

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: March 27, 2023

Subject: A Resolution adopting Hearing Examiner report and recommendations, and expressing Board's intent to vacate a County Right-of-Way known as Ricky Beach Drive, 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 a County right-of-way known as Ricky Beach Drive located in Govt. Lot 1, Section 2, Township 27 North, Range 1 East, W.M. and dedicated in the plat of Termination Point, Volume 4 of Plats, Pages 25A and 25B (recorded at Auditor's File No. 170298 in 1961). See attached maps.

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

A public hearing on the road vacation petition was conducted before the Jefferson County Hearing Examiner on December 20, 2022. Based upon the recommendations contained in the County Engineer's report, as well as testimony presented from other departments, agencies, and individuals, the Hearing Examiner has recommended that the road vacation be approved subject to Petitioner meeting the following conditions:

- A. Provide a mechanism, possibly in the form of one or more easements, for alternative access for all owners of all lots within the Plat of Termination Point - including without limitation Lot 57 - to access community beach lots (Lots 9, 10 and/or 19), with appropriate language expressly identifying and describing the lot, lots, or portions thereof, through which owners of lots in the plat hold rights to access the beach, as credibly demonstrated by the petitioner using binding legal instruments, subject to review and confirmation by the County's attorney.
- B. Provide a mechanism, possibly in the form of one or more easements, providing access to and from Shine Road, benefitting all the lots within the Plat of Termination Point and any other lot or lots that currently rely upon Ricky Beach Road for access to Shine Road, including Parcel Numbers 721-022-004, 721-022-002 and Lot 8. This condition requires reference to all lots and parcels as they exist on the date any road vacation is approved, whether under common ownership by the petitioner or others, regardless of whether a lot may obtain access via some other route or through another lot under common ownership. Such document(s) shall be subject to review and approval as to form and compliance with this condition to the satisfaction of the County's attorney.
- C. The mechanisms or easements required by the two previous conditions A and B, may be accomplished using one legal instrument, subject to review and approval as to form and compliance with these conditions to the satisfaction of the County's attorney.

- D. Record a restrictive covenant, easement, or other binding legal instrument, granting access to County officials along the vacated right-of-way for general emergency, public safety, and law enforcement purposes, expressly including site-visits, inspections or investigations related to legal (regulatory) compliance issues, including without limitation any conditions of approval imposed as part of any road vacation approved by the Board of County Commissioners. Such document shall be subject to review and approval as to form and compliance with this condition to the satisfaction of the County's attorney; and
- E. Pay all required compensation owed to the County for the vacated right-of-way [to be determined based on an updated appraisal of the property] 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.

Fiscal Impact/Cost Benefit Analysis:

The Petitioner will pay remaining costs, including land value compensation, associated with the road vacation prior to adoption of a final resolution officially vacating and abandoning the subject right-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 right-of-way subject to Petitioner meeting the Hearing Examiner's recommended approval conditions, with the clarification that County staff shall record all of the legal instruments described above at the same time as staff records any final Resolution officially vacating the subject right-of-way. The recording fees will be included with the other administrative fees to be paid by Petitioner.

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 right-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 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 3/22/23

STATE OF WASHINGTON
COUNTY OF JEFFERSON

In the matter of }
an Intent to Vacate }
Ricky Beach Drive right-of-way }

RESOLUTION NO. _____

WHEREAS, in 2001 Jefferson County Public Works received a petition submitted by Russell Trask (“Petitioner”) to vacate the Ricky Beach Drive right-of-way dedicated to the County in the Plat of Termination Point, Volume 4 of Plats, Pages 25A and 25B, located in Section 2, Township 27 North, Range 1 East, W.M. (“subject right-of-way”); and

WHEREAS, due to the more than 20 years that have elapsed since the Hearing Examiner originally reviewed the matter in 2001, the Board of County Commissioners remanded the matter to the Hearing Examiner to re-review the petition to vacate; and

WHEREAS, the Jefferson County Hearing Examiner held a public hearing on the road vacation petition on December 20, 2022; and

WHEREAS, the Jefferson County Hearing Examiner considered the 2001 report of the Hearing Examiner, and testimony of the public, comments from applicable departments, agencies and offices, and recommendations from the Jefferson County Engineer at the public hearing; and

WHEREAS, the Jefferson County Hearing Examiner has issued a report dated March 7, 2023 (“Hearing Examiner Report”) which contains findings, conclusions and a recommendation that the Board approve the road vacation subject to the Petitioner meeting the following conditions:

- A. Provide a mechanism, possibly in the form of one or more easements, for alternative access for all owners of all lots within the Plat of Termination Point – including without limitation Lot 57 – to access community beach lots (Lots 9, 10 and/or 19), with appropriate language expressly identifying and describing the lot, lots, or portions thereof, through which owners of lots in the plat hold rights to access the beach, as credibly demonstrated by the petitioner using binding legal instruments, subject to review and confirmation by the County’s attorney.
- B. Provide a mechanism, possibly in the form of one or more easements, providing access to and from Shine Road, benefitting all lots within the Plat of Termination Point and any other lot or lots that currently rely upon Ricky Beach Road for access to Shine Road, including Parcel Numbers 721-022-004, 721-022-002 and Lot 8. This condition requires reference to all lots and parcels as they exist on the date any road vacation is approved, whether under common ownership by the petitioner or others, regardless of whether a lot may obtain access via some other route or through another lot under common ownership. Such document(s) shall be subject to review and approval as to form and compliance with this condition to the satisfaction of the County’s attorney.
- C. The mechanisms or easements required by the two previous conditions A and B, may be accomplished using one legal instrument, subject to review and approval as to form and compliance with these conditions to the satisfaction of the County’s attorney.
- D. Record a restrictive covenant, easement, or other binding legal instrument, granting access to County officials along the vacated right-of-way for general emergency, public safety, and law enforcement purposes, expressly including site-visits, inspections or investigations related to legal (regulatory) compliance issues, including without limitation any conditions of approval imposed as part of any road vacation approved by the Board of County Commissioners. Such document shall be subject to review and approval as to form and compliance with this condition to the satisfaction of the County’s attorney.

