

**DEPARTMENT OF TRANSPORTATION
ROAD SERVICES DIVISION
REPORT TO THE HEARING EXAMINER**

PUBLIC HEARING: March 15, 2018 at 10:00 am or shortly thereafter

**King County Hearing Examiner's Office
516 Third Avenue, Fred Conference Room, 12th Floor
Seattle, WA 98104**

February 15, 2018

PETITION TO VACATE: Portion of 103rd Avenue SW (H. Steen Road – County Road 1604)

Transportation File: V-2694

Proposed Ordinance: 2018-0011

A. GENERAL INFORMATION

Petitioner(s): Erinn McIntyre
2005 E. Crescent Drive
Seattle, WA 98112

Location of Road: Portion of 103rd Avenue SW (H. Steen Road – County Road 1604)
Thomas Brothers Page 623
Zoning – RA 5

Adjacent Parcels: 1923039120 and 1923039119

B. HISTORY

R.C.W. 36.87 establishes the right of property owners to petition a county legislative body for the vacation of road rights-of-way. K.C.C. 14.40 establishes King County policies and procedures for accomplishing same.

The petition was filed on May 11, 2015 with the Clerk of the King County Council. The Department of Transportation, Road Services Division (Roads) circulated the request for vacation, soliciting comments from the agencies listed below. The petition requested vacation of a portion of 103rd Avenue SW (H. Steen Road – County Road 1604) located on Vashon Island in the SE quarter of Section 19, Township 23 N, Range 3 E, W.M. and Thomas Brothers Page 623.

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Petitioner submitted a revised petition on April 1, 2017 enlarging the area of vacation within 103rd Avenue SW (H. Steen Road – County Road 1604). Petitioner owns both parcels abutting the subject right-of-way.

A search of records by staff found that King County acquired the subject right-of-way by quit claim deed in 1922 recorded under King County Recording Number 1625175 as part of the establishment of H. Steen Road, County Road No. 1604. Deeds were not obtained for all portions of the planed right-of-way and the road was never constructed.

The Deed to King County reflects consideration of one dollar “and also of benefits to accrue to them by reason of laying out and establishing a public road through their property.” No record has been located reflecting payment of public funds for the acquisition.

The right-of-way is unopened and unimproved. No record has been located reflecting expenditure of public funds for improvement or maintenance of the right-of-way.

C. NOTICE

Notice of this hearing was posted at the termini of the proposed vacation area on February 16, 2018 and published in accordance with requirements of RCW 36.87.060.

D. REVIEWING AGENCIES AND COMMENTS

Roads did not receive responses from Wave Broadband, Vashon Fire Department, Vashon-Maury Island Parks District or Vashon Community Council, or the following King County agencies: Department of Executive Services, Real Estate Services Division; and the Department of Natural Resources and Parks, Open Space and Water and Land Divisions. A copy of the Final Notice is included as Exhibit #9.

ATTACHMENTS	AGENCY	COMMENT
1.	Puget Sound Energy	Response dated 6/20/2016. No PSE gas or electric facilities within the proposed vacate area at this time.
2.	Frontier Communications Northwest, Inc.	Response dated 6/14/2016. This is outside of Frontier's territory. We have no issues with the vacation.

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3.	CenturyLink	Response dated 8/11/2016. No objections, with the stipulation that if Centurylink Facilities are found within the vacated area as described, the Applicant will relocate the facilities at Applicant's expense and within guidelines set by CenturyLink and all regulating entities. All relocations will be done under the supervision of a CenturyLink inspector.
4.	Comcast	Response dated 8/2/2016. Comcast has no plant in this area.
5.	Heights Water District	Response dated 6/15/2016. Heights Water district has no concerns regarding the proposed vacation.
6.	DPER	Response dated 8/3/2016. No objection.
7.	DNRP- Parks Div.	Response dated 7/22/2016. Parks has no objections to this request. Okay to vacate.
8.	DNRP-Wastewater	Response dated 6/29/2016. King County Wastewater Treatment Division does not anticipate any impact to property/ facility.
9.	DOT- CIP & Planning Section	Response dated 7/1/2016. From a transportation planning perspective, we have no objection to approving this road vacation. There are no short or long term transportation improvements planned for this right of way, and no funded County road improvements in the surrounding area. This right of way is not a documented transportation need for the present or future county road system.
10.	DOT- Roads Maintenance	Response dated 6/16/2016. Road Maintenance reviewed the vacation request and finds that the right of way is neither open nor maintained and there are no plans to do so; the only current access to this portion of the Steen Road Right of way is through a private road; the properties adjacent to the vacation area are owned by the same party; a Critical Areas Notice is on title on adjacent properties noting that there are soil erosion and steep slope hazards. Any proposed clearing or grading of the right of way will require approval from DPER
11.	DOT- Traffic Engineering	Response dated 6/28/2016. No objection to this proposed vacation.
12.	DOT- Transit	Response dated 7/11/2016. Transit has conducted a review of the above referenced street vacation. We've concluded that the subject vacate will have no effect on our facilities or operations.

