

Jefferson County
Board of Commissioners
Agenda Request

To: Board of Commissioners
Mark McCauley, County Administrator

From: Monte Reinders, P.E., Public Works Director 

Agenda Date: October 28, 2024

Subject: A Resolution adopting Hearing Examiner report and recommendations, and expressing Board's intent to vacate a portion of two platted County Rights-of-Way known as Mitchell Street and Duffy Avenue, subject to Petitioner meeting certain conditions

Statement of Issue:

In accordance with JCC 12.10.090, the Board is asked to consider the Hearing Examiner's Report and recommendations (attached) pertaining to a petition to vacate only those portions of unopened Mitchell Street and Duffy Avenue rights-of-way located north and west of the existing (as of 2024) Thorndyke Road right-of-way in the northwest quarter of the northwest quarter of Section 20, Township 27 North, Range 1 East, W.M. The subject rights-of-way are each 30-feet wide as dedicated in the Plat of Goodfellow's Manhattan Beach Tracts, filed on July 8, 1908 and recorded in Volume 2 of Plats Page 122, records of Jefferson County.¹ The subject rights-of-way abut Tax Parcel 954-600-201 owned by Robert Zimmermann and Beth Orling (Petitioner). As shown on the attached parcel map, other than Petitioner, all of the property abutting the subject rights-of-way is owned by Rayonier, which joined in the Petition to Vacate.

Analysis/Strategic Goals/Pro's & Con's:

A public hearing on the road vacation petition was conducted before the Jefferson County Hearing Examiner on July 26, 2024. Based upon the recommendations contained in the County Engineer's report, as well as any comments received from other departments, agencies, and individuals, the Hearing Examiner has recommended that the road vacation be approved subject to Petitioner meeting the following condition:

- Pay all required compensation owed to the County for the vacated right-of-way and administrative process.

Although the official public hearing was conducted by the Hearing Examiner, pursuant to JCC 12.10.130(1) the Board has the discretion to accept public testimony in support or in opposition to the proposed vacation.

¹ Note, Thorndyke Road right-of-way is coincident with Manhattan Avenue right-of-way as platted in the Goodfellow's Manhattan Beach Plat, EXCEPT that the existing Thorndyke right-of-way diverges to the north from platted Manhattan Avenue near the westerly boundary of the plat (see parcel map attached).

Fiscal Impact/Cost Benefit Analysis:

If the Board approves the attached Resolution of Intent to Vacate, then in accordance with JCC 12.10.120, Petitioner will pay compensation for administrative fees and expenses incurred over-and-above staff hours included in the application fee plus \$10,500 as compensation for one-half of the assessed value of the subject rights of way.

Recommendation:

Department of Public Works recommends that the Board adopt the Hearing Examiner's findings and conclusions and approve the vacation of the subject rights-of-way subject to Petitioner meeting the Hearing Examiner's recommended approval condition, with the clarification that compensation to be paid by Petitioner shall include the costs for preparing and recording (by County staff) a Final Resolution approving the vacation of the subject rights-of-way.

Public Works recommends that the Board sign the attached Intent to Vacate Resolution which will commit the Board to adopting a final Resolution which will officially grant the petition to vacate the subject rights-of-way upon verification that Petitioner has met all of the required conditions within one-year. Failure to meet the conditions within that timeframe, or any extension approved by the Board, will result in termination of the vacation process, in which case Petitioner will remain liable for all administrative costs actually incurred by the County.

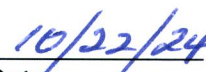
Department Contact:

Colette Kostelec, P.E., Engineer III/Right-of-Way Representative, 385-9218

Reviewed By:



Mark McCauley, County Administrator



Date

**STATE OF WASHINGTON
COUNTY OF JEFFERSON**

**In the Matter of Jefferson County's
Intent to Vacate a Portion of Platted Mitchell
Street and Duffy Avenue Rights-of-Way**

RESOLUTION NO.

WHEREAS, Jefferson County Code Title 12 Public Ways and Places governs Right-of-Way Permits and Places, including road vacations in Chapter 12.10 JCC; and

WHEREAS, Jefferson County Public Works requires permits for any activity by a citizen or business that impacts a county road or public right-of-way, in order to protect the infrastructure and the public's safety and investment. Public Works reviews and processes applications for road approaches, utilities and other right-of-way uses, as well as requests for road vacations