- E. Pay all required compensation owed to the County for the vacated right-of-way [to be determined based on an updated appraisal of the subject right-of-way] and administrative process; and

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

NOW, THEREFORE BE IT RESOLVED, that the Board of County Commissioners hereby adopts the Hearing Examiner's findings, conclusions and recommendations with the clarification that all of the legal instruments described above shall be recorded by County staff, at Petitioner's expense, at the same time as the recording of any final resolution adopted by the Board officially granting the vacation of the subject right-of-way. 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 right-of-way described above. 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 incurred by the County.

APPROVED this _____ day of _____, 2023.

**JEFFERSON COUNTY
BOARD OF COMMISSIONERS**

Kate Dean, District 1

Heidi Eisenhour, District 2

Greg Brotherton, District 3, Chair

ATTEST:

Clerk of the Board

4-25A A-51

TERMINATION POINT

SITUATED IN GOVT. LOT 1, SEC. 2, TWP 27 N, R 1 E, W.M.
JEFFERSON COUNTY, WASH.

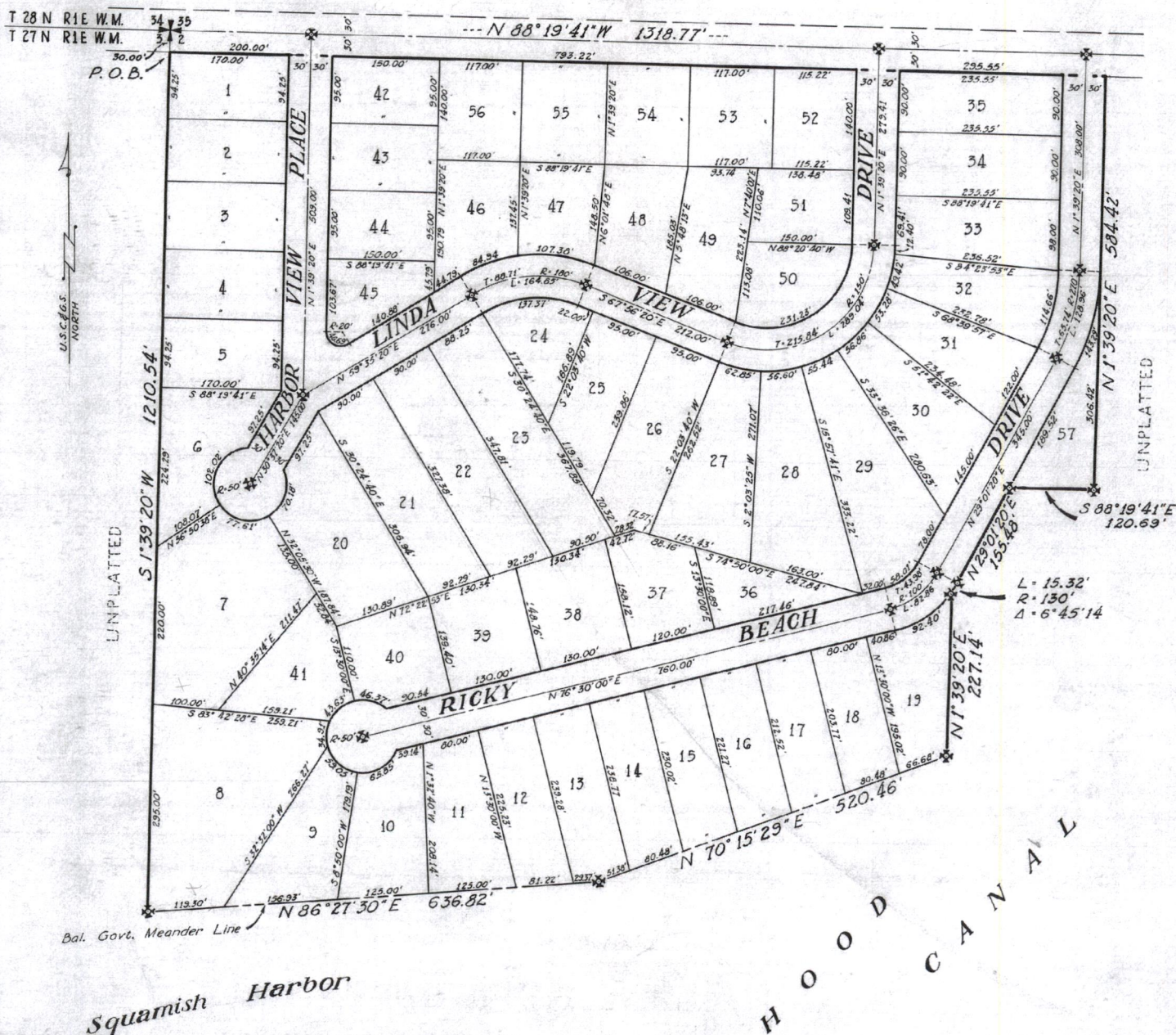
SCALE: 1" = 100'

JUNE, 1961

GEORGE ROATS
CIVIL ENGINEER & LAND SURVEYOR
POULSBORO, WASH.

SHEET 1 OF 2 SHEETS

UNPLATTED



TERMINATION POINT

SITUATED IN GOVT. LOT 1, SEC. 2, TWP. 27 N, R 1 E, W.M.
JEFFERSON COUNTY, WASH.