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13.	DOT-Enviro Unit	Response dated 7/28/2016. The Environmental Unit does not have any comments regarding this road vacation.
14.	EXEC- Landmarks & Heritage	Response dated 8/10/2016. Reviewed data and files for the location and the adjacent parcels and find no indications of historical resources that would be affected by this road vacation.

E. OTHER COMMENTS:

F. COUNTY ROAD ENGINEER RECOMMENDATION

The Department of Transportation recommends vacating the right-of-way. The subject right-of-way is useless to the County Road System. The full report of the County Road Engineer is included as Exhibit #16.

G. COMPENSATION

The County Road Engineer recommends that the County accept the non-monetary benefits of reduction of liability and obligation, the avoided costs of management and the additional tax revenue that will result from vacating this segment of useless right-of-way as full compensation for the proposed vacation and waiver of any payment by the Petitioner.

Road vacations are a unique activity created and governed specifically by statute and county code. The circumstances, methodology and purpose of road vacations are limited to the statutes and codes from which they arise. RCW 36.87 and King County Code section 14.40 govern this action.

Under KCC 14.40.020, compensation may be required as a condition of a road vacation. The requirement is discretionary, not mandatory. If the county council chooses to require compensation for a road vacation, it “may consider as a factor the assessed land value of the parcels adjacent to the county right-of-way proposed for vacation in addition to the factors listed in RCW 36.87.120.”

The compensation analysis begins with the assessed value of the properties adjacent to the subject right-of-way. KCC 14.40.020. Petitioner’s property is currently zoned RA-5. The properties surrounding the remainder of H. Steen Road are zoned RA-5 or RA 2.5. The right-of-way is on Vashon Island, but not waterfront or near the water.

The averaged assessed value on a square footage basis for the subject right-of-way is approximately \$0.33 per square foot.

Application of this average assessed value of \$0.33 per square foot to the 22,663 square feet of vacation area results in a value of \$7,478.79. However, when looking at the average assessed values for parcels, consideration should be given to the fact that as a stand-alone strip of land

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containing approximately 22,663 square feet in an area zoned RA5, the vacation area would not be usable as a stand-alone building lot.

The Petitioner owns the two parcels abutting this section of right-of-way. One parcel is undeveloped and the other is improved with a single family residence. Combined, the total acreage of Petitioner's property is approximately 11.63 acres. If the vacation is approved and the vacation area added to the parcels, the zoning would not allow the properties to be divided beyond the current two parcels. Additionally, there are significant environmental restrictions that would likely limit development, subdivision or improvement of the parcels. The larger parcel, 192303-9120 is deemed unbuildable according to the King County Department of Assessments. It is mostly covered with steep slope hazard areas and erosion hazard with some seismic hazard. The area within the right-of-way appears to be within a large and deep gully. See Exhibit 14. The smaller parcel improved with the residence, 192303-9119, has a sensitive area notice on title (Exhibit #11). Therefore, the vacation would have little to no impact on development possibilities for the parcels. For these reasons, the valuation of \$0.33 per square foot is not considered directly applicable to the vacation area.

Unlike tax title parcels or other property owned by the county, sections of right-of-way do not have a readily open market. Vacation, pursuant to RCW 36.87, 58.17 and KCC 14.40, is the only method to eliminate the county's interest in useless county right-of-way and the only method by which the county may divest itself of the duty and liability of maintaining county roads. *See Attorney General Opinion 57-58 No.3, March 13, 1957.* Except in the very limited circumstance of vacating right-of-way abutting bodies of water (RCW 36.87.130), the county is not free to transfer the vacated right-of-way to anyone other than the abutting property. Therefore, the area to be vacated does not have a ready market for its sale. The only party that can acquire the vacated area from the county is the Petitioner. The county cannot sell the vacation area on an open market.