WHEREAS, Jefferson County Public Works has received and reviewed a petition submitted by Robert Zimmermann and Beth Orling ("Petitioner") to vacate only those portions of unopened Mitchell Street and Duffy Avenue rights-of-way located north and west of the existing Thorndyke Road right-of-way in the northwest quarter of the northwest quarter of Section 20, Township 27 North, Range 1 East, W.M., both of which are 30-foot wide rights-of-way dedicated in the Plat of Goodfellow's Manhattan Beach Tracts, filed on July 8, 1908 and recorded in Volume 2 of Plats Page 122, records of Jefferson County and which rights-of-way abut Tax Parcel 954-600-201 owned by Petitioner; and

WHEREAS, the Jefferson County Hearing Examiner held a public hearing on the road vacation petition on July 26, 2024; and

WHEREAS, the Jefferson County Hearing Examiner considered testimony of Petitioner and Public Works staff (no other public testimony or comments provided during hearing); reports from the Department of Community Development and the County Engineer, both recommending approval of the petition; and a Public Works Staff Report documenting compliance with vacation notice requirements; and

WHEREAS, the Jefferson County Hearing Examiner has issued a report dated October 11, 2024 ("Hearing Examiner Report") which contains findings, conclusions and a recommendation that the Board approve the road vacation subject to the Petitioner meeting certain conditions to pay all required compensation owed to the County for the vacated right-of-way and administrative process; and

WHEREAS, Petitioner's compensation owed to the County for the vacated right-of-way includes \$10,500 for one-half of the appraised value, plus administrative fees and expenses; and

WHEREAS, upon verification by the Public Works Department that Petitioner has met all of the conditions identified above, and pursuant to Chapter [36.87](#) RCW and Chapter [12.10](#) JCC, the Board shall adopt a resolution officially granting the petition and vacating and abandoning the subject rights-of-way described above; and

WHEREAS, the administrative expenses are over-and-above the staff time allowed under the application fee, with the clarification that such administrative fees and expenses shall include the costs for preparing and recording (by County staff) a Final Resolution approving the vacation of the subject rights-of-way; and

WHEREAS, if Petitioner fails to meet the required conditions within one year from the date of this Resolution, or any approved extension, the vacation process shall terminate, in which case Petitioner shall remain liable for all administrative costs actually incurred by the County.

WHEREAS, the Jefferson County Board of Commissioners has considered the Hearing Examiner Report and the recommendations contained therein;

NOW, THEREFORE, THE BOARD OF COUNTY COMMISSIONERS OF JEFFERSON COUNTY, WASHINGTON, HEREBY RESOLVE AS FOLLOWS:

Section 1. Whereas Clauses are Findings of Fact. The Jefferson County Board of Commissioners hereby adopts the above "Whereas" clauses as Findings of Fact.

Section 2. Purpose. The Board of County Commissioners hereby adopts the Hearing Examiner's findings, conclusions and recommendations as reflected in the Hearing Examiner's Report dated October 11, 2024.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or section of this Resolution or its application to any person or circumstance is held invalid, the remainder of this Resolution or its application to other persons or circumstances shall be fully valid and shall not be affected.

Section 4. SEPA Categorical Exemption. This Resolution is categorically exempt from the State Environmental Policy Act under WAC [197-11-800 \(19\)](#).

Section 5. Effective Date. This Resolution shall take effect and be in full force immediately upon passage by the Board of County Commissioners.

(SIGNATURES FOLLOW ON THE NEXT PAGE)

ADOPTED and APPROVED this _____ day of October, 2024.

SEAL:

JEFFERSON COUNTY BOARD OF
COUNTY COMMISSIONERS

Kate Dean, Chair

Greg Brotherton, Member

Heidi Eisenhour, Member

ATTEST:

APPROVED AS TO FORM:

Carolyn Gallaway, CMC Date

Philip C. Hunsucker, Date
Chief Civil Deputy Prosecuting Attorney

Before Hearing Examiner
Gary N. McLean

**BEFORE THE HEARING EXAMINER
FOR JEFFERSON COUNTY**

In the Matter of the Petition to Vacate a)
portion of platted Mitchell Street and)
Duffy Avenue rights-of-way, submitted by)

Project File No. 97024001

**ROBERT ZIMMERMAN &
ELIZABETH ORLING,**

**FINDINGS, CONCLUSIONS, AND
RECOMMENDATION OF
APPROVAL TO THE BOARD OF
COUNTY COMMISSIONERS**

Principal Petitioners/Property Owners)
_____)

I. SUMMARY OF RECOMMENDATION.

The petition should be granted, vacating portions of County right-of-way now known as Mitchell Street and Duffy Avenue.

II. JURISDICTION.

This matter came before the Hearing Examiner who is responsible for conducting a public hearing on all petitions for road vacations; reviewing such petitions, the written staff report, and applicable criteria found in JCC 12.10.110; and receiving public testimony in support of or opposing the proposed road vacation. Following the public hearing, the Examiner is tasked with providing a written recommendation to the Board of County Commissioners to grant or deny the petition, with any conditions of approval. (*See JCC 12.10.080*).