JUNE, 1961

SHEET 2 OF 2 SHEETS

LAND SURVEYOR'S CERTIFICATE



I hereby certify that the plat of "TERMINATION POINT" is based upon an actual survey and sub-division of Section 2, Twp. 27 N, R 1 E, W.M., that the distances and courses of angles are shown thereon correctly, the monuments have been set and all lot and block corners have been staked on the ground.

George Roats
Civil Engr. and Land Surveyor.

DEDICATION

KNOW ALL MEN BY THESE PRESENTS that BERNADINE PARKKO, wife of Norman Parkko, as her separate estate, owner in fee simple of the land hereby platted and GEORGE D. BARCLAY and MARY JEAN BARCLAY, his wife, DONALD V. ANDERSON and DOROTHY G. ANDERSON, his wife, and H&L BLOCK, a California Corporation, contract purchasers of the land hereby platted, hereby declare this plat and dedicate to the use of the public forever all streets, avenues and places shown on the plat and the use thereof for any and all public purposes not inconsistent with the use thereof for public highway purposes, also the right to make all necessary slopes for cuts and fills upon the lots and blocks shown on this plat in the reasonable original grading of all the streets, avenues, and places shown hereon. Also the right to drain all streets over and across any lot or lots where water might take a natural course after the street or streets are graded. All lots, tracts or parcels of land embraced in this plat are subject to and shall be sold only under the following restrictions:

No permanent structure or building shall be constructed on any lot, tract or parcel of this plat closer than 20 ft. to the margin of any street or road. No lot, tract or portion of a lot or tract of this plat shall be divided and sold, or resold, or ownership changed or transferred whereby the ownership of any portion of this plat shall be less than 7,500 sq. ft. or less than 50 ft. in width at its narrowest part.

In witness whereof we have hereunto set our hands and seals.

George D. Barclay
GEORGE D. BARCLAY

Mary Jean Barclay
MARY JEAN BARCLAY

Donald V. Anderson
DONALD V. ANDERSON

Dorothy G. Anderson
DOROTHY G. ANDERSON

Bernadine Parkko
BERNADINE PARKKO

H&L BLOCK, A CALIFORNIA CORPORATION

Dewey H. Morberg
Dewey H. Morberg, Pres.
M. John Slikas
M. John Slikas, Secy.

ACKNOWLEDGMENT

STATE OF WASHINGTON) S.S.
COUNTY OF KITSAP)

This is to certify that on the 23rd day of June 1961 A.D. before me, the undersigned, a notary public in and for the State of Washington duly commissioned and sworn, personally appeared BERNADINE PARKKO, GEORGE D. BARCLAY and MARY JEAN BARCLAY, his wife, and DONALD V. ANDERSON and DOROTHY G. ANDERSON, his wife, to me known to be the individuals described in and who executed the foregoing instrument and acknowledged to me that they signed and sealed the same as their free and voluntary act and deed for the use and purposes mentioned therein.

In witness whereof I have hereunto set my hand and seal the day and year first above written.

R. A. Richards
Notary Public in and for the State of Wash. residing at Idaho Falls.

DESCRIPTION

This plat of "TERMINATION POINT" comprises a portion of Govt. Lot 1, Sec. 2, Twp. 27 N, R 1 E, W.M. in Jefferson Co., Wash., described as follows:

Beginning at a pt. on the West Line of said Sec. 2 which is S 1° 39' 20" W 30.00 ft. from the NW corner of said Govt. Lot 1; thence S 1° 39' 20" W 1210.54 ft. to the Govt. Meander Line; thence along the said Meander Line N 86° 27' 30" E 636.82 ft.; thence N 70° 15' 29" E 520.46'; thence leaving Meander Line N 1° 39' 20" E 227.14 ft. to a point on a curve having a radius of 130.00 ft. and bearing S 54° 13' 26" E from the point of radius; thence along said curve to the left on an arc distance of 15.32 ft.; thence N 29° 01' 20" E 155.40 ft.; thence S 88° 19' 41" E 120.69 ft. to the E boundary of Govt. Lot 1; thence along said boundary N 1° 39' 20" E 584.42 ft. to a point S 1° 39' 20" W 30.00 ft. from the NE corner of said Govt. Lot 1; thence N 88° 19' 41" W 1318.77 ft. to the point of beginning. TOGETHER WITH SECOND CLASS TIDE LANDS.

CORPORATE ACKNOWLEDGMENT

STATE OF WASHINGTON) S.S.
COUNTY OF KITSAP)

This is to certify that on the 20th day of June 1961 A.D. before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared DEWEY H. MORBERG and M. JOHN SLIKAS to me known to be the PRESIDENT and SECRETARY respectively of H&L BLOCK, a California Corporation, the corporation that executed the within foregoing instrument and acknowledged the same to be the free and voluntary act and deed of said corporation, for the use and purposes therein mentioned, and an oath stated that they were authorized to execute said instrument by resolution of the Board of Directors of said corporation and that the seal affixed is the corporate seal of said corporation.

In witness whereof I have hereunto set my hand and seal the day and year first above written.

R. A. Richards
Notary Public in and for the State of Washington
residing at Idaho Falls.

APPROVALS

Approved by me this 6 day of Nov 1961 A.D.

Edmund G. Beckler
COUNTY ENGINEER

Approved by the Board of County Commissioners this 6th day of Nov 1961 A.D.

ATTEST: Delbert Eads Franklin J. Young
AUDITOR AND CLERK OF THE BOARD OF CO. COMM. CHAIRMAN OF THE BOARD OF CO. COMM.

TREASURER'S CERTIFICATE

I, Arthur A. Swanson, treasurer of Jefferson Co., Wash. hereby certify that all taxes on the above property are paid up to and including the year 1962 A.D.