RCW 36.87.120 allows the County to adjust the appraised value of proposed vacation area "to reflect the value of the transfer of liability or risk, the increased value to the public in property taxes, the avoided costs for management or maintenance, and any limits on development or future public benefit."

The County Road Engineer recommends that the County accept the non-monetary benefits of reduction of liability and obligation, the avoided obligations of enforcement and management, plus the addition of tax income as compensation for the proposed vacation. In reaching this recommendation, the following factors have been considered:

- The right-of-way is unopened and unimproved and no public funds have been expended to date for its maintenance or repair;
- The right-of-way is imposed over an area with no useful connectivity to the county road system and it is unlikely that it would ever be developed as a road;
- The right-of-way is imposed over an area with environmentally sensitive slopes and erosion risk making it less suitable for use as a road;

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- The right-of-way is imposed over an area within a large deep gully with steep slopes making it a potential hazard to persons;
- Upon vacation of this section of unopened, unimproved and unmaintained right-of-way the County shall receive monetary benefit as the vacation area is added to the property tax rolls;
- Upon vacation, Roads is relieved of obligation and liability associated with maintenance, improvement, enforcement, monitoring and management of the right-of-way;
- Upon vacation, Roads is relieved of liability that can arise as an owner of vacant and unattended land; and
- Retention of this right-of-way provides no other benefit to the County.

Roads maintains approximately 1,500 miles of roadway within unincorporated King County. The total amount of unopened unimproved road right-of-way in the County is not known.

Roads has limited staff hours available; diverting Roads staff to respond to calls associated with unopened right-of-way prevents Roads staff from addressing critical daily work on the County's contiguous road system. Roads supports the vacation of unopened unimproved road right-of-way that is useless to the county road system in order to allow the Roads to focus on its core responsibility of maintaining improved county roads.

Furthermore, the County's ownership of open and unopened right-of-way can give rise to tort liability for the County. Vacation of this unopened road right-of-way reduces the County's exposure to liability claims. This section of unopened road right-of-way is right in the middle of Petitioner's parcels. Every time the Petitioner, her guests or invitees travel between the parcels, they are crossing the road right-of-way.

King County Office of Risk Management Services informed Roads that as of March 2017 it had closed 428 claims on behalf of Roads for the five year period of January 1, 2012 through December 31, 2016. Of the 428 claims closed, 152 (64%) were closed with payments. In 2016, the Office of Risk Management Services paid \$3,022,232 to resolve 21 claims on behalf of Roads and closed 2016 with 42 additional open claims remaining.

Risk Management Services also reports that the County routinely pays out in excess of \$50,000 for a simple pedestrian trip and fall occurring in maintained county areas such as park-and-rides and sidewalks. The County has crews to maintain and service such improved areas and the general public will report hazards within an improved area. Whereas, not only does the county not know of all unopened and unimproved road right-of-way, it does not regularly patrol or monitor unopened right-of-way. A hazardous condition could arise on unopened right-of-way and the County wouldn't know until a claim is filed.

This specific area of unopened right-of-way is problematic as it is inaccessible from public right-of-way. It is a stand-alone section of right-of-way surrounded by private property. Even if Roads staff wanted to monitor the condition of this right-of-way, it could not do so without crossing private property.

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The County has the liability risks associated with simply being an owner of vacant land: hazardous materials dumped on unopened road right-of-way can migrate to adjacent properties exposing the County to potential trespass claims; hazard trees on unopened road right-of-way can fall on adjacent property damaging structures or harming residents; and attractive nuisances can be erected resulting in claims for personal injury. This section of unopened road right-of-way partially lies within a large steep sided gully within a heavily treed area. The potential for personal injury is significant.

Every piece of unopened right-of-way held by Roads carries with it the real potential liability for injuries to persons and property. The cost of just one claim can far surpass the straight calculated compensation for the vacation of this road.

Roads seeks to reduce potential obligations, opportunity costs, and liability risk while benefiting the citizens of King County through the vacation of this portion of right-of-way. The dollars Roads might obtain from the Petitioner through the vacation of this portion of right-of-way is insignificant in comparison to the County's potential liability from its mere retention.

The other factors included in RCW 36.87.120 to offset monetary compensation, limits on development and future public benefit, are briefly highlighted here. Vacation of this useless right-of-way will not change the limits or increase the likelihood of development of the abutting properties. The addition of the vacation area to the Petitioner's property does not change the use or potential division of the property. Only one parcel is currently occupied by and used as a single family residence. Both parcels are heavily impacted by environmentally sensitive areas. The subject area is of limited use or function. The majority of the vacation area is within a gully with steep slopes. Development on the Petitioner's property and within this portion of right-of-way is highly limited. The vacation will not improve the development potential.

The public is benefited by reducing the cost and exposure associated with Roads retaining this right-of-way and the private property owners assuming full responsibility of this area and payment of the associated property taxes and assessments.

Throughout the county there are segments of right-of-way that are useless to the county road system. The County has many unopened short useless segments of right-of-way that will never be made into a county road. However, the County has the burdens of ownership and risk, which are risks to the County with no public benefit. Vacation is the only mechanism to move these useless segments of right-of-way out of the County inventory and into private ownership. The subject right-of-way is one of the useless segments of right-of-way that is better in private ownership than retained by the County.

It is the recommendation of the County Road Engineer and the Director of Roads that this right-of-way be vacated and any associated monetary compensation be waived. The reduction in liability and obligations for management and enforcement are valuable consideration for the vacation of this right-of-way.

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H. EXHIBITS

Exhibit #	DESCRIPTION
1.	DOT Report to the Hearing Examiner February 15, 2018 with 14 attachments.
2.	Petition transmittal letter dated May 11, 2105 to the Department of Transportation from the Clerk of Council.
3.	Petition for Vacation of a County Road. Received May 11, 2015.
4.	Vicinity Map
5.	Site map depicting vacation area.
6.	Aerial Map showing vacation area
7.	Deed abstract Quit Claim to King County June 13, 1922
8.	Letter to Petitioner dated March 17, 2016 acknowledging receipt of petition and explaining process.
9.	Copy of final agency notice sent to stakeholders on August 2, 2016, including comment sheet, vicinity map, and maps of vacation area.
10.	Revised Petition received April 1, 2017
11.	Sensitive Area Notice on Parcel 1923039119 – recording number 1999110100112
12.	King County Department of Assessments: eReal Property report for Parcel 192303-9120 reporting parcel unbuildable
13.	Site map showing vacation area with iMap environmentally sensitive areas layer
14.	Photos of portion of subject right-of-way adjacent to Parcel 192303-9120
15.	Letter dated July 13, 2017 to petitioner with a copy of the County Road Engineer's Report.
16.	County Road Engineer's Report
17.	Ordinance transmittal letter dated October 11, 2017 from King County Executive to Councilmember Joe McDermott. (note: signed copy unavailable)
18.	Proposed Ordinance 2017-xxxx.
19.	Fiscal Note.
20.	Affidavit of posting for hearing with notice of hearing.
21.	Letter dated January 30, 2018 to Vashon Maury Island Land Trust transmitting a copy of the County Road Engineer Report sent pursuant to KCC 14.40.015 (C)
22.	Letter dated January 30, 2018 to Michael and Katrina Lande transmitting a copy of the County Road Engineer Report sent pursuant to KCC 14.40.015 (C)
23.	Letter dated January 30, 2018 to Gary Peterson transmitting a copy of the County Road Engineer Report sent pursuant to KCC 14.40.015 (C)
24.	Affidavit of Publication for date of hearing – to be supplied by Clerk of the Council.

G. ISSUES:

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Exhibit #24 Affidavit of Publication is typically received either on the day of the hearing or shortly thereafter. The Clerk of Council will forward a copy of the affidavit to both the Examiner's Office and Roads when they receive it.

Mailing List Road Vacation File V-2694

Petitioners

Erinn McIntyre
2005 E. Crescent Drive
Seattle, WA 98112
(206) 715-3381
erinnmcintyre@yahoo.com

Other Properties to receive CRE Report - KCC 14.40.015

Gary Peterson
15305 Vashon Hwy SW
Vashon Island, WA 98070

Vashon Maury Island Land Trust
PO Box 2031
Vashon, WA 98070

Michael and Katrina Lande
14527 Vashon Hwy SW
Vashon, WA 98070

Stakeholders

Puget Sound Energy
P.O. Box 97034
MS : EST-06W (AEM)
Bellevue, WA 98009
Rightofway@pse.com
(425) 462-3436

Heights Water District
P.O. Box 820
Vashon, WA 98070
Attn: Mary Ann Stipp
maryann@heightswater.org

Wave Broadband
10427 MLK Jr Way S
Tukwila, WA 98178
Attn: Jim Biggs
jbiggs@WaveBroadband.com
(206) 926-2906

Clerk of the Council
MS - KCC-CC-1200

Vashon Community Council
kyle@cruverdesign.com

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Vashon Fire District
administration@vifr.org

Vashon Parks District
info@vashonparks.org

King County DNRP - Parks and Recreation
Division
MS - KSC-NR-0700
Attn: Robert Nunnenkamp, Property Agent III
Capital Planning and Land Management
Phone: (206) 477-4581
Robert.Nunnenkamp@kingcounty.gov

King County DOT - Road Services Division
MS – KSC-TR-0313
Attn: Leslie Drake, Road Property Program
Manager
(206) 477-7764
Leslie.Drake@kingcounty.gov

King County DES – Facilities Management
Division
MS - ADM-ES-0830
Attn: Michael Kulish, Supervisor
Real Estate Services Section
(206) 477-9375
Michael.Kulish@kingcounty.gov

King County DOT - Road Services Division
MS – KSC-TR-0313
Attn: Cindy Torkelson, Program Manager II
Strategic Business Operations Section
(206) 477-3638
Cindy.Torkelson@kingcounty.gov

King County DNRP - Wastewater Treatment
Division
MS - KSC-NR-0512
Attn: Trevor Carr, Real Property Agency III
Environmental and Community Services
Section
Regulatory Compliance & Land Acquisition
Services
(206) 477-5452
Trevor.Carr@kingcounty.gov

King County DNRP - Water & Land
Resources Division
MS - KSC-NR-0600
Attn: Andrew McDonald, Engineer III
Storm Water Services
Asset Management Unit
(206) 477-4768
Andrew.Mcdonald@kingcounty.gov

King County DNRP - Water & Land Resources
Division
MS - KSC-NR-0600
Attn: Robert Jackson, Title & Escrow Officer
Rural and Regional Services Section
Open Space Acquisitions
(206) 477-4604
Robert.Jackson@kingcounty.gov

King County DOT - Road Services Division
MS - KSC-TR-0313
Attn.: Rob Fritz, Supervising Ecologist
Maintenance Section
Environmental Unit
(206) 477-2397
Rob.Fritz@kingcounty.gov

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King County DOT - Road Services Division
MS – RSD-TR-0100
Attn.: Jim Ballweber, Site Development
Specialist II
Maintenance Section
Environmental Unit
(206) 477-2374
Jim.Ballweber@kingcounty.gov

King County DOT – Transit
MS - KSC-TR-0431
Attn: Jennifer Lee, Real Property Agent III
Design & Construction
Real Estate/Land Use/ Environmental Planning
Phone: (206) 477-5925
Jennifer.Lee@kingcounty.gov

King County DPER
MS – SNO-DP-0210
Attn: Kim Claussen, Program Manager III
Current Planning Section
(206) 477-0329
Kim.Claussen@kingcounty.gov

King County DOT - Road Services Division
MS - KSC-TR-0313
Attn.: Jim Ishimaru, Transportation Planner
III
Strategic Business Operations Section
Policy, Planning & Grant Administration
(206) 477-3623
Jim.Ishimaru@kingcounty.gov

King County DOT - Road Services Division
MS – KSC-TR-0313
Attn: Robert Eichelsdoerfer, Engineer III
Engineering Services Section
Road Design & Traffic Engineering
(206) 477-3652

Robert.Eichelsdoerfer@kingcounty.gov
King County DNRP
MS – KSC-NR-0700
Attn: Ivy Freitag, Preservation Planner
Historic Preservation Program
(206) 477-7976
Ivy.Freitag@kingcounty.gov

End of Report to the Hearing Examiner

ATTACHMENTS

1 THROUGH 14

AND

EXHIBITS

1 THROUGH 24