III. RECORD.

Exhibits entered into evidence as part of the record, and an audio recording of testimony provided at the public hearing, are maintained by the Jefferson County Department of Public Works, in accord with applicable law. In this Recommendation, materials included

**RECOMMENDATION TO APPROVE PETITION FOR
ROAD VACATION – PORTIONS OF MITCHELL
STREET AND DUFFY AVENUE –
PROJECT FILE NO. 97024001**

**GARY N. MCLEAN
HEARING EXAMINER
FOR JEFFERSON COUNTY**

IV. FINDINGS OF FACT.

1. Any statements of fact or findings set forth in previous or subsequent portions of this Recommendation that are deemed to be findings of fact are hereby adopted and incorporated herein as such. Captions are used for some groups of findings but should not be construed to modify the language of any finding, as they are only provided to make it easier for readers to identify some of the key topics addressed in this Recommendation.

2. The portions of Mitchell Street and Duffy Avenue at issue in this road vacation petition are located west of Thorndyke Road, which is inland and west of Hood Canal, near the principal-petitioner's home, addressed as 2722 Thorndyke Road, on tax parcel no. 954-600-201, in unincorporated Jefferson County. The rights-of-way to be vacated essentially form the northern and western border of Petitioner's triangular parcel, with Rayonier Forest Resources, LP/Pope Resources ("Rayonier") owning property on the other side of the subject right-of-way. (See *Engineer's Report, Findings on page 1-2; Staff Report, page 1; Ex. C, Petition for Vacation; and Ex. A, Vicinity Map and parcel map, showing rights-of-way proposed for vacation, a copy of which is republished below*).



EXHIBIT A - Vicinity map and parcel map showing rights-of-way proposed for vacation

RECOMMENDATION TO APPROVE PETITION FOR
ROAD VACATION – PORTIONS OF MITCHELL
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HEARING EXAMINER
FOR JEFFERSON COUNTY

1 9. Neither of the subject rights-of-way have ever been opened as a public road or been
2 maintained by Jefferson County. Therefore, the subject rights-of-way meet the definition
3 provided in JCC 12.10.020 for "Class A" road, namely a road "*established, dedicated to,*
4 *deeded to, or otherwise established by the county for which no public expenditures have been*
made in the acquisition, improvement, or maintenance of same except those roads platted
prior to March 12, 1904, which remained unopened for public use for a period of five years
after authority was granted for opening them." (*County Engineer's Report, page 2*).

5 10. The subject rights-of-way do not provide for overall area or neighborhood circulation
6 for the general public, nor is there any anticipated future need for this right-of-way to serve
7 the general public. The southern portion of Duffy Avenue right-of-way has steep slopes and
8 benches indicating possible past landslide activity. (*County Engineer's Report, page 2; See*
Exhibit D, contour/lidar map).

9 11. As credibly explained in the unrebutted Engineer's Report, RCW 36.87.040 and JCC
10 12.10.050(2)(e) require the County Engineer to give an opinion as to whether the public will
11 benefit by the vacation; however, neither provide guidance as to what might be considered a
12 "public benefit" when vacating a public right-of-way. The legislative body is held to be the
13 proper entity to weigh public benefit, and there is a presumption that an ordinance approving
14 a street vacation was validly enacted for a public purpose (*London v. Seattle*, 93 Wn.2d 657
15 (1980)). In the absence of any need for a road right-of-way for the benefit of the general
16 public (circulation, trails, utilities, etc.), typically any benefit would accrue to the property
17 owners with frontage on the vacated right-of-way. These benefits might include additional
18 building space, room for septic systems, green-belt buffer, the ability to keep the public from
19 trespassing on their property, or other benefits. Benefits to the public and County could
20 include reduced road maintenance costs, reduced liability for managing public right-of-way
21 (such as garbage dumping, timber theft, danger trees, or abandoned vehicles), and increased
22 property tax. All of these reasons have been used in the past to support road vacations and
could support a finding of public benefit for the vacation of the subject rights-of-way.
(*County Engineer's Report, on page 2*).

18 12. As provided in WAC 197-11-800(2)(i), road vacation matters are exempt from SEPA
19 review.

20 13. Staff confirmed that all public notices were provided in accord with applicable law,
21 and that no one submitted any comments or questions that would serve as a basis to deny the
22 requested petition. (*Staff Report; Exhibits 2, 3, 4, and 5, related to notice and comments;*
Testimony of Ms. Kostelec).