Arthur A. Swanson
COUNTY TREASURER

RECORDING CERTIFICATE

Filed for record at the request of R. A. Richards on Nov 6 1961 A.D. at 20 min. past 1 P o'clock and recorded in Vol. 4 of Plats page 25, Records of Jefferson Co. Wash.

Wm. J. Eads
COUNTY AUDITOR

By: David Hufford
DEPUTY:



Jefferson County, WA., Pro-West & Associates, Inc., Source: Esri, Maxar, Earthstar
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These data are provided on an "AS-IS" basis, without warranty of any type, expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for any particular purpose.

Ricky Beach Drive

1:4,514

Date: 10/18/2022

This map is not a substitute for accurate field surveys or for locating actual property lines and any adjacent features.



Before Hearing Examiner
Gary N. McLean

**BEFORE THE HEARING EXAMINER
FOR JEFFERSON COUNTY**

In the Matter of the Petition to Vacate)
Ricky Beach Drive, identified as County)
Road No. 504809, submitted by)
RUSSELL TRASK,)
(MEMBER, TERMINATION POINT, LLC))

Petitioner/Property Owner)

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

I. SUMMARY OF RECOMMENDATION.

The petition should be granted, vacating Ricky Beach Drive, subject to updated conditions of approval.

II. JURISDICTION; LEGAL AUTHORITY.

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*).

Based on legal authority summarized in Conclusions of Law provided elsewhere in this document, the Jefferson County Board of County Commissioners, in the good faith discharge of its legislative responsibilities, is free to disagree with any hearing examiner recommendation. JCC 12.10.090 reads in part: "(1) The Jefferson County board of commissioners shall review the report and recommendation of the Jefferson County hearing examiner. The Jefferson County board of commissioners shall either deny or accept and adopt, in whole or in part, the findings, conclusions, and recommendations of the hearing

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- COUNTY ROAD NO. C504809**

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FOR JEFFERSON COUNTY**

1 examiner, and shall make a final determination whether the request shall be denied, approved,
2 approved with conditions, or approved in part. The board of county commissioners may make
3 separate or revised findings and conclusions. These shall be based upon testimony presented
4 at the public meeting at which the hearing examiner's recommendation is considered."

5 Under RCW 36.87.080, "no county road shall be vacated and abandoned except by
6 majority vote of the board properly entered, or by operation of law, or judgment of a court of
7 competent jurisdiction."

8 **III. RECORD.**

9 Exhibits entered into evidence as part of the record, and an audio recording of
10 testimony provided at the public hearing, are maintained by the Jefferson County Department
11 of Community Development, in accord with applicable law. In this Recommendation,
12 materials included as part of the Record are numbered and identified as follows:

- 13 ▪ Staff Report to the Hearing Examiner, prepared by Collette Kostelec, dated December
14 7, 2022, for hearing set for December 20, 2022, with the following 7 exhibits, as
15 numbered and identified on page 3 of such report:

- 16 1: Plat of Termination Point
- 17 2: County Engineer's Report with Exhibits
- 18 3: List and map of adjacent property owners sent notice
- 19 4: Agency/businesses/departments responses
- 20 5: Letter received 12/5/2022 from the Cooper-Long family
- 21 6: Posting notice verification
- 22 7: Publication notice

- 23 ▪ County Engineer's Report to the Hearing Examiner, dated October 25, 2022, with the
24 following exhibits, as numbered and identified on page 9 of such report:

- 25 A. 2001 Hearing Examiner's report
- 26 B. 2001 Petition
- C. Maps
- D. Photos (taken April 20, 2022)
- E. Emergency Service Provider Comments [none received in 2001; to be
supplemented with any comments received during current public comment
period]
- F. Utility Comments [to be supplemented with any comments received
during current public comment period]

1 G. Parks Advisory Board Comments [to be supplemented with any
comments received during current public comment period]

2 H. Termination Point Properties' draft easement for Beach Access

3 I. Termination Point Properties' draft easement for Lot 57 and Tax
Parcel 721022002

4 J. Department of Community Development Comments [to be
supplemented with any comments received during current comment period]

5 K. Public Testimony [copies of written comments received during
comment period; **also includes any post-hearing written comments received
6 by County staff on or before December 28, 2022, given snow-event on hearing
7 date that may have made it difficult for some individuals to participate,
consistent with direction provided by the Examiner during the public hearing*]

8 L. County Engineer's Response to post-hearing Comments from Lot 57
Owners, dated January 3, 2023 [**Prepared by County Engineer based on
9 direction provided by the Examiner before close of the public hearing*]

- 10 ▪ Letter and Memorandum from Lincoln Miller, attorney for the petitioner, dated
11 December 15, 2022, summarizing petitioner's position and reasons they believe the
requested road vacation should be approved.

12 Below is a list of individuals called to present testimony under oath at the duly noticed
13 public hearing for this matter, held using the Zoom online meeting platform coordinated by
County staff on December 20, 2022. The petitioner was represented by counsel, Lincoln
14 Miller. County staff was represented by Barbara Ehrlichman, from the County Prosecutor's
Office. **A snow event impacted Jefferson County on the day of the hearing, so the Examiner
15 held the record open for additional written public comments through December 28th, with an
opportunity for Staff to respond as needed in the following weeks. Staff updated public
16 information about such additional comment opportunity on the County's website:*

- 17 1. Monte Reinders, P.E., Public Works Director and County Engineer, prepared the detailed County
18 Engineer's Report that is included in the record. Mr. Reinders summarized the long history
associated with this matter, noted that Public Works does not object to the requested road vacation,
19 explained that he agrees with most of the Petitioner's hearing memo except he pointed out that
this hearing process is a new hearing, that the Board of County Commissioners are the final
20 decision makers, and that approval of a road vacation is a legislative decision by the
Commissioners.
- 21 2. Colette Kostelec, Engineer III/Right-of-way representative with the Public Works Department,
and Helena Smith, with the Department of Community Development, both appeared during the
22 course of the hearing, and helped address logistical concerns related to the snow event and
confirmed they would update the County's website to explain how the record was held open to
23 allow for written comments if individuals were unable to participate on the hearing day.
- 24 3. Lincoln Miller, the petitioner's counsel, summarized his client's position, arguing that this is a
remand of a 2001 recommendation of approval, already made by a previous hearing examiner,
25

26 **RECOMMENDATION TO APPROVE PETITION TO
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nothing more, and that all provisions of such recommendation have been satisfied.

