)

Public Works Engineering/Real Property Services, City of Tacoma (Sue Simpson)

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**OFFICE OF THE HEARING EXAMINER**

**CITY OF TACOMA**

**REPORT AND RECOMMENDATION**

**TO THE CITY COUNCIL**

**PETITIONER:** Puyallup Tribe of Indians

**FILE NO.:** HEX 2015-011 (124.1350)

**SUMMARY OF REQUEST:**

Real Property Services has received a petition from the Puyallup Tribe of Indians to vacate all that certain alley right-of-way lying between East 29<sup>th</sup> and East 30<sup>th</sup> Street from Portland Avenue to East "R" Street, excepting therefrom the westerly 18 feet thereof, for the construction of a multi-level garage structure in anticipation of the upcoming Emerald Queen Casino Relocation project.

**RECOMMENDATION OF THE HEARING EXAMINER:**

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

**PUBLIC HEARING:**

After reviewing the report of the Department of Public Works (DPW), Real Property Services Division and examining available information on file with the petition, the Hearing Examiner conducted a public hearing on the petition on July 30, 2015.

**ORIGINAL**



## **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION:**

### **FINDINGS OF FACT:**

1. The Puyallup Tribe of Indians has petitioned the City to vacate all that certain alley right-of-way lying between East 29<sup>th</sup> and East 30<sup>th</sup> Streets from Portland Avenue to East “R” Street, excepting therefrom the westerly 18 feet thereof, for the construction of a multi-level garage structure in anticipation of the upcoming Emerald Queen Casino Relocation project. The area to be vacated is more particularly described below:

All that certain alley right-of-way lying between and abutting Blocks 7946 and 8045 of the Indian Addition to the City of Tacoma, as per Plat recorded in Volume 7 of Plats at Page 30, records of Pierce County, Washington.

EXCEPT therefrom the Westerly 18 feet thereof.

Situate in the City of Tacoma, County of Pierce, State of Washington; within Section 10, Township 20 North, Range 03 East of the Willamette Meridian.

2. The Petitioner plans on acquiring the vacated area for the construction of a multi-level garage structure in anticipation of the upcoming Emerald Queen Casino Relocation. The project will further Tribal development and generate associated economic expansion. *Cornforth Testimony; Ex. 1; Wright Testimony.*

3. The alley right-of-way proposed to be vacated is graveled, relatively flat, pocked with potholes, and is not used as a primary thoroughfare. The alley does not contain curbs, gutters or sidewalks and has alley approaches at both Portland Avenue and East “R” Street. *Cornforth Testimony; Ex. 1.*

4. The City of Tacoma acquired the right-of-way proposed to be vacated by Plat filing of the Indian Addition to the City of Tacoma as filed of record in Volume 7, at Page 30, records of Pierce County, Washington. *Cornforth Testimony; Exs. 5 and 6.*

5. The vacation of this alley right-of-way will not adversely affect the street pattern or traffic circulation in the area or in the wider community because the right-of-way being vacated is currently used for storage and is not a part of the traffic circulation system in the area. *Cornforth Testimony; Ex. 1.*

6. The public would benefit from the proposed right-of-way vacation because it would return unneeded right-of-way property to a useful purpose and would add the property to the tax rolls. The project will increase economic viability and employment in the community and facilitate further economic development in the immediate area. *Cornforth Testimony; Ex. 1; Wright Testimony.*

7. There is no evidence the alley right-of-way proposed for vacation would be needed for an additional or different public use in the future. *Cornforth Testimony; Ex. 1.*

8. No abutting property or nearby property would become landlocked or have its access substantially impaired as a result of the proposed vacation of the subject portion of alley right-of-way. *Cornforth Testimony; Ex. 1.*

9. The portion of alley right-of-way proposed for vacation does not abut a body of water and, thus, the provisions of RCW 35.79.035 are not implicated. *Cornforth Testimony; Ex. 1.*

10. The vacation petition has been joined by all owners of property abutting the right-of-way proposed to be vacated. *Cornforth Testimony.* No members of the public appeared at the public hearing to oppose the project.

11. The proposed alley vacation has been reviewed by various City departments and outside quasi-governmental agencies. The reviewing entities have no objection to the project; however, some base their position on the inclusion of conditions preserving the right to utility easements and installations in the area. *Cornforth Testimony. Exs. 7 through 12.*

12. Petitioner Puyallup Tribe of Indians concurs in the conditions recommended by the commenting agencies and agrees to comply with the same. *Wright Testimony.*

13. Pursuant to WAC 197-11-800(2)(h), 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.*

14. The DPW Preliminary Report, as entered into this record as Exhibit 1, accurately describes the proposed project, general and specific facts about the site and area, and applicable codes. The report is incorporated herein by reference as though fully set forth.

15. A Public Hearing Notice for the July 30, 2015, hearing, was posted at the property on June 25, 2015, at least 30 days prior to the hearing, as required by Tacoma Municipal Code (TMC) 9.22.060. The Public Notice was also published in the Tacoma Daily Index and mailed to all parties of record within 300 feet of the vacation request. All required postings of notices for the hearing have been accomplished. *Cornforth Testimony; Ex. 1.*

16. Any conclusion hereinafter stated which may be deemed to be properly considered a finding herein is hereby adopted as such.