23 14. As noted above, no one submitted any written comments or testimony during the
24 public hearing process opposing the pending road vacation petition.

25
26 **RECOMMENDATION TO APPROVE PETITION FOR
ROAD VACATION – PORTIONS OF MITCHELL
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FOR JEFFERSON COUNTY**

1 RCW 36.87.140, the board of county commissioners may retain an easement within
2 the subject vacated area for the construction, repair, and maintenance of public
utilities and services.

3 *No opposition from public or private utility companies or providers was received in response*
4 *to the Notice of Intent to Vacate the subject right-of-way. However, if necessary, and in*
5 *compliance with RCW 36.87.140 and JCC 12.10.130(2)(a), the Board of County*
6 *Commissioners may retain an easement within the subject vacated area for the construction,*
7 *repair, and maintenance of public utilities and services.*

8 (5) Roads should not be closed, vacated, or abandoned when such routes can be
effectively used for trails or pathways. Suitable trail easements could be retained as a
means of satisfying this policy. The Jefferson County parks, recreation, and open
space plan should be used as a guide to determine trail needs.

9 *Since the rights-of-way are essentially dead-ends, and do not provide direct public access to*
10 *water or a beach, and the fact that there are no Jefferson County Parks located within or*
11 *currently proposed in the area, the subject right-of-way is not a prime candidate for a public*
12 *trail.*

13 (6) In compliance with RCW 36.87.130, no county road or part thereof should be
14 vacated that abuts on a body of salt or fresh water, unless the vacation is to enable
any public authority to acquire the vacated property for port purposes, boat moorage,
or launching sites or for park, viewpoint, recreational, educational, or other public
purposes, or unless the property is zoned for industrial purposes.

15 *The subject right-of-way, although close to Hood Canal, does not abut the water, so this*
16 *statutory prohibition does not apply.*

17 (7) The proposed vacation will not land lock any parcel of property.

18 *The subject right-of-way is currently undeveloped, unused, and features topographic*
19 *challenges noted by DCD staff. The only parcels that could benefit are those owned by the*
20 *Petitioners, Zimmerman and Rayonier, and all Petitioners' properties have alternate access*
21 *directly from Thorndyke Road. (Engineer's Report, page 3).*

22 ***Compensation required for Class A and Class B rights-of-way.***

23 16. Again, for reasons explained above, the County Engineer determined that the
24 segments of roadway at issue in this Petition are "Class A" right-of-way. (*County Engineer's*
25 *Report, on page 2, finding no. 6).* JCC 12.10.120 requires the Principal Petitioner to
compensate the County for all Class A and Class B vacated rights-of-way in compliance with

2. Based on findings provided above, the pending request to vacate portions of Mitchell Street and Duffy Avenue rights-of-way as described in the County Engineer's Report satisfies all review criteria provided in JCC 12.10.110.

3. The proposed conditions of approval included in the Engineer's Report are supported by a preponderance of evidence in the record, consistent with applicable law, and in the public interest.

4. Any legal conclusions or other statements made in previous or following sections of this document that are deemed conclusions of law are hereby adopted as such and are incorporated herein by this reference.

VI. RECOMMENDATION.

Based upon all evidence in the record, and all findings and conclusions provided above, the Hearing Examiner respectfully recommends that the Board of County Commissioners should formally vacate the following segments of County right-of-way, subject to Conditions of Approval set forth below:

Those portions of Mitchell Street and Duffy Avenue rights-of-way located west of Thorndyke Road in the northwest quarter of the northwest quarter of Section 20, Township 27 North, Range 1 East, W.M., Jefferson County Washington, (*see Exhibit A, vicinity and parcel maps*), both of which are 30-foot-wide rights-of-way that were dedicated in the Plat of Goodfellow's Manhattan Beach Tracts, filed on July 8, 1908 and recorded in Volume 2 of Plats Page 122, records of Jefferson County. (*See Exhibit B, highlighted plat illustration*).

[*Note: The County Engineer should include a formal legal description of the vacated rights-of-way as part of any Council Resolution].

VII. CONDITIONS OF APPROVAL.

Before the requested road vacation can take effect, the Principal Petitioner shall:

A. Pay all required compensation owed to the County for the vacated right-of-way and administrative process.

ISSUED this 11th Day of October, 2024



Gary N. McLean
Hearing Examiner

RECOMMENDATION TO APPROVE PETITION FOR
ROAD VACATION – PORTIONS OF MITCHELL
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HEARING EXAMINER
FOR JEFFERSON COUNTY



Location of rights-of-way proposed for vacation



EXHIBIT A - Vicinity map and parcel map showing rights-of-way proposed for vacation