4. Nezam Tooloe (sp?), neighboring property owner, lives at end of Longmire Lane to the west of the current Ricky Beach Drive end, spoke in favor of the requested road vacation, directed attention to page 4 of Mr. Miller's hearing memo, explained that he believes the road vacation will improve security for the area.

No one appeared during the public hearing to submit written comments or verbal testimony opposing or questioning this road vacation. The owners of Lot 57 submitted a post-hearing written comment on December 28, 2022, which is included as part of Ex. K, and was addressed in the County Engineer's post-hearing response memo listed above.

The Examiner has had a full and fair opportunity to consider all evidence submitted as part of the record; has visited the road vacation site and surrounding area; has reviewed and researched relevant codes, caselaw, and ordinances; and is fully advised. Accordingly, this Recommendation is now in order.

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 Principal Petitioner in this matter is Russell Trask, as a registered Member of Termination Point Properties, LLC ("TPP"), and there is no dispute that Termination Point Properties, LLC owns the majority of property fronting Ricky Beach Drive, County Road No. 504809. (*County Engineer's Report, pages 1 and 2; Ex. C, maps*).

3. More than 20 years ago, Mr. Trask submitted a road vacation petition, seeking to vacate all of Ricky Beach Drive. Consistent with County code requirements, the matter came before the County's Hearing Examiner in 2001, for a public hearing which included a detailed report from the then-County Engineer. There is no dispute that the previous Hearing Examiner issued a written report and recommendation of approval subject to specific conditions in August of 2001, a copy of which is included in the record as *Ex. A*.

4. There is no dispute that the previous recommendation was not presented to the Board of County Commissioners, because Staff believed that the petitioner should first satisfy all recommended conditions of approval. (*County Engineer's Report issued in 2022, page 1*). In short, the recommended conditions from 2001 tasked the petitioner with responsibility for developing "mechanisms" and a "private road easement" addressing continued beach access for lot owners in the affected plat sufficient to replace access currently provided by the public

1 right of way (Ricky Beach Drive); and access to Lot 57 to replace access currently provided
2 by Ricky Beach Drive, among other things.

3 5. The previous Hearing Examiner expressly concluded that:

4 5. The mechanisms discussed in Conclusions 3 and 4 should have been
5 negotiated before the public hearing. If satisfactory mechanisms
6 cannot be found, the Board should remand the matter to the Examiner.

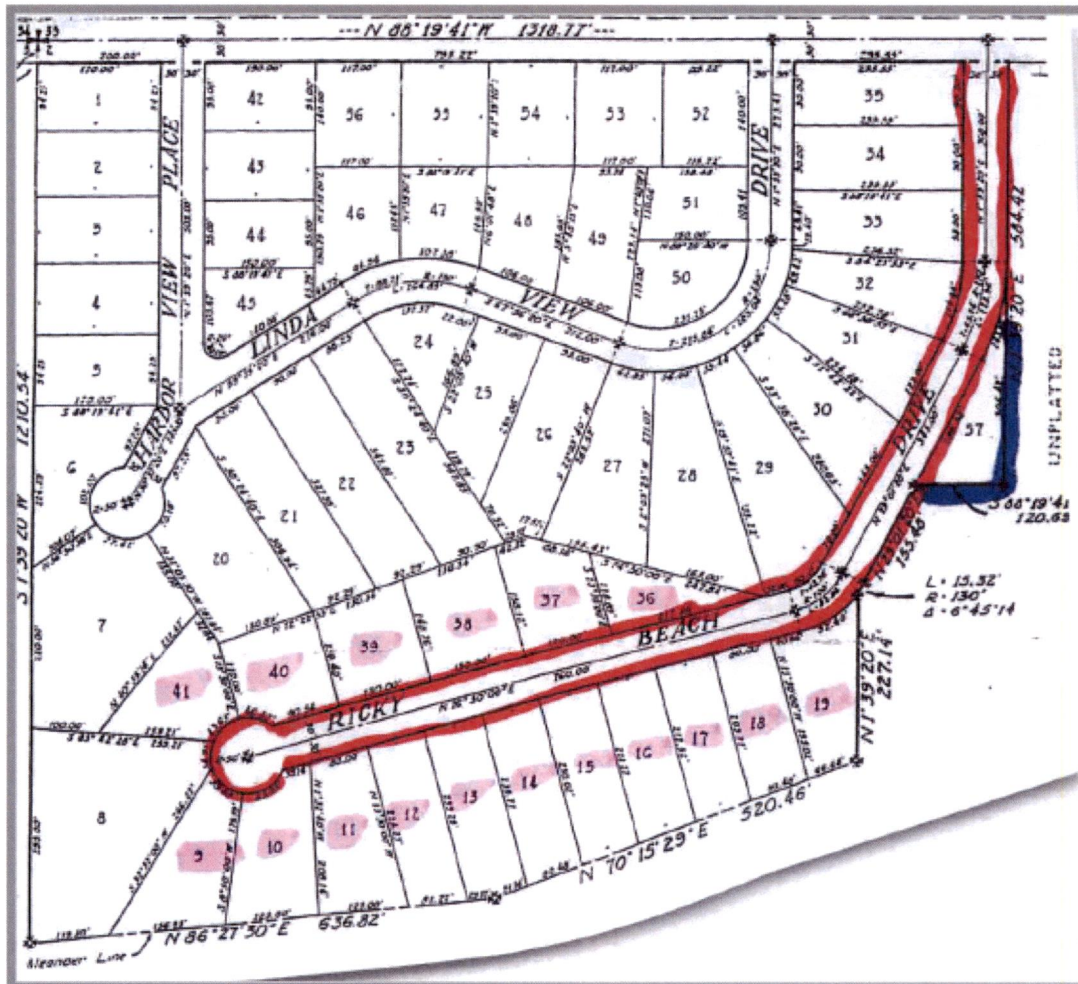
7 6. A complete reading of the 2001 Hearing Examiner's report shows that "Conclusions
8 3 and 4" referenced above are the portions of the prior Hearing Examiner's report explaining
9 the need for "mechanisms" [presumably easements or similar legal instruments] to provide
10 beach access rights and a private road easement for continued access to Barbara Cooper's lot,
11 i.e. Lot 57.

12 7. As explained in the County Engineer's 2022 Report, since 2001, the petitioner
13 proposed various versions of easements to address beach access and continue access to Lot
14 57, but none of their drafts met with County staff approval, for a variety of reasons. (*County
15 Engineer's Report, page 1*).

16 8. In April of 2022, after discussions amongst Petitioner representatives and County
17 Staff, the pending petition was brought before the Board of County Commissioners. The
18 Board remanded the matter to the Hearing Examiner before reaching a final decision.
19 (*County Engineer's 2022 Report, page 2*). As shown above, such action is fully consistent
20 with the prior hearing examiner's report, where it stated that if satisfactory mechanisms to
21 address specific conditions of approval cannot be found, then the Board should remand the
22 matter to the Examiner.

23 9. In any event, the pending petition seeks to vacate all of Ricky Beach Drive right-of-
24 way, identified as County Road No. 504809. Ricky Beach Drive is on Termination Point,
25 north of Hood Canal, south of SR 104 and Shine Road (a County road), just west of and with
26 easy access to and from the western end of the Hood Canal Bridge. The site location, so
close to a major state transportation corridor, serves to amplify concerns expressed by the
petitioner and other property owners – including the owners of Lot 57 – to the effect that the
area is sometimes used by people to engage in bad behaviors, like drug use, or improper
disposal of various materials and garbage on and around the existing Ricky Beach Drive
right-of-way.

10. The petitioner's counsel submitted a pre-hearing memorandum, which included the following aerial illustration marked to show the roadway subject to this vacation request and surrounding parcels:



11. The Ricky Beach Drive right-of-way is 60 feet in width, with a wider cul-de-sac at the end, running about 1,650 feet in length.¹ It is fully contained within the plat of Termination Point as recorded November 6, 1961 in Volume 4, Page 25, records of Jefferson County, located in Section 2, Township 27 North, Range 1 East, W.M. (*County Engineer's 2022 Report on page 2; Exhibit B – 2001 Petition; and Staff Report, Ex. 1, copy of recorded Plat of Termination Point from 1961*).

¹ Using these undisputed figures, the vacated roadway area would be approximately 99,000 sq.ft. (60 x 1,650), which is 2.27 acres (Acre size is 43,560 sq.ft.; $99,000/43,560 = 2.27$).

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GARY N. MCLEAN
HEARING EXAMINER
FOR JEFFERSON COUNTY

1 12. Ricky Beach Drive begins at Shine Road (a county road) and terminates at a dead-
2 end cul-de-sac. The road is the sole access for Lots 8-19, Lots 36-41, and Lot 57 of the Plat
3 of Termination Point and for parcel 721022004 (located outside of the boundaries of the
4 Termination Point plat but owned by Petitioner). Termination Point Properties, LLC of which
5 the Petitioner is a co-managing member, is the majority frontage owner for the proposed
6 vacation area as required by RCW 36.87.020. (See Exhibit C – Maps; County Engineer’s
7 2022 Report on page 2).

8 13. The County Engineer’s 2022 Report explains that Ricky Beach Drive is primarily a
9 gravel surfaced road except for the first 250 feet which is chip sealed. The road has been
10 closed since 1997 by order of the Board (Resolution No. 10-97) due to a landslide hazard. In
11 1997, cracks opened up in the road where it crosses a large landslide headscarp about 350
12 feet from its beginning. The County chose not to repair the road for several reasons:

- 13 • Landslide activity, while sporadic and slow, is ongoing.
- 14 • The road does not access developable land due to the presence of the large
15 landslide.
- 16 • The road does not provide public access to the beach/water.
- 17 • A Petition to vacate the road was submitted in 1996 and then again in 2001. It
18 did not make sense to spend public funds on a road with a pending road vacation.

19 14. There is no dispute that the Petitioner made road repairs himself and continues to use
20 the road sporadically for access to his property. It also appears that the owner of Lot 57
21 occasionally uses the road as well. Much of the road is now somewhat overgrown. (See
22 Exhibit D – Photos taken April 20, 2022).

23 15. The County Engineer’s Report explains that the Ricky Beach Drive road closure has
24 been handled “informally” for many years. Originally, signage was placed indicating “Road
25 Closed.” At some later date, concrete barriers were installed; however, these have been
26 regularly moved by parties desiring to gain access to the area, presumably by the property
owners. There is also evidence of sporadic use of an off-road vehicle track leading from Linda
View Drive down to Ricky Beach Drive. Since Public Works has no desire to prevent
property owners from gaining access to their property and since this arrangement has not
caused any significant problems, the County has not taken any action to date. Pending the
outcome of this road vacation proceeding, this issue should be formally addressed, possibly
through installation of a locked gate and system to issue gate keys. The County’s inability to
monitor and control access along Ricky Beach Drive in its current condition and status – i.e.,
a closed roadway – is another reason that supports vacating this right of way.

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

18 **RECOMMENDATION TO APPROVE PETITION TO**
19 **VACATE RICKY BEACH ROAD**
20 **– COUNTY ROAD NO. C504809**

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1 17. Staff confirmed that all public notices for the public hearing before the undersigned
2 hearing examiner were provided in accord with applicable law. (*Staff Report; Exhibits 6 and*
3 *7*). Notices in the newspaper and elsewhere expressly provided that this matter requests
4 vacation of public right-of-way. The Examiner is satisfied that proper – and current – notices
5 were issued, and that new property owners and individuals with current interests in the
6 vicinity of the proposed road vacation were provided an opportunity to comment. Staff did
7 not simply rely on old notices associated with the previous 2001 road vacation process that
8 was never completed.

9 18. As noted above, only the owners of Lot 57 submitted written comments during the
10 public hearing process opposing the pending road vacation petition, before the hearing, and
11 again after the hearing. The County Engineer responded to the comments about Lot 57 and
12 concluded that language in easements recently proposed by the petitioner, and recommended
13 conditions of approval, should be sufficient to appropriately address concerns expressed by
14 the Lot 57 owners. As noted in the County Engineer's 2022 Report, relevant Washington
15 caselaw establishes that a property owner who opposes a street vacation does not have
16 standing to sue a local jurisdiction vacating a roadway if an alternative mode of ingress/egress
17 serving the affected property is provided, even if such access is less convenient. (See
18 *Hoskins v. Kirkland*, 7 Wn. App. 957 (1972), where a property owner who opposed a street
19 vacation did not have standing to sue the City; although a landowner whose land becomes
20 landlocked or whose access is "substantially impaired" is said to sustain a special injury, there
21 is no special injury if there remains an alternative mode of ingress/egress, "even if less
22 convenient.").

23 19. There is no dispute that this right of way segment is not subject to what is sometimes
24 called Washington's "non-user statute", found at RCW 36.87.090, so it has never been
25 vacated and continues to be County right-of-way until or unless the Board of County
26 Commissioners chooses to grant any petition to do so.

27 20. And, as noted above, the subject right-of-way (Ricky Beach Road) does not provide
28 for overall area or neighborhood circulation for the general public, nor is there any anticipated
29 future need for this right-of-way to serve the general public. The road is a dead end, and
30 Ricky Beach Drive has been closed to vehicular traffic since 1997, due to landslide and
31 geotechnical issues summarized in previous findings and the County Engineer's 2022 Report.

32 21. RCW 36.87.040² and JCC 12.10.050(2)(e) require the County Engineer to give an
33 opinion as to whether the public will benefit by the vacation; however, neither provide

34 ² RCW 36.87.040, captioned "Engineer's Report", reads as follows: "When directed by the board the county
35 road engineer shall examine any county road or portion thereof proposed to be vacated and abandoned and
36 report his or her opinion as to whether the county road should be vacated and abandoned, whether the same is
37 in use or has been in use, the condition of the road, whether it will be advisable to preserve it for the county

1 guidance as to what might be considered a “public benefit” when vacating a public right-of-
2 way. The legislative body is held to be the proper entity to weigh public benefit, and there is
3 a presumption that an ordinance approving a street vacation was validly enacted for a public
4 purpose (*London v. Seattle*, 93 Wn.2d 657 (1980)).

5 22. In the absence of any need for a road right-of-way for the benefit of the general public
6 (circulation, trails, utilities, etc.), typically any benefit would accrue to the property owners
7 with frontage on the vacated right-of-way. These benefits might include additional building
8 space, room for septic systems, green-belt buffer, the ability to keep the public from
9 trespassing on their property, or other benefits. Benefits to the public and County could
10 include reduced road maintenance costs, reduced liability for managing public right-of-way
11 (such as garbage dumping, timber theft, danger trees, or abandoned vehicles), and increased
12 property tax. All of these reasons have been used in the past to support road vacations and
13 could support a finding of public benefit for the vacation of the subject right-of-way.

14 23. The petitioner’s prehearing memorandum includes a section offering what it believes
15 to be additional information showing the importance of vacating Ricky Beach Road, which
16 reads as follows:

17 First, it is important to note that the County closed Ricky Beach Drive in 1997 because of a slide
18 across the road near Lot 30, since repaired by TPP. There have been trespassers using the beach
19 for parties and drug usage at various times.

20 TPP and the TPHOA are anxious to have this road vacated so they can put a gate across the road
21 to limit access to those with the legal right to use it. This includes the owners of lots in the Plat
22 and the Cooper-Long family that owns a waterfront parcel adjacent and to the south of Lot 57.
23 Each owner will be given a lock combination or key.

24 Ricky Beach Drive winds through a woody and isolated area, where it is not enjoyable to meet
25 strangers, especially if you are a vulnerable person. A call for help will probably not be heard.
Persons experiencing homelessness have used this beach area earlier this year and there have been
reports of firearm discharges coming from the lower lots that border Ricky Beach Drive. It is also
not enjoyable to take children to the beach and bump into drug paraphernalia, used condoms, or
other evidence of inappropriate activity.

The road vacation of Ricky Beach Drive will be a significant benefit to all parties. The County,
of course, will be relieved of responsibility for a road the public can make no legitimate use of
and which the County has closed in any event, having no desire to maintain it. The County will
no longer have any potential liability if someone gets injured on the road, whether from defective
road conditions or dangerous trees lining the road.

road system in the future, whether the public will be benefited by the vacation and abandonment, and all other
facts, matters, and things which will be of importance to the board, and also file his or her cost bill.”

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1 All of the lot owners with homes will benefit from a safe, gate-controlled access to the lower
2 beach lot. They will be able to access the beach feeling secure. Depending on the conditions, they
may be able to take a small boat, canoe or kayak to the beach in the back of their car, truck or
trailer. The beach will be much more usable and enjoyable.

3 The Cooper-Long family that owns Lot 57 will benefit from the road vacation as well. At the
4 present time, with the road closed, they have no vehicular access to their lots. Ricky Beach Drive
is fairly steep and is a difficult walk for someone who is elderly and carrying things. Now and in
5 the future they will obviously benefit from vehicle access. Their property will be more usable and
enjoyable as well as safer.

6 If this road is vacated and the private easements recorded, the Cooper-Long family will have no
7 burden of maintenance for the road from their property to Shine Road. Under the proposed
easement, that burden rests solely with the lot owners in the Plat. The Cooper-Long family will
8 have access controlled by a gate and will not have to arrive and find trespassers on their property
or discover drug paraphernalia or similar items.

9 Turning now to TPP's departures in position from that stated by the County Engineer in his report,
10 I begin at Paragraph #5 of the Engineer's Report, where Mr. Reinders believes that TPP should
explain its future vision for the vacated road. While this is not a condition of the road vacation,
11 TPP has previously informed the County that it has no definitive plans for the portion of the
vacated road that will be allocated to its properties, other than the access as can be made over the
12 existing road. Development of improved access for vehicles and/or pedestrian traffic would have
to be both safe and cost-efficient, and no present analysis has been undertaken to determine if it
13 could be made so. TPP acknowledges their obligation to obtain permits that may be required by
improvements to the road and the County's right to inspect the same.

14 Turning to Paragraph #8, the County Engineer correctly notes that any beach access should be
15 preserved for the lots within the Plat and that TPP's proposed easement (Exhibit H of County
Engineer's Report) does not benefit Lot 57 owned by the Cooper-Long Family. However, the
16 owner of Lot 57 already has independent beach access through its adjacent waterfront lot (See
Exhibit A [attached to prehearing memo]). It was TPP's understanding that the Cooper-Long
17 Family's sole objection to the road vacation was the potential loss of access to Shine Road
(satisfied through the proposed easement at Exhibit I of County Engineer's Report) and that they
18 were not seeking an easement for beach access as they already had the same through the Cooper-
Long Family Waterfront Lot. Nonetheless, TPP has no objection to adding Lot 57 as a grantee to
19 the Exhibit I* easement [*appears to be a typo, should read Exhibit H].

20 *(See Petitioner's prehearing memorandum, on .pdf pages 3-5)*

21 24. As noted elsewhere, the owners of Lot 57 continue to oppose this requested road
22 vacation. Their post-hearing letter, transmitted to Staff on or about December 28, 2022,
23 repeated general allegations that the petitioner took some actions at some point that appear
to violate applicable County codes, implying concerns with the petitioner's compliance with
24 critical areas and/or shoreline regulations. The 2001 hearing examiner report directed
attention to some of the petitioner's actions taken on his property without necessary permits,
25 and likely in violation of applicable codes and regulations in effect at such time, including

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1 without limitation stormwater regulations, shoreline and other state regulations associated
2 with work that impacted beach habitat, and DNR involvement based upon a violation of
Forest Practices Act regulations. (*Ex. A, 2001 report, Finding No. 11*).

3 25. Given un rebutted evidence regarding the petitioner's apparent willingness to overlook
4 applicable codes and regulations on his property from time to time, the Examiner finds and
5 concludes that any road vacation should be conditioned to reserve access rights along all
6 sections of vacated right-of-way for County officials for general emergency and public safety
purposes, as well as conducting site-visits, inspections, or investigations related to code
compliance issues, including without limitation compliance with any conditions of approval
imposed as part of any road vacation approved by the Board of County Commissioners.

7 26. Again, as shown above, the petitioner concedes that "beach access should be
8 preserved for the lots within the Plat." (*Petitioner's hearing memorandum, quoted above*).
9 The 2001 hearing record, and the record created as part of this new hearing process, confirms
10 that Ricky Beach Road provides all lot owners within the Termination Point plat with access
11 to the beach over what are reportedly "community lots" lots, which Staff believes to be Lots
9, 10, and 19. (*County Engineer's 2022 Report, on pages 4-5*). So, if Ricky Beach Road is
12 vacated, owners of lots within the plat would have no legal means to access the beach via
community lots unless an easement were granted by the Petitioner. This was the primary
13 reason that the 2001 Hearing Examiner recommended that the Petitioner "*perfect a*
14 *mechanism, subject to County approval, to assure continued beach access for the benefit of*
all lots within the Plat of Termination Point...", noting that Ricky Beach Drive is used "*... as*
15 *a walking access to the beach...*". (*See 2001 Recommendation, proposed Condition No. 1,*
on page 9, and Conclusion No. 3, on page 7).

16 27. Staff raised the issue that access easements may need to expressly allow for the type
17 of access that lot owners have enjoyed over the last two decades and more, after the road was
18 closed. (*County Engineer's 2022 Report, on pages 4-5*). Despite the opportunity for various
lot owners to step forward and show how they used the roadway for vehicular access, or
19 something more than just pedestrian access, no one did so. Accordingly, there is insufficient
evidence to mandate 