

PRELIMINARY REPORT

PREPARED FOR THE HEARING EXAMINER BY REAL PROPERTY SERVICES

For the Hearing to be Held
Thursday, January 8, 2015 at 9:00 AM

PETITIONER: JEMSTONE, LLC

FILE NO. 124.1345

A. SUMMARY OF REQUEST:

Real Property Services has received a petition from Jemstone, LLC to vacate a portion of South Proctor Street right-of-way lying southerly of South 19th Street, as depicted on the attached Exhibits 3, 3(a) and 3(b), in connection with development and in compliance with suggested conditions within Concomitant Agreement recorded July 3, 2008 under Auditor's File Number 200807030640, at page 8 paragraph 6 (k), attached hereto as Exhibit 4.

B. GENERAL INFORMATION:

1. Legal Description of Vacation:

All that portion of South Proctor Street lying southerly of South 19th Street within the Northeast and Northwest Quarters of the Northeast Quarter of Section 12, Township 20 North, Range 03 East, W.M. more particularly described as follows:

All that portion of South Proctor Street as describe in paragraph 2 of City of Tacoma Deed No. 1763 recorded under Auditor File No. 1489549, records of Pierce County Auditor, lying southerly of a line 35.00 feet South and parallel with the North line of said Section 12.

Situate in the City of Tacoma, County of Pierce, State of Washington.

2. Notification:

9.22.060 NOTICE OF PUBLIC HEARING The Public Works Department shall cause a 30-day notice to be given of the pendency of the petition by written notice posted in three of the most public places in the City, a like notice in a conspicuous place on the street or alley sought to be vacated, a like notice in a newspaper of general circulation in the City, and a like notice to the legal property owners of all property abutting the right of way requested for vacation as enumerated on the applicant's vacation petition, and to any other interested parties of record. In addition to posting notices of the hearing, the Public Works Department shall mail a copy of the notice to all owners and occupants of the property

Exhibit 1

ORIGINAL

which lies within 300 feet of the street or alley to be vacated. The said notice shall contain the 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 the City Council 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, notice shall be sent as provided above. Failure to send notice by mail to any such property owner where the current address for such property owner is not a matter of public record shall not invalidate any proceedings in connection with the proposed street vacation.

C. PUBLIC NOTICE:

Real Property Services in conjunction with the City of Tacoma Clerk's office issued the following public notice:

The Public Hearing Notice was posted December 4, 2014 at approximately 2:00 p.m. at location described in item 1 below:

1. Placed yellow public notice sign at the westerly margin of the Proctor Street entrance, facing South 19th Street.
2. Public notice memo placed into the glass display case located on the second floor of the Municipal Building.
3. Public notice memo placed into the glass display case located on the first floor of the Municipal building abutting the Finance Department.
4. Public notice memo advertised on the City of Tacoma web site at address: <http://www.cityoftacoma.org/page.aspx?nid=596>
5. Public Notice advertised in the Daily Index newspaper.
6. Public Notice mailed to all parties of record within the 300 feet of vacation request.
7. Public Notice advertised on Municipal Television Channel 12.

D. PURPOSE OF REQUEST:

The Petitioner plans on acquiring the vacated area in furtherance, and adherence to development suggestions, for future development.

E. HISTORY:

The City of Tacoma acquired the rights of way proposed to be vacated within Special County Treasurer's Deed, referenced as City of Tacoma Deed No. 1763, which was record under Auditor's File Number 1498549, at Volume 913, Page 675, records of Pierce County, Washington. Copy of Treasurer's Deed attached as Exhibit 4.

Real Property Services has previously received petition to vacate this same portion of Proctor Street on May 21, 2007, referenced as File Number 124.1283. Requests for review were conducted and a preliminary report was presented before the Hearing Examiner at public hearing held on November 8, 2007.

Findings of Fact, Conclusions of Law, and Recommendations of the Hearing Examiner were provided to the applicant on January 4, 2008 by and thru their legal representative. A copy of such 2008 Findings of Fact are attached hereto and referenced as Exhibit 5.

While recommendations of approval had been granted, and Ordinance 27700 drafted, Petitioner was ultimately unable to complete the action due to severe economic decline. Subsequent 2013 efforts to re-initiate the original petition were denied and petitioner was advised to resubmit under renewed petition, as presented here.

F. PHYSICAL LAND CHARACTERISTICS:

This portion of South Proctor Street is unimproved and does not contain curbs, gutters or sidewalks. This portion of South Proctor Street is functioning as a private driveway to service adjoining parcels. A driveway approach exists at the intersection of South 19th Street and South Proctor. The right of way has a beginning width of 40 feet at South 19th Street then tapers to 30 feet at a point 130 feet southerly of the intersection. This right of way does not connect to another right of way and does not meet the minimum right of way width required for a residential street.

G. APPLICABLE SECTIONS OF THE OFFICIAL CODE OF THE CITY OF TACOMA:

9.22.010 PETITION TO VACATE AUTHORIZED: The owners of an interest in any real estate abutting on any street or alley who may desire to vacate any street or alley, or any part thereof, shall petition to the City Council to make vacation in the manner hereafter provided in this chapter and pursuant to RCW 35.79 or the City Council may itself initiate by Resolution such vacation procedure. The City Council shall require the petitioners to compensate the City in an amount which equals one-half of the appraisal value of the area vacated; provided that if the street or alley has been a public right of way for 25 years or more, the City shall be compensated in an amount equal to the full appraised value of the area vacated; provided that when the vacation is initiated by the City or the City Council deems it to be in the best interest of the City, all or any portion of such compensation may be waived. Except as provided below, one-half of the revenue received hereunder shall be devoted to the acquisition, improvement, and maintenance of public open space land and one-half may be devoted to transportation projects and the management and maintenance of other City owned lands and unimproved rights-of-way.

In the case of vacations of rights-of-way in the tide flats area, defined as easterly of the Thea Foss Waterway (inclusive of the Murray Morgan Bridge), northerly of State Route 509 and westerly of Marine View Drive, the total revenue received hereunder shall be devoted to transportation projects in the tide flats area.

9.22.040 PUBLIC'S RIGHT TO TRAVEL – UTILITIES: Vacation of any portion of a street that is designated as an arterial under Section 11.05.490 of the Municipal Code shall be of a minor nature only and shall not unreasonably limit the public's right to travel upon said street or interfere with the ancillary right to occupy said street for utility purposes.

CRITERIA: Section 9.22.070 of the Official Code of the City of Tacoma. The following criteria have been considered:

1. That the vacation will provide a public benefit and/or will be for a 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 vacation of right-of-way shall not be in violation of RCW 35.79.035

Regarding the above Criteria, Real Property Services finds the following:

1. The vacation is a public benefit because:
 - a. It will produce and add commercial and/or residential uses of the lands to the tax rolls;
 - b. Will provide economic, residential density and/or employment viability to the community; and
 - c. Facilitate economic development.
2. City of Tacoma Traffic Engineering has been consulted regarding this petition and does not object to the vacation.
3. No general public is served by this dead end road segment.
4. The vacation area is not contemplated or needed for future public use as a right of way.
5. No abutting owner, not contemplated under this development project, becomes landlocked nor will their access be impaired.
6. The vacation area is not close to a body of water as contemplated under RCW 35.79.035.

H. ADDITIONAL INFORMATION:

The area to be vacated has not been assessed for sanitary sewers and is subject to a Connection Charge In-Lieu-of-Assessment per T.M.C. 12.08.350. Should the petitioner wish to clear this item from title, please contact Sue Simpson of the Public Works Department, L.I.D. Section, at

591-5529 for the most current assessment amount. Please note that the ordinance establishing the rate of assessment is updated every few years, and the amount quoted may increase in the future. When the petitioner has submitted a development plan, an in lieu of amount will be computed.

I. PROJECT RECOMMENDATIONS:

As part of the City's review process for street vacation petitions, notice of this application was mailed to various City departments as well as many outside quasi-governmental agencies. These agencies, as noted below, have provided comments and recommended conditions to the Real Property Services Division. These comments, where appropriate, have been incorporated in the "Recommended Conditions of Approval" section of this preliminary report.

Preliminary Report – Exhibit 1
Exhibit List – Exhibit 2
Map Frame – Exhibit 3
Aerial Map Frame – Exhibit 3(a)
Survey Map – Exhibit 3(b)
Treasurer's Deed – Exhibit 4
2008 Findings of Fact – Exhibit 5
Concomitant Agreement – Exhibit 6
Tacoma Power – Exhibit 7
Tacoma Water – Exhibit 8

PW Engineering – No Objection
PW Traffic – No Objection
Environmental Services – No Objection
Tacoma Fire – No Objection
Solid Waste – No Objection
Pierce Transit – No Objection
Comcast Communications – No Objection
CenturyLink – No Objection

Public Works/LID – No Response
Puget Sound Energy – No Response
Police – No Response
Click! – No Response
Planning & Development Services – No Response

J. RECOMMENDED CONDITIONS OF APPROVAL:

Should this street vacation request be approved, the Real Property Services Department of Public Works recommends that the following conditions be made conditions of approval:

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. TACOMA POWER

- a. Please contact Thad Glassy at (253) 502-87047 regarding Tacoma Power's comments.
- b. Tacoma Power has no objection; however, they will require a separate easement to be executed and recorded concurrently with the vacation Ordinance and not as a reservation therein.

3. TACOMA WATER

- a. Please contact Jesse Angel at (253) 502-8280 regarding Tacoma Water's comments.
- b. Tacoma Water has no objection; however, they will require a separate easement to be executed and recorded concurrently with the vacation Ordinance and not as a reservation therein.

Comments for the record:

4. CENTURY LINK

Real Property Services has received conflicting information relative to Century Link; however, since Century Link is not a City utility and based on their most current review of this petition, Real Property Services recommends approval of this vacation action while Petitioner continues to work with Century Link independently of this action.

Petitioner has submitted an easement ready for execution over and along the northerly 10' feet of the subject Proctor Street Vacation action; however, direct response from Century Link to this office has indicated that no facilities currently exist and as such Century Link has no objection. Easement and response both attached hereto and referenced as Exhibits 9 & 10 respectively.

5. PUBLIC COMMENT

Real Property Services has received the following public comment:

Though most pertinent to any future development and not conditioned or impacted by this Street Vacation Action, Real Property Services has received a phone call from Mr. Anderson expressing neighborhood concerns as to the location of the existing water meters and private service lines serving adjoining properties. Further expressing concern that any costs associated with required relocation of the meters and service mains should not be borne by the adjoining property owners.

The applicant shall comply with all City regulations for any future use of the subject site.

ATTACHMENT: Vacation Jacket containing all pertinent maps and papers.



JEMSTONE, LLC

STREET VACATION NO. 124.1345

PROCTOR STREET SOUTH OF SOUTH 19TH STREET

NE 1/4 SEC. 12, T20N, R2E

NOT TO SCALE



JEMSTONE, LLC

STREET VACATION NO. 124.1345

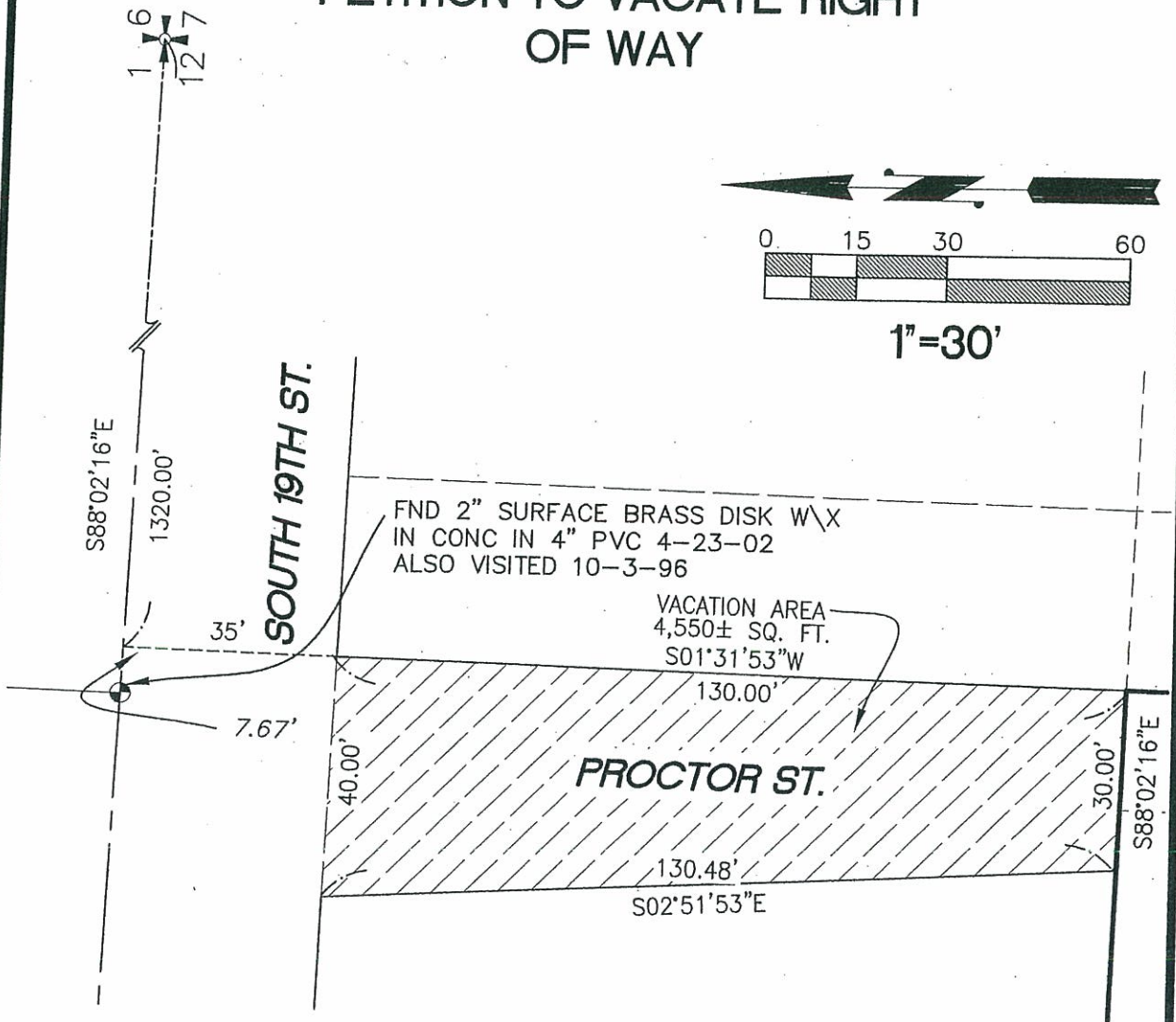
PROCTOR STREET SOUTH OF SOUTH 19TH STREET

NE 1/4 SEC. 12, T20N, R2E

NOT TO SCALE

EXHIBIT 'A'

PETITION TO VACATE RIGHT OF WAY



A PORTION OF THE NE 1/4 OF SEC 12, T20N, R2E, W.M.
CITY OF TACOMA, PIERCE COUNTY, WASHINGTON



BASELINE ENGINEERING, INC.

Land Development Professional Services

(253)565-4491 • Seattle (206)824-1205 • FAX (253)565-8563

Land Planning & Use • Engineering • Surveying

1910-64th Avenue West • Tacoma, WA 98466

DRAWN BY	KRF	DATE	7-6-14	JOB NO.	96-140
CHECKED BY	TCF	SCALE	1"=30'	SHEET	1 OF 1

SPECIAL COUNTY TREASURER'S DEED

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

THIS INDENTURE, Made this 2nd day of October, 1948, between L. R. JOHNSON, as Treasurer of Pierce County, State of Washington, party of the first part, and the CITY OF TACOMA, a municipal corporation of the State of Washington, party of the second part,

W I T N E S S E T H: WHEREAS, the party of the second part has deposited with the Treasurer of Pierce County the face of the taxes and costs, without penalty or interest, with the request for a deed to the following described real property, in accordance with and as provided for in Chapter 143, Laws of 1929 of the State of Washington,

NOW, THEREFORE, The said L. R. JOHNSON, Treasurer of Pierce County, Washington, for and in consideration of the sum of One Dollar (\$1.00), lawful money of the United States, to him in hand paid, the receipt whereof is hereby acknowledged, and by virtue of the statutes of the state of Washington in such cases made and provided, does hereby convey unto the said party of the second part, its successors and assigns, all the right, title and interest of said Pierce County in and to the following described real property, to-wit:

D-3106

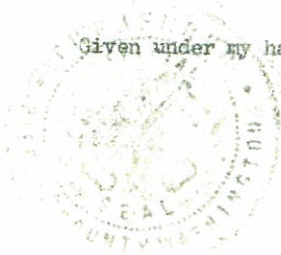
Out of Dia 1/17:

Section 12, Township 20 North, Range 2 East, W.M. North 35 feet of following description: Beginning 1320 feet West of Northeast corner of section; thence South 165 feet; thence West 264 feet; thence North 165 feet; thence East 264 feet to beginning, less .04 acres contained South 19th Street, and

Beginning at a point 35 feet South of the Northeast corner of the Northwest Quarter (NW $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section 12, Township 20 North, Range 2 East of W.M.; thence West 40 feet; thence Southeasterly 130 feet more or less to a point 165 feet South and 30 feet West of said Northeast corner; thence East 30 feet to the East line of said Northwest Quarter (NW $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$); thence North along said East line to point of beginning,

(This deed is issued as a correction of one description in Deed No. 13897, recorded May 11, 1948, Fee No. 1483722, in Volume 899 of Deeds, Page 177.)

Given under my hand and seal of office this 2nd day of October, 1948.



L. R. Johnson
Treasurer.

001763

13999 170 NE12-20-2

STATE OF WASHINGTON)
COUNTY OF PIERCE) ss.

Young
J. W. SONNITZ, REGISTER
PIERCE COUNTY, WASH.
AUDITOR

8 6 PM 02 10 98

1498549

TACOMA WASHINGTON
CONTROLLER CITY HALL

THIS IS TO CERTIFY That on this 2nd day of October, A.D. 1948, before me personally appeared L. R. Johnson, to me known to be the Treasurer of Pierce County, Washington, and the person described in and who executed the foregoing instrument, and he acknowledged to me that he signed, sealed and executed the same, as Treasurer of said County, as his free and voluntary act and deed and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Walter V. Enderday
Notary Public.



NOTICES

OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

REPORT AND RECOMMENDATION

TO THE

TACOMA CITY COUNCIL

FILE NO.: 124.1283

PETITIONER: Jemstone, LLC

SUMMARY OF REQUEST:

A petition to vacate that portion of South Proctor Street lying southerly of South 19th Street.

RECOMMENDATION OF THE HEARING EXAMINER:

The request is recommended for approval, subject to conditions.

PUBLIC HEARING:

After reviewing the report of the Department of Public Works, Real Property Services Division, examining available information on file with the application, and visiting the subject site and the surrounding area, the Hearing Examiner conducted a public hearing on the application on November 8, 2007.

FINDINGS, CONCLUSIONS, AND RECOMMENDATION:

FINDINGS:

1. Jemstone, LLC (hereinafter "petitioner"), is seeking the vacation of that portion of South Proctor Street lying southerly of South 19th Street and more particularly described as follows:

Vacating that portion of South Proctor Street lying southerly of South 19th Street as contained within City of Tacoma Deed No. 1763, which was filed for record under Auditor's File Number 1498549, at Volume 913, Page 675, records of Pierce County, Washington.

All lands situate in the Northeast Quarter of Section 12, Township 20 North, Range 02 East, W.M..

2. The petitioner is proposing to combine the right-of-way sought to be vacated with its abutting property for the purpose of facilitating the development of a medical center.

3. The vacation petition submitted has been signed by all owners of property abutting the right-of-way sought to be vacated.

4. The subject right-of-way was dedicated for public street purposes when City of Tacoma Deed No. 1763 was filed for record in 1948.

5. Currently, the portion of South Proctor Street, here proposed for vacation, is unimproved and is used as a private driveway serving adjoining parcels of land. The right-of-way has a beginning width of 40 feet at South 19th Street and then tapers down to 30 feet at a point 130 feet south of South 19th Street where the right-of-way terminates.

6. The portion of South Proctor Street lying south of South 19th Street does not interconnect with another street and does not meet minimum width requirements for a residential access street.

7. South Proctor Street south of South 19th Street is not designated as an arterial street.

8. The public would benefit from vacation of the right-of-way to the extent that it return this substandard dead end street right-of-way to the property tax rolls of Pierce County.¹

9. Since the right-of-way does not interconnect with any other street except South 19th Street, it dead ends, it has not been developed as a street, and it is substandard in width, its vacation would not

¹ 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 goods and services to the community, and increasing property tax revenues. *Banchemo v. City Council of Seattle*, 2 Wn. App. 519, 524, 468 P.2d 724 (1970).

adversely affect the street pattern or traffic circulation in the area and the right-of-way is not needed for future street purposes.

10. The public need would not be adversely affected by the vacation of the right-of-way provided appropriate provisions are made for existing utilities located within the right-of-way.

11. No abutting property would become landlocked or have its access substantially impaired as a result of the vacation of the undeveloped portion of South Proctor Street lying south of South 19th Street.

12. The right-of-way does not abut a body of salt or fresh water. Thus, the provisions of *RCW* 35.79.035 are not applicable.

13. The vacation request has been reviewed by a number of governmental agencies and utility providers and none object to the proposed vacation; however, conditions have been recommended concerning either the retention of easements for existing water and power utility facilities located within the right-of-way or relocation of those facilities out of the right-of-way at the petitioner's expense. Exhibit 1 at 4 and 5. Also, advisory comments have been provided regarding certain fees and charges applicable to the vacation of public rights-of-way.

14. The petitioner concurs in the conditions recommended and agrees to comply with the same.

15. No one appeared at hearing in opposition to the proposed street vacation.

16. 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 (SEPA)*.

17. All property owners of record and adjacent to the proposed vacation have been notified of the hearing date at least 30 days prior to the hearing, as required by *TMC* 9.22.060.

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

CONCLUSIONS:

1. The Hearing Examiner has jurisdiction in the matter. *Tacoma Municipal Code (TMC)* 1.23.050.A.5 and *TMC* 9.22.070.

2. Proceedings involved in the 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).

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

FINDINGS, CONCLUSIONS, AND RECOMMENDATION

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 land-locked 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. The petitioner bears the burden of proof to establish that its petition for vacation is consistent with the foregoing criteria. *TMC 1.23.070.A.*

5. Findings entered herein, based upon substantial and un rebutted evidence in the hearing record, support a conclusion that the vacation petition conforms to all of the criteria required to be met for the vacation of public rights-of-way, provided the conditions set forth herein, and agreed to by the petitioner, are imposed and complied with by the petitioner and that the petitioner pay to the City an amount equal to the full appraised value of the right-of-way vacated in accordance with *TMC 9.22.010.*

6. Based on the foregoing, the subject vacation petition should be granted subject to payment of the required fees and charges and subject to the conditions listed below:

A. SPECIAL CONDITIONS:

1. TACOMA WATER

- a. A 20 foot water main easement shall be reserved over the entire length of the water main, fire hydrant, service laterals and meters and within the proposed street vacation. The petitioners Professional Surveyor shall prepare and submit the legal description of the easement to Tacoma Water for review and processing.
- b. The proponent may elect to relocate Tacoma Water facilities at their own expense with direction from Tacoma Water, at which time as the facilities are relocated the easement may be released.
- c. If existing water facilities need to be relocated or adjusted due to street improvements for this proposal they will be relocated by Tacoma Water at the owners' expense.

**FINDINGS,
CONCLUSIONS,
AND RECOMMENDATION**

2. TACOMA POWER

- a. Tacoma Power currently has a 110kv sub-transmission line traveling north-south within the area requested for vacation. Before vacating the right of way a 20 foot wide easement must be granted to City of Tacoma – Tacoma Power.
- b. If the developer requires this line to be relocated and if it is possible to do so, then they shall pay all of the costs to procure comparable satisfactory easements for the line and its guying requirements and also the physical costs to relocate the line.

The applicant shall comply with all City regulations for any future use of the subject site.

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.

7. Any finding hereinbefore stated which may be deemed to be a conclusion herein is hereby adopted as such.

RECOMMENDATION:

The vacation petition is recommended for approval, subject conditions.

DATED this 4th day of January, 2008.



RODNEY M. KERSLAKE, Hearing Examiner

COPY

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 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.



City of Tacoma
Hearing Examiner

January 4, 2008

William T. Lynn, Attorney at Law
Law Offices of GTHMP & Daheim, LLP
PO Box 1157
1201 Pacific Avenue, STE 220
Tacoma WA 98401-1157

Re: File No. 124.1283

Petitioner: Jemstone, LLC

Enclosed please find your copy of the Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommendation to the Tacoma City Council as a result of a hearing held on November 8, 2007.

RODNEY M. KERSLAKE
Hearing Examiner

/lal

Enclosure

Cc: Joe Mayer, Jemstone, LLC, 312 – 112th Street East, Tacoma, WA 98444
Kevin Foley, AICP, Baseline Engineering, Inc., 1910 64th Avenue West, Fircrest, WA 98466
Donna Robertson, 2902 S. Monroe Street, Tacoma, WA 98409-3220
Hal Salzman, 1938 S. Madison, Tacoma, WA 98405
John Garner, Metro Park District of Tacoma, 4702 South 19th Street, Tacoma, WA 98405
Lois Stark, Metro Park District of Tacoma, 4702 South 19th Street, Tacoma, WA 98405
Steve Apling, Central Neighborhood Council, P.O. Box 5201 Tacoma, WA 98415-0201
Howard Anderson, 1757 S. Proctor, Tacoma, WA 98405
Dee Margeson, 1502 Washington Street, Tacoma, WA 98405-2065
Judith Mitchels, 1757 S. Proctor, Tacoma WA 98405
City Clerk (Clerk's Jacket)
Legal Department, Civil Division, City of Tacoma
Department of Public Works, City of Tacoma (Env. Svcs. Eng./R. Flynn)
Department of Public Works, City of Tacoma (Solid Waste Mgmt./R. Coyne)
Department of Public Works, City of Tacoma (Construction/LID/S. Simpson)
Department of Public Works, City of Tacoma (Real Prop. Svcs/R. Price)
Tacoma Fire Department, City of Tacoma (Carl Anderson)
Tacoma Power, City of Tacoma (Transmission & Distribution/R. Barrutia)
Tacoma Water, City of Tacoma (J. Angel)
CEDD, City of Tacoma (L. Wung)
Pierce County Assessor-Treasurer (Sally Barnes)
747 Market Street, Room 720 ■ Tacoma, Washington 98402-3768 ■ (253) 591-5195 ■ Fax (253) 591-2003



200807030640 24 Pcs
 07/03/2008 2:37pm \$65.00
 PIERCE COUNTY, WASHINGTON

When Recorded, Return To:
 City of Tacoma
 City Clerk's Office
 747 Market Street, Room 220
 Tacoma WA 98402-3769

ORIGINAL

DOCUMENT TITLE
Concomitant Agreement
Grantor City of Tacoma
Grantee Jemstone, LLC
Description A Concomitant Agreement for a rezone of a 5.89-acre site from an "R-2" One-Family Dwelling District to a "T" Transitional District, and a "C-1" Commercial District, located at 3902 South 19th Street, for the development of a 69,000-square-foot office/medical center and a small retail component. (Jemstone, LLC; File No. REZZ2006-40000041992)
Reference Number
Assessor's Parcel Number

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For reference only, not for re-sale.

When Recorded, Return To:

**Steve Gross
Assistant City Attorney
747 Market Street, Room 1120
Tacoma, WA 98402**

CONCOMITANT AGREEMENT

THIS AGREEMENT is entered into this 19th day of JUNE, 2008, by and between JEMSTONE, LLC, hereinafter referred to as the "Owner/Applicant," and the CITY OF TACOMA, a municipal corporation, hereinafter referred to as the "City."

WITNESSETH:

WHEREAS the Owner/Applicant has applied for rezone of a 5.89 acre site located at 3902 South 19th Street, within the City's jurisdiction, from "R-2" One-Family Dwelling District to "T" Transitional District and "C-1" Commercial District, and legally described as follows:

T Transitional District portion of the site legally described as follows:

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TRANSITIONAL (T) DISTRICT

COMMENCING AT A POINT ON THE NORTH LINE OF THE NORTHEAST QUARTER OF SECTION 12, TOWNSHIP 20 NORTH, RANGE 2 EAST, W.M., IN PIERCE COUNTY, WASHINGTON, WHICH IS NORTH 88°02'16" WEST A DISTANCE OF 1320 FEET FROM THE NORTHEAST CORNER THEREOF;

THENCE SOUTH 01°31'53" WEST A DISTANCE OF 35.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 88°02'16" EAST ALONG THE SOUTHERLY MARGIN OF SOUTH 19TH STREET A DISTANCE OF 259.27 FEET;

THENCE SOUTH 01°31'53" WEST A DISTANCE OF 542.50 FEET;

THENCE NORTH 88°02'16" WEST A DISTANCE OF 249.00 FEET MORE OR LESS TO THE EASTERLY LINE OF PARCEL "B" ACCORDING TO THE CITY OF TACOMA BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S FILE NUMBER 200712195005, RECORDS OF PIERCE COUNTY, WASHINGTON;

THENCE NORTH 01°31'53" EAST ALONG SAID EASTERLY LINE A DISTANCE OF 82.50 FEET MORE OR LESS TO THE SOUTHEAST CORNER OF PARCEL "A" ACCORDING TO SAID CITY OF TACOMA BOUNDARY LINE ADJUSTMENT;

THENCE NORTH 88°02'16" WEST ALONG THE SOUTH LINE OF SAID PARCEL "A" A DISTANCE OF 20.00 FEET;

THENCE NORTH 01°31'53" EAST A DISTANCE OF 56.00 FEET;

THENCE NORTH 88°02'16" WEST A DISTANCE OF 41.22 FEET TO A POINT OF TANGENCY WITH A 74.00 FOOT RADIUS CURVE TO THE RIGHT;

THENCE NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 33°53'15" AN ARC DISTANCE OF 43.77 FEET;

THENCE NORTH 54°09'01" WEST A DISTANCE OF 56.37 FEET;

THENCE NORTH 88°02'16" WEST A DISTANCE OF 115.06 FEET MORE OR LESS TO THE WEST LINE OF SAID PARCEL "A";

THENCE NORTH 01°31'53" EAST ALONG THE WEST LINE OF SAID PARCEL "A" A DISTANCE OF 230.00 FEET TO THE NORTHWEST CORNER OF SAID PARCEL "A";

THENCE SOUTH 88°02'16" EAST ALONG THE NORTH LINE OF SAID PARCEL "A" A DISTANCE OF 61.99 FEET;

THENCE SOUTH 01°31'53" WEST A DISTANCE OF 40.84 FEET;

THENCE SOUTH 88°28'07" EAST A DISTANCE OF 191.73 FEET TO INTERSECT A LINE 10.28 FEET WEST OF THE EAST LINE OF SAID PARCEL "A";

THENCE NORTH 01°31'53" EAST ALONG SAID LINE A DISTANCE OF 169.48 FEET MORE OR LESS TO THE SOUTHERLY MARGIN OF SOUTH 19TH STREET AND TRUE POINT OF BEGINNING;

SITUATED IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.

SUBJECT TO AND TOGETHER WITH EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD.

(CONTAINS 195,630± S.F. OR 4.49± AC.)

UNAPPROVED

C-1 General Neighborhood Commercial District portion of the site legally described as follows:

COMMERCIAL (C-1) DISTRICT

BEGINNING AT THE NORTHWEST CORNER OF PARCEL "A" ACCORDING TO THE CITY OF TACOMA BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S FILE NUMBER 200712195005, RECORDS OF PIERCE COUNTY, WASHINGTON;

THENCE SOUTH 88°02'16" EAST ALONG THE NORTH LINE OF SAID PARCEL "A" A DISTANCE OF 61.99 FEET;

THENCE SOUTH 01°31'53" WEST PARALLEL TO THE WEST LINE OF SAID PARCEL "A" A DISTANCE OF 40.84 FEET;

THENCE SOUTH 88°28'07" EAST A DISTANCE OF 191.73 FEET TO A POINT 10.27 FEET WEST OF THE EAST LINE OF SAID PARCEL "A";

THENCE NORTH 01°31'53" EAST PARALLEL TO SAID EAST LINE A DISTANCE OF 169.40 FEET MORE OR LESS TO THE SOUTHERLY MARGIN OF SOUTH 19TH STREET;

THENCE NORTH 88°02'16" WEST ALONG SAID MARGIN A DISTANCE OF 253.72 FEET TO A POINT THAT BEARS NORTH 01°31'53" EAST FROM THE POINT OF BEGINNING;

THENCE SOUTH 01°31'53" WEST A DISTANCE OF 130.00 FEET TO THE POINT OF BEGINNING.

SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.

SUBJECT TO AND TOGETHER WITH EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD, IF ANY.

(CONTAINS 40,676± S.F. OR 0.93± AC.)

hereinafter sometimes referred to as the "site," and

WHEREAS the City has authority to enact laws and to enter into agreements to promote the health, safety, and welfare of its citizens and thereby control the use and development of property within its jurisdiction, and

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WHEREAS the City, pursuant to RCW 43.21C, the Washington State Environmental Policy Act, should mitigate any adverse effects which might result because of the proposed rezone, and

WHEREAS the City, pursuant to RCW 43.21C, the Washington State Environmental Policy Act, should mitigate any adverse effects which might result because of the proposed rezone, and

WHEREAS the Owner/Applicant has indicated its understanding of its obligation to cooperate with the City, its Public Works Department, and the Hearing Examiner of the City to ensure compliance with all City ordinances and all other local, state, and federal laws relating to the use and development of the site by entering into an agreement as authorized by RCW 36.70B.170, and

WHEREAS the City, in addition to civil and criminal sanctions available by law, desires to enforce the rights and interests of the public by this Concomitant Agreement pursuant to the authority granted by RCW 36.70B.170.

NOW, THEREFORE, in the event the site is rezoned from from "R-2" One-Family Dwelling District to "T" Transitional District and "C-1" Commercial District and subject to the terms and conditions hereinafter stated, the Owner/Applicant does hereby covenant and agree to develop the property as follows:

All of the terms, conditions, and requirements of the Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommendation to the City Council, dated February 4, 2008, together with additional Condition 11.d referred to in the Order Granting in Part and Denying in Part Motion Seeking Reconsideration, dated February 1, 2008, under File Nos. REZ2006-40000041992 and WET2006-40000041994 ("FFCL"), copies of which are attached hereto, incorporated by reference herein in full, regardless of whether they are set forth separately in this Agreement.

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A. SPECIAL CONDITIONS:

1. SOLID WASTE MANAGEMENT

- a. The applicant shall be required to contact Solid Waste Management prior to construction to determine specific size/type of solid waste/recycle containers. Construction of enclosures for solid waste containers shall not commence prior to Solid Waste Management's approval. Enclosures constructed prior to approval may require alterations, relocation or complete reconstruction and shall be at the owner's expense. The applicant shall contact Rick Coyne of Solid Waste Management, 253-593-7707, prior to construction, to obtain enclosure specifications.

2. TACOMA POWER

- a. There is an overhead Tacoma Power Transmission pole line traversing north-south the center of this property. Some of these poles may need to be relocated or drive entry or parking strips may need to be readjusted. Buildings shall contain clearances to overhead power lines per NEC, WAC and Tacoma Power code.
- b. There is an overhead Tacoma Power distribution single phase pole line traversing east-west the center of this property, bisecting the new buildings and serving some existing buildings. Power to these buildings will have to be reclaimed and some portion of this overhead distribution can be removed to accommodate the new buildings but power will have to be reconfigured to restore to existing services west and south of this project.

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- c. This development will require underground 3 phase power utilities. Padmount transformers and vaults must be located on owner premises and easements may be required. Transformers shall maintain an 8-foot clearance to combustible buildings.
- d. Development of new power distribution and the adjustment, removal, and or relocation of existing Tacoma Power facilities shall be at the expense of the developer.

3. FIRE DEPARTMENT

- a. Compliance with Fire Code, at time of construction, shall include water main extension and installation of fire hydrants on the south side of South 19th Street will be required.

4. PUBLIC WORKS DEPARTMENT SOURCE CONTROL

- a. If dental offices are located within the medical center, amalgam separators shall be required.
- b. If a trash compactor is installed, it shall drain to the sanitary sewer, and pad and shall be bermed to control stormwater run-on.

5. PIERCE TRANSIT

- a. The applicant shall be required to provide a single shelter package at the existing bus stop adjacent to the site on south 19th Street. The shelter package shall consist of a shelter, bench, trash can and rider information holder. The package may be purchased directly from Pierce Transit. A 15' x 6' x 8" thick concrete foundation is also required. Monica Adams, Pierce Transit, shall be contacted at 253.581.8130, for information.

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6. PUBLIC WORKS DEPARTMENT REVIEW PANEL

- a. All damaged or defective sidewalk abutting the site along South 19th Street shall be removed and new cement concrete sidewalk constructed in its place to the approval of the City Engineer.
- b. Cement concrete sidewalk shall be constructed along the eastern edge of South Madison Street, from South 19th Street to the southern edge of the entrance to the site, to the approval of the City Engineer.
- c. Per RCW 35.68.075, a wheelchair ramp shall be constructed at all four corners of the intersection of South Proctor and South 19th Street, at the southeast and southwest corners of the intersections of South Madison and South 19th Street, and the southeast and southwest corners of the intersection of South Durango and South 19th Street, to the approval of the City Engineer.
- d. All damaged or defective cement concrete curb and gutter abutting the site along South 19th Street shall be removed and new cement concrete curb and gutter constructed in its place to the approval of the City Engineer.
- e. Cement concrete curb and gutter shall be constructed, abutting the site(s), along the eastern edge of South Madison Street at an alignment to be determined by and to the approval of the City Engineer.
- f. An asphalt wedge curb shall be constructed on the western edge of the required improvement to South Madison Street.

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- g. Any damage or cuts associated with the proposal to South 19th Street, abutting the site(s), shall be maintained and repaired to existing or better conditions.
- h. South Madison Street, abutting the sites from South 19th Street to the entrance to the site, shall be 52 feet wide right-of-way and shall be improved to a width of 28 feet and shall include necessary drainage. The minimum roadway section shall be 3 inches of Hot Mix Asphalt PG58-22, 2½ inches of Crushed Surfacing Top Course and 5 inches of Crushed Surfacing Base Course. Any additional unsuitable foundation excavation material must be removed as directed by the City Engineer.
- i. The South Madison Street entrance is not currently shown to Design Standards. The driveway and approach shall be constructed at a 90-degree angle to the Street.
- j. South Proctor Street, abutting the sites from South 19th Street to the site, shall be provide to a width of 60 feet for right-of-way purposes and shall be improved to a width to be determined by the City Engineer and shall include necessary drainage. The minimum roadway section shall be 3 inches of Hot Mix Asphalt PG58-22, 2½ inches of Crushed Surfacing Top Course and 5 inches of Crushed Surfacing Base Course. Any additional unsuitable foundation excavation material must be removed as directed by the City Engineer.
- k. The island shown at the center of the Proctor Street right-of-way located south of South 19th Street would not be allowed. The applicant may want to pursue vacation of Proctor Street between the site and South 19th Street to allow for this island.

- I. The type, width and location of all driveway approaches serving the site(s) shall be approved by the City Engineer. This includes approaches from South Madison Street and South Proctor Street.

7. TACOMA WATER

- a. City Ordinance 12.10.045 requires a separate water service and meter for each parcel.
- b. Extension of a permanent water main may be constructed by private contract. The developer of the privately financed project shall be responsible for all costs and expenses incurred by Tacoma Water for preparation of plans and specifications, construction inspection, testing, flushing, sampling of the mains, and other related work necessary to complete the new water main construction to Tacoma Water standards and specifications. The engineering charge for the preparation of plans and specifications shall be estimated by Tacoma Water. The developer shall be required to pay a deposit in the amount of the estimated cost. The actual costs for the work shall be billed against the developer's deposit. The new mains shall be installed by and at the expense of the developer. The developer shall be required to provide a 20-foot wide easement over the entire length of the water main, fire hydrant, service laterals and meters. The developers Professional Land Surveyor shall prepare and submit the legal description of the easement to Tacoma Water for review and processing. Prior to construction, a second deposit in the estimated amount for construction inspection, testing, and sampling shall be due to Tacoma Water. Upon completion of the project, the developer will either be refunded the unused amount of the deposit or billed the cost overrun. Approximate design time is ten weeks.

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- c. Existing 2" Galvanized water main shall be protected in place until a permanent water main is put into place to provide fire and domestic service to the property.
- d. Customer is advised to obtain private utility easements for any property-side water pipes leading from the City meter to the building on any portion(s) existing on adjacent parcels.
- e. If fire sprinkling, the Tacoma Water Permit Counter shall be contacted at 253-502-8247 for policies related to combination fire/domestic water service connections.
- f. New water services shall be installed by Tacoma Water after payment of the Service Construction Charge and the Water Main Charge. New meters shall be installed by Tacoma Water after payment of the System Development Charge.
- g. If a new fire hydrant is required at a location with an existing water main, the hydrant shall be installed by Tacoma Water after payment of an installation charge.
- h. If existing water facilities need to be relocated or adjusted due to street improvements for this proposal they shall be relocated by Tacoma Water and shall be at the owners' expense.
- i. Sanitary sewer mains and side sewers shall maintain a minimum horizontal separation of ten feet from all water mains and water services. When extraordinary circumstances dictate the minimum horizontal separation is not achievable, the methods of protecting water facilities shall be in accordance with the most current State of Washington, Department of Ecology "Criteria For Sewage Works Design".

UNBIDDING

8. PUBLIC WORKS ENVIRONMENTAL SERVICES ENGINEERING

- a. Any utility construction, relocation, or adjustment costs shall be at the applicant's expense.
- b. All buildings shall have independent connections to the City sanitary sewer at the building construction stage. A new side sewer and new connection to the City sanitary sewer shall be required for the proposed new building. The existing side sewer shall be abandoned per Chapter 7, Section 722.0 of the Uniform Plumbing Code. Permits for this work shall be obtained.
- c. City permit records indicate the existing residences on this site are connected to an onsite septic systems. Prior to redevelopment on the site, the septic systems shall be abandoned per Tacoma-Pierce County Health Department requirements.
- d. All storm drainage not considered vital to wetland hydrology shall be collected and conveyed to the City storm system using methods and materials acceptable to the Public Works Department.
- e. This site is located in the natural drainage course of abutting properties. Adequate drainage shall be provided to collect drainage that naturally flows across the site.
- f. The City storm sewer shall be extended through this site to serve the properties and the City right-of-way that naturally drain through this development through the City's work order process. To start the work order, Dan Handa, Public Works Construction Division at shall be contacted at 253-591-5765. Storm sewer plans shall be prepared by a licensed civil engineer registered in the state of Washington, per City standards, and shall be

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submitted to the Public Works Department Construction Division for approval.

- g. All easements required for public storm sewer extensions shall be granted to the City of Tacoma and be prepared by the City of Tacoma Public Works, Real Property Services Department. The applicant shall contact the Public Works, Real Property Services Division at 253-591-5535 to prepare the easement for recording during the work order process.
- h. This project is located within the South Tacoma Groundwater Protection District (STGPD). Private infiltration systems proposed in the STGPD to receive storm water from any pollution-generating impervious surface (PGIS) are prohibited unless no other reasonable alternative exists. Any proposed infiltration system will be subject to review and approval by the Public Works Department and the Tacoma-Pierce County Health Department. If infiltration is deemed an acceptable alternative for accepting storm water from PGIS, water quality treatment shall be provided prior to infiltration.
- i. This project will contribute stormwater to the City's regional detention system in the Flett Creek Drainage Basin, which is at capacity. If this project totals 10,000 square feet or more of new effective impervious surface in a threshold discharge area, the applicant shall meet one of the following criteria in accordance with the City of Tacoma *Surface Water Management Manual*:
 - i. Provide on-site detention of stormwater to match a forested condition; or
 - ii. An in-lieu-of detention fee will be offered negating the requirement for on-site detention. The fee collected will be used to make future improvements to the City's regional Flett Creek

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Drainage Basin. The applicant must sign an Agreement Regarding Stormwater Detention and pay the fee before issuance of building permits.

Note: Effective impervious surface created off-site as a result of this project shall count toward the effective impervious surface total.

- j. Projects totaling 5,000 square feet or more of effective pollution-generating impervious surface within a threshold discharge area shall be required to construct stormwater treatment facilities. Commonly used stormwater treatment facilities include cartridge filtration, biofiltration, wet ponds/vaults, or a combination of such devices. Due to any number of site-specific conditions, the selection of an appropriate stormwater treatment facility is the responsibility of the project engineer and shall be based on Volume V, Chapter 2 of the City of Tacoma Surface Water Management Manual. Pollution-generating impervious surfaces created and/or replaced off-site as a result of this project shall count toward the pollution-generating impervious surface total.
- k. The information submitted indicates a wetland or wetland buffer is on this site; therefore, the method of managing the storm drainage for this project may be impacted by the City of Tacoma's Critical Areas Ordinance. If this site contributes drainage to a regulated wetland or stream system, the proposed drainage system shall be designed to match existing hydrology to the wetland or stream system, and water quality treatment shall be provided for drainage from pollution-generating impervious surfaces directed to the wetland or stream system. All storm drainage not considered vital to wetland or stream hydrology shall be collected and conveyed to the City storm system using methods and materials acceptable to the Public Works Department. For further information on possible

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wetland requirements, Theresa Dusek, Public Works Department, Building and Land Use Services Division, shall be contacted at 253-591-5976.

- I. No permanent structure(s) shall be erected within the public easement area(s) unless specifically approved in writing by the City of Tacoma Director of Public Works. Permanent structures shall mean any concrete foundation, concrete slab, wall, rockery, pond, stream, building, deck, overhanging structure, fill material, tree, recreational sport court, carport, shed, private utility, fence, or other site improvement that restricts or unreasonably interferes with the City of Tacoma's access to install, construct, inspect, maintain, remove, repair and replace public storm sewer utilities in said easement(s). Permanent structures shall not mean flowers, ground cover and shrubs less than 3-feet in height, lawn grass, asphalt paving or gravel improvements that do not prevent the access of men, material, and machinery across, along and within the said easement area. Land restoration by the City within the said easement area due to the construction, shall mean planting grass seed or grass sod, asphalt paving and gravel unless otherwise determined by the City of Tacoma.

9. PUBLIC WORKS, BUILDING AND LAND USE SERVICES

- a. The applicant shall provide a geotechnical report consistent with *TMC Section 2.02.60 Excavation and Grading* for review and approval prior to the issuance of development permits for the project. The report shall address foundation requirements for the buildings as well as recommendations for erosion control and grading techniques to be used during construction.
- b. The applicant shall provide a detailed landscape plan for the review and approval of the Land Use Administrator prior to any development permits issued

for the site. The landscape plan shall conform to the standards contained in TMC 13.06.502.B Commercial and X-District Landscaping.

Wetland Development Conditions of Approval:

1. The applicant shall record Notice on Title per *TMC* Section 13.11.200 for the on-site wetland, stream and associated *buffer* prior to any development permits being issued for the site. Notice on Title is not required at this time on the Metro Parks owned property that is part of this application.
2. The applicant shall comply with the requirements of the City of Tacoma Environmental Services Engineering Division and Building Division Geotechnical Engineer for construction of the stormwater dispersion systems that discharge into the wetland and stream systems near the steep slopes and the Retaining Wall Considerations Memo prepared by GeoEngineers dated October 3, 2007, and the Wetland Hydrology Report Addendum prepared by Baseline Engineers dated October 2, 2007.
3. The applicant shall attend a preconstruction meeting with the SES and Building Inspector prior to the issuance of any development permits for the site.
4. Barricade fencing, erosion control fencing, construction sequencing and erosion control methodologies shall be included on the grading plans for the site and shall be reviewed and approved by the City's Senior Environmental Specialist.
5. The applicant shall provide an erosion control and barricade fence between the wetland/stream and site work area prior to conducting site work. The applicant

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shall ensure that once the development is complete and erosion control is no longer needed, the barricade and silt fence must be removed.

6. The applicant shall conduct mitigation in accordance with the Wetland and Drainage Corridor Evaluation and Delineation Report, Wildlife Habitats and Species Assessment and Compensatory Restoration Program for Minor Prior Impacts, prepared by Habitat Technologies dated December 7, 2004 revised June 15, 2006. This report shall be stamped approved by the Land Use Administrator at the end of the appeal period.
7. The applicant shall inform the City SES when the grading and plantings will be installed. The applicant shall have a qualified wetland specialist on site during all plant installation. The applicant shall provide a Year 0/as-built baseline monitoring report to the City Building and Land Use Services Division (BLUS) Division within 30 days of planting along with the applicable review fees.
8. The applicant shall provide vegetative and maintenance and monitoring of the entire mitigation area for a period of 5 years and provide monitoring reports to the City of Tacoma Public Works Department BLUS in years 1, 2, 3, and 5 after completion along with applicable review fees.
9. Permanent fencing such as a split rail fence or similar fence shall be constructed along the outside perimeter of the remaining wetland buffer. Signage shall be attached to the fence to alert individuals of the boundary limits of the Critical Area. The applicant shall use the approved sign template of the City of Tacoma and signs shall be placed every 50 feet along the fence.

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10. The applicant shall provide performance, and maintenance and monitoring bonds for the mitigation plan. The performance bonds shall be placed prior to any development permits being issued for the site. The performance bond may be released upon approval of the City's Senior Environmental Specialist upon review and written approval of the year 0/as-built report. The maintenance and monitoring bond shall not be released until the project has been monitored for a minimum of 5 years, met the performance standards as defined in the project mitigation plan, and received written approval from the City's Senior Environmental Specialist that the project is released from regulatory purview.

SEPA Mitigating Measures:

Mitigating conditions were identified through the SEPA review process for this proposal. The following mitigation measures are required by the City and outside regulatory agencies to address and mitigate for the potential impact created by the proposed project:

Environmental Health:

According to the DOE Facility Site Atlas, the site is located within the Tacoma Smelter Plume with an area that exceeds 20.0 ppm for arsenic levels. Prior to issuance of a development permit for the project, the applicant shall be required to perform the following actions:

The applicant shall complete additional soil sampling of the site to determine whether Tacoma Smelter Plume contamination exists at the site. If the soils are tested and found to contain higher than 100 parts per million of arsenic, the results must be reported to DOE.

If the soils are found to be contaminated above Model Toxic Control Act (MTCA) standards, the applicant shall take the following measures:

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If the soils are found to be contaminated above Model Toxic Control Act (MTCA) standards, the applicant shall take the following measures:

- a. Any soils to be removed from the site shall receive a Waste Disposal Authorization from the Tacoma Pierce County Health Department and the soils shall be disposed of at a regulated landfill and not taken to a soil recycler, dump site, or other property.
- b. If no soils are to be removed from the site, the applicant shall implement the following measures to address the contamination:
 - i. Consolidate contaminated soils underneath building foundations or roads,
 - ii. Till or mix with deeper soils to dilute to below MTC cleanup standards (this requires more testing, and extensive mixing, possibly with the addition of clean soils),
 - iii. In landscape areas, provide a "barrier" cloth or geotextile fabric over the top of the contaminated soil and add 1 to 2 feet of clean top soil over the cloth or fabric, or
 - iv. Fence off undeveloped areas from contact with the public.
- c. According to MTCA, any site where contaminated soils are left in place shall have a restrictive covenant placed on the deed that states any future development or removal of the structures will require notification of the DOE and remedial actions taken to address newly exposed contamination.

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The applicant shall provide additional information to DOE on the area of the site that was previously used as an auto wrecking yard.

The applicant shall comply with regulations regarding worker protection for contaminants. The applicant shall contact the Washington State Department of Labor and Industries for minimum standards and requirements.

B. Traffic

Future delays during the PM peak hour are expected to cross into the LOS E threshold at the Union Avenue/South 19th Street intersection with project traffic included. To mitigate intersection impacts, the Engineering Division has determined that implementation of the conditions recommended in the applicant's TIA will adequately mitigate any potential significant adverse impacts associated with the development.

Therefore, the applicant shall be required to reconstruct the Proctor Street/South 19th Street intersection to City of Tacoma standards, including changes to the signal system. The new phasing shall have leading left turns for the eastbound and westbound approaches. A westbound turn lane is required on South 19th Street at Proctor Street to serve inbound project traffic. There is already sufficient space for a left turn lane at this location however re-striping to mark the area of the new left turn lane is necessary. These improvements shall be constructed prior to final occupancy permit issued for the project.

10. MISCELLANEOUS

The applicant agrees to the following limitations on the commercial uses of the property and agrees that these limitations should be included in the Concomitant Zoning Agreement (CZA) running with the title property:

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- a. The "C-1" uses shall be limited to Building No. 2 as depicted on the site plan.
- b. The allowed uses of Building No. 2 shall be limited to: business support services; daycare center; offices; personal services; retail; and restaurant.
- c. The business operation of any commercial uses shall be limited to the hours between 5 a.m. and 8 p.m. The closing hour may be extended to 10 p.m. on limited occasions for special events.
- d. Vehicle service shall not be a use permitted within the "C-1" District applied to the subject property.

B. USUAL CONDITIONS:

- 1. This Agreement 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 are conditions precedent to the approvals granted and are continuing requirements of such approvals. By accepting this approval, the applicant 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 applicant agrees to promptly bring such development or activities into compliance.
- 3. The owners/applicants understand and agree that if the property that is subject to this agreement is rezoned as a part of an area-wide rezone after the date of this agreement, the requirements of the subsequent area-wide rezone may supersede the provisions of this agreement.

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4. The Owner/Applicant further agrees and understands that prior to obtaining a temporary certificate of occupancy, the required improvements shall be constructed or the Owner/Applicant shall provide to the City of Tacoma a performance bond or other financial security, as approved by the City Attorney, guaranteeing the completion of such improvements. A final certificate of occupancy will not be issued until such improvements are completed.

5. No modifications of this agreement shall be made unless mutually agreed upon by the parties in writing. It is the intent of this section that, since this Agreement applies to more than one parcel, that any substantial change(s) or deviation(s) in such development plans, proposals, or conditions of approval imposed be agreed to by the owners of each parcel, or those persons' heirs, successors, and assigns, as well as by the City of Tacoma, before a change can be approved.

6. The City may, at its discretion, bring a lawsuit to compel specific performance of the terms of this agreement. In addition to all other remedies available to the City by law, the City reserves the right to revoke the reclassification of the site should the Owner/Applicant fail to comply with any of the terms and conditions of this agreement.

7. If any condition or covenant herein contained is not performed by the Owner/Applicant, the Owner/Applicant hereby consents to entry upon the site by the City of Tacoma or any entity, individual, person, or corporation acting on behalf of the City of Tacoma for purposes of curing said defect and performing said condition or covenant. Should the City in its discretion exercise the rights granted herein to cure said defect, the Owner/Applicant, his successors and assigns, consent to the entry of the City on the above described property and waive all claims for damages of any kind whatsoever arising from such activity, and the Owner/Applicant further agrees to pay the City all costs incurred by the City in remedying said defects or conditions. **The obligations contained in this section are covenants running with the land, and burden the successors and assigns of the respective parties.**

For reference only, not for re-sale.

8. In the event that any term or clause of this agreement conflicts with applicable law, such conflict shall not affect other terms of this agreement which can be given effect without the conflicting term or clause, and to this end, the terms of this agreement are declared to be severable.

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the day and year first above written.

Attest:  Donna Scum 6-19-08
City Clerk
[seal]

CITY OF TACOMA
By: William H. Baarsma
William H. Baarsma, Mayor

Legal Description Approved:

OWNER/APPLICANT:

James J. H. [Signature]
Chief Surveyor
Public Works Department

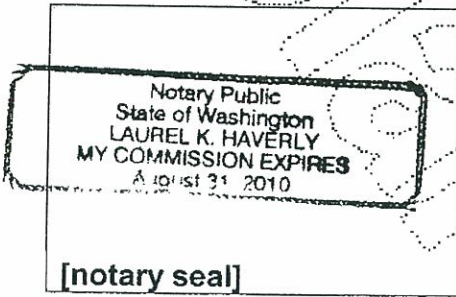
Joseph E. Mayer
JEMSTONE, LLC

Approved as to form:
[Signature]
Assistant City Attorney

STATE OF WASHINGTON)
) ss
COUNTY OF PIERCE)

On this 13TH day of June, 2008, before me personally appeared Ché Murren the MANAGING MEMBER of JEMSTONE, LLC, to me known, to be the individual who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year last above written.



Laurel Haverly
NOTARY PUBLIC
Printed Name: Laurel Haverly
Residing at ACOMA
My commission expires 8/31/2010

For reference only, not for re-sale.



DATE: October 14, 2014

TO: Ronda Cornforth, Senior Real Estate Officer
Department of Public Works, Facilities Division

FROM: Dolores Stegeman, Interim T&D Manager *DJS*
Tacoma Power

SUBJECT: Street Vacation Request No. 124.1345
(Proctor – South of 19th Street)

Tacoma Power has reviewed the above-referenced street vacation and has the following comments:

1. Tacoma Power currently operates a major transmission line traveling north-south within the area requested for vacation.
2. Tacoma Power requests a perpetual easement over, under, across, and through the easterly 20 feet of the existing right-of-way as currently described for installation, maintenance, repair, modification, and replacement of its transmission and distribution infrastructure.
3. The easement shall include unlimited access to the easement area at all times.
4. To avoid conflicts with existing facilities and access, Tacoma Power requests review and approval rights for any proposed improvements, including grade changes, within the easement area.
5. Any relocation or adjustment of existing Tacoma Power infrastructure requested by the grantor and acceptable to Tacoma Power will be done by Tacoma Power at the expense of the grantor.
6. Damage to any Tacoma Power facilities within the easement area by the grantor, or its agents, assigns, employees, or invitees shall be repaired by Tacoma Power at the expense of the grantor.
7. No permanent structures shall be placed within the easement area.
8. Tacoma Power shall have the right to place and modify Tacoma Power facilities, including overhead and underground structures, wires, conduits, cables, and appurtenant equipment within the easement area without prior approval of the grantor.



DATE: October 15, 2014

TO: Ronda Cornforth, Senior Real Estate Specialist
Department of Public Works, Facilities Division

FROM: Tony Lindgren, Water Distribution Engineering Manager
Tacoma Water

SUBJECT: Street Vacation Request No. 124.1345

Tacoma Water has reviewed the above-referenced street vacation and has the following comments:

1. Tacoma Water requests a perpetual, 20 foot, easement over, under, across, and through the entire length of the existing right-of-way for a water main, fire hydrants, service laterals, meters and other necessary Tacoma Water facilities.
2. The easement shall include unlimited access to the easement area.
3. To avoid conflicts with existing facilities and access, Tacoma Water requests review and approval rights for any proposed improvements within the easement area.
4. Any relocation or adjustment of Tacoma Water infrastructure requested by the grantor and approved by Tacoma Water will be done by Tacoma Water at the expense of the grantor.
5. Damage to any Tacoma Water facilities within the easement area by the grantor, or its agents, assigns, employees, or invitees shall be repaired by Tacoma Water at the expense of the grantor.
6. No permanent structures shall be placed within the easement area.
7. No grading will be allowed within the easement area without prior consent of Tacoma Water. No removal of material over Tacoma Water infrastructure will be allowed which will produce a depth of cover of less than 3 feet. No filling over Tacoma Water infrastructure will be allowed which will produce a depth of cover of greater than 5 feet.

Return to:
Right-of-Way Department
Qwest Corporation dba CenturyLink QC
1208 NE 64th St., 4th Floor
Seattle, WA 98115

RECORDING INFORMATION ABOVE
EASEMENT

The undersigned Grantor, *JEMSTONE, LLC* for and in consideration of "MUTUAL BENEFITS" and other good and valuable consideration, do hereby grant and convey unto Qwest Corporation, a Colorado corporation d/b/a CenturyLink QC ("CenturyLink"), whose address is 100 CenturyLink Drive, Monroe, LA 71203, Attention: Construction Services, its permitted successors, assigns, lessees, licensees, and agents a perpetual easement to construct, reconstruct, modify, change, add to, operate, maintain, and remove such telecommunications facilities, and electrical facilities as needed for Qwest equipment, which may include power vaults or power transformers, provided by the local power utility and their contractors, and other appurtenances, from time to time, as Grantee may require upon, over, under and across the following described land situated in the County of PIERCE, State of *Washington*, which the Grantor owns or in which the Grantor has any interest, to wit:

An easement which is described in its entirety on EXHIBIT "A" which is attached hereto and by this reference made a part hereof, all of which is situated in the NW ¼ of the NE ¼ of Section 12, Township 20North, Range 2East of the Willamette Meridian. See Exhibits A & B Attached Hereto And By This Reference Made A Part Hereof.

*NW¼ of the NE¼ of SECTION 12, TOWNSHIP 20NORTH, RANGE 2EAST, W.M.
Tax Parcel # 0220121017,0220121026,0220121038,0220121160
ROW Reference #:*

Grantor further conveys to Grantee the following incidental rights:

Grantor further conveys to Grantee the right of ingress and egress to and from the Easement Area during all periods of construction, maintenance, installation, reinforcement, repair and removal over and across Grantor's lands with the right to clear and keep cleared all trees and other obstructions as may be necessary for Grantee's use and enjoyment of the Easement Area.

Grantee shall indemnify Grantor for all damages caused to Grantor as a result of Grantee's negligent exercise of the rights and privileges herein granted. Grantee shall have no responsibility for pre-existing environmental contamination or liabilities.

Grantor reserves the right to occupy, use and cultivate said easement for all purposes not inconsistent with the rights herein granted.

Grantor Initials _____

Page 1 of 4

Grantor covenants that Grantor is the fee simple owner of said land or in which the Grantor has any interest and will warrant and defend title to the land against all claims.

Grantor hereby covenants that no excavation, building, structure or obstruction will be constructed, erected, built or permitted on said Easement Area and no change will be made by grading or otherwise to the surface or subsurface of the easement area or to the ground immediately adjacent to the easement area.

The rights, conditions and provisions of this easement shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto.

Any claim, controversy or dispute arising out of this Agreement shall be settled by arbitration in accordance with the applicable rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall be conducted in the county where the property is located.

Dated this _____ day of _____, 2014.

GRANTOR: JEMSTONE, LLC

By _____

Name _____

Title _____

STATE OF WASHINGTON }
 }ss
COUNTY OF PIERCE }

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by _____ the _____ of JEMSTONE, LLC

[NOTARY SEAL]

Notary Public

My commission expires: _____

Resides at: _____

R/W #: _____ Job #

Exchange: _____ County: PIERCE

SECTION 12, TOWNSHIP 20NORTH, RANGE 2EAST, W.M.

EXHIBIT 'A'
10' CENTURYLINK EASEMENT
Page 3 of 4

LEGAL DESCRIPTION
10'X40' CENTURYLINK EASEMENT
BASELINE Engineering Job# 96-140

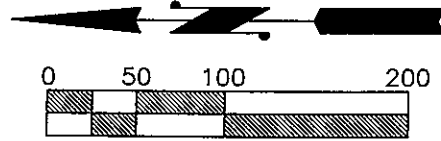
THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 12; TOWNSHIP 20 NORTH;
RANGE 02 EAST W.M. PIERCE COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 12; THENCE NORTH 88°02'16" WEST, ALONG THE
NORTH LINE OF SAID SUBDIVISION, A DISTANCE OF 1,320.00 FEET; THENCE SOUTH 01°31'53" WEST, A DISTANCE OF
35.00 FEET TO AN INTERSECTION POINT OF THE SOUTH MARGIN LINE OF SOUTH 19TH STREET WITH THE EAST MARGIN
LINE OF PROCTOR STREET; SAID POINT BEING THE TRUE POINT OF BEGINNING OF HEREIN DESCRIBED EASEMENT,
THENCE CONTINUING SOUTH 01°31'53" WEST ALONG SAID EAST MARGIN LINE, A DISTANCE OF 10.00 FEET; THENCE
NORTH 88° 02'16" WEST, A DISTANCE OF 39.23 FEET TO THE WEST MARGIN LINE OF SAID PROCTOR STREET; THENCE
NORTH 02°51'53" WEST, ALONG SAID WEST MARGIN LINE, A DISTANCE OF 10.04 FEET TO THE SOUTH MARGIN LINE OF
SAID SOUTH 19TH STREET; THENCE SOUTH 88°02'16" EAST ALONG SAID SOUTH MARGIN LINE, A DISTANCE OF 40.00
FEET TO THE TRUE POINT OF BEGINNING.

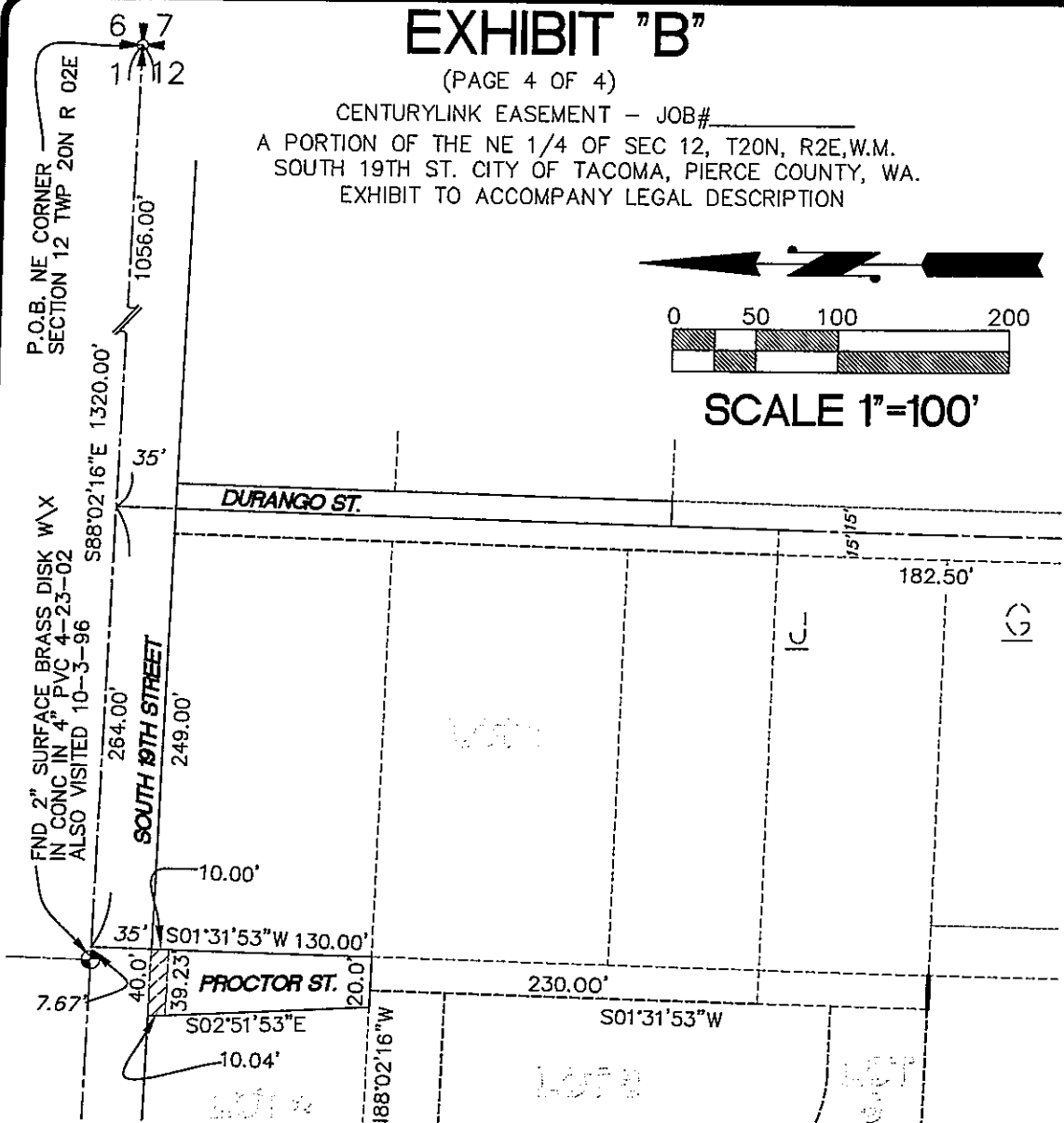
EXHIBIT "B"

(PAGE 4 OF 4)

CENTURYLINK EASEMENT - JOB# _____
 A PORTION OF THE NE 1/4 OF SEC 12, T20N, R2E, W.M.
 SOUTH 19TH ST. CITY OF TACOMA, PIERCE COUNTY, WA.
 EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION



SCALE 1"=100'



BASELINE ENGINEERING, INC.

Land Development Professional Services

(253)565-4491 • Seattle (206)824-1205 • FAX (253)565-8563

Land Planning & Use • Engineering • Surveying

1910-64th Avenue West • Tacoma, WA 98466

DRAWN BY	KRF	DATE	7/7/14	JOB NO.	96-140
CHECKED BY	TCF	SCALE	1"=100'	SHEET	1 OF 1



September 26, 2014

City of Tacoma
Public Works/ Real Property Services
Attn: RJ Cornforth
747 Market Street, TMB Room 737
Tacoma, Washington 98402

RE: Street Vacation Request No. 124.1345 – A Portion of Proctor Street laying South of South 19th Street

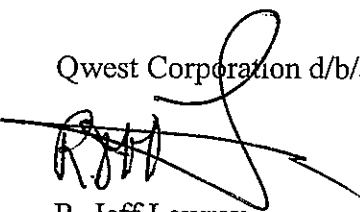
Dear Mr. Cornforth,

This letter is in response to the notice for the above referenced proposal. Please be advised that **Qwest Corporation d/b/a CenturyLink QC currently has NO facilities in the area addressed by this action, and has no objections to said proposal.**

Please feel free to contact me as needed; I can be reached on 206-345-0333 or R.Lawrey@CenturyLink.com. Thank you for your time.

Sincerely,

Qwest Corporation d/b/a CenturyLink QC



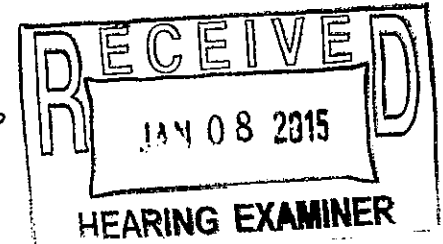
R. Jeff Lawrey
Manager, Right-of-Way
Western Washington
1208 NE 64th St. Rm 401
Seattle, WA 98115

1208 NE 64th St., 4th floor
Seattle, WA 98115-6722
www.centurylink.com

Exhibit 10



TO: Phyllis Macleod, Hearing Examiner
FROM: Ronda Cornforth, Sr. Real Estate Specialist *RC*
SUBJECT: **Jemstone Street Vacation Petition 124.1345**
Memorandum of minor correction
DATE: January 8, 2015



Real Property Services been made aware of 3 minor typographical errors contained within the Preliminary Report submitted in preparation of the Jemstone Street Vacation Petition and Public Hearing held today, January 8, 2014, that I would like to correct of record.

- 1.) Page 1, Section B, subparagraph 1 – Legal Description of Vacation:
 - a. First paragraph, 3rd line – should read “Range 02 East” and not Range 03 East
 - b. Second paragraph, 1st line – should read “as described in” and not describe

Fully corrected as follows:

All that portion of South Proctor Street lying southerly of South 19th Street within the Northeast and Northwest Quarters of the Northeast Quarter of Section 12, Township 20 North, Range 02 East, W.M. more particularly described as follows:

All that portion of South Proctor Street as described in paragraph 2 of City of Tacoma Deed No. 1763 recorded under Auditor File No. 1489549, records of Pierce County Auditor, lying southerly of a line 35.00 feet South and parallel with the North line of said Section 12.

Situate in the City of Tacoma, County of Pierce, State of Washington.

- 2.) Page 5, Section J, subparagraph 2 – Tacoma Power
 - a. Tacoma Power staff contact phone number for Thad Glassy should read as “(253) 502-8704” and not (253) 502-87047.

Fully corrected as follows:

TACOMA POWER

- a. Please contact Thad Glassy at (253) 502-8704 regarding Tacoma Power's comments.
- b. Tacoma Power has no objection; however, they will require a separate easement to be executed and recorded concurrently with the vacation Ordinance and not as a reservation therein.

Please accept this memorandum to correct these 3 minor errors within the Preliminary Report.

ORIGINAL

Ex. 11



TO: Phyllis Macleod, Hearing Examiner
FROM: Ronda Cornforth, Sr. Real Estate Specialist
SUBJECT: **Jemstone Street Vacation Petition 124.1345
Memorandum of Amendment**
DATE: July 16, 2015

Real Property Services been been advised by legal counsel to consolidate Sections 6.A.2 and 6.A.3 to be a reservation within the Ordinance of a general City Utility Easement to read as follows:

Section 6, A.2. CITY OF TACOMA

A general Utility Easement shall be reserved for the benefit of all City of Tacoma infrastructure over the entirety of the requested vacation area.

The Ordinance shall read as follows:

An easement is reserved over the vacation area to the City of Tacoma for use specifically by the City's Department of Public Utilities as well as for any and all City utility purposes generally.

In the event that City utilities are relocated, formally abandoned and/or removed from the retained easement area and the easement is deemed, in the City's sole discretion, to be no longer necessary, the City shall, upon formal request, relinquish the no longer necessary easement, or any part thereof, as retained herein.

Background:

While it had been the Department of Utilities intent to secure additional rights for protections of future development by execution of separate documentation in lieu of reservations within the ordinance, it has since been determined by the City's legal department that such is not authorized under the provisions of the RCW35.79.030 which states in part: "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." Such provision does not authorize the City to require execution of separate documentation.

ORIGINAL

EXHIBIT 12