#### **CONCLUSIONS OF LAW:**

1. The Hearing Examiner has jurisdiction over the parties and subject matter in this proceeding. *See TMC 1.23.050.A.5 and TMC 9.22.*

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION**



2. Proceedings that involve consideration of petitions for the vacation of public rights-of-way are quasi-judicial in nature. *State v. City of Spokane*, 70 Wn.2d 207, 442 P.2d 790 (1967). The petitioner must demonstrate, by a preponderance of the evidence that its vacation request conforms to the applicable criteria. *See TMC 1.23.070*.

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

1. The vacation will provide a public benefit, and/or will be for public purpose.
2. That the right-of-way vacation shall not adversely affect the street pattern or circulation of the immediate area or the community as a whole.
3. That the public need shall not be adversely affected.
4. That the right-of-way is not contemplated or needed for future public use.
5. That no abutting owner becomes landlocked or his access will not be substantially impaired; i.e., there must be an alternative mode of ingress and egress, even if less convenient.
6. That the vacation of right-of-way shall not be in violation of *RCW 35.79.035*.

*TMC 9.22.070*.

4. Findings entered herein, based upon substantial evidence in the hearing record, support a conclusion that the requested alley right-of-way vacation conforms to the TMC's criteria for the vacation of street rights-of-way, provided the conditions recommended herein are imposed. The public would experience benefits from the requested vacation by returning unused property to a productive use. The overall project will enhance economic development and employment options in the community.<sup>1</sup> The requested alley vacation does not involve right-of-way that is being used for traffic circulation and the property would not be needed for future public use. The requested alley vacation would not landlock any abutting owner and the provisions of *RCW 35.79.035* are not applicable. The proposed alley right-of-way vacation would not adversely affect the public need so long as provisions for utility easements are included as required conditions.

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<sup>1</sup> The term "public benefit" as used in the street vacation context is construed broadly and may include the enrichment of the local economy, the facilitating of the providing of goods and services to the community, and increasing property tax revenues. *Banchero v. City Council of Seattle*, 2 Wn. App. 519, 524, 468 P.2d 724 (1970).

5. Accordingly, the requested alley right-of-way vacation covering this segment of alleyway 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 rights-of-way. *TMC 9.22.010.*

2. PUBLIC WORKS TRAFFIC

The Petitioner shall finalize a Traffic Impact Study prior to development.

3. ENVIRONMENTAL SERVICES

All existing infrastructure is shall be relocated, operated, and accepted in accordance with an approved Work Order.

4. TACOMA POWER & CLICK! NETWORK

All existing infrastructure shall be relocated, energized and accepted prior to completion of the subject vacation action.

5. COMCAST

All existing infrastructure shall be protected by either independent easement and/or relocated, at Petitioner's sole expense, in coordination with Tacoma Power.

6. CENTURY LINK

All existing infrastructure shall be protected by either independent easement and/or relocated, at Petitioner's sole expense, in coordination with Tacoma Power.

**B. USUAL CONDITIONS:**

1. THE RECOMMENDATION SET FORTH HEREIN IS BASED UPON REPRESENTATIONS MADE AND EXHIBITS, INCLUDING DEVELOPMENT PLANS AND PROPOSALS, SUBMITTED AT THE HEARING CONDUCTED BY THE HEARING EXAMINER. ANY SUBSTANTIAL CHANGE(S) OR DEVIATION(S) IN SUCH DEVELOPMENT PLANS, PROPOSALS, OR CONDITIONS OF APPROVAL IMPOSED SHALL BE SUBJECT TO THE APPROVAL OF THE HEARING EXAMINER AND MAY REQUIRE FURTHER AND ADDITIONAL HEARINGS.
2. THE AUTHORIZATION GRANTED 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 APPROVALS GRANTED AND IS A CONTINUING REQUIREMENT OF SUCH APPROVALS. BY ACCEPTING THIS/THESE APPROVALS, THE PETITIONER REPRESENTS THAT THE DEVELOPMENT AND ACTIVITIES ALLOWED WILL COMPLY WITH SUCH LAWS, REGULATIONS, AND ORDINANCES. IF, DURING THE TERM OF THE 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.

**C. ADVISORY COMMENT:**

1. PUBLIC WORKS/L.I.D.

The property has been assessed for an in-lieu of assessment for sanitary sewer in the amount of \$1,325.80.

6. Based upon the facts and the governing law, the vacation petition should be granted, subject to conditions set forth in Conclusion 5 above.
7. Any finding of fact hereinbefore stated which may be deemed to be properly considered a conclusion of law herein is hereby adopted as such.



**RECOMMENDATION:**

The vacation request is hereby recommended for approval, subject to the conditions contained in Conclusion 5.

**DATED** this 4<sup>th</sup> day of August, 2015.



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**PHYLLIS K. MACLEOD, Hearing Examiner**

## NOTICE

### **RECONSIDERATION/APEAL 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 entered 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 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.

**Notice - No Fee (7/11/00)**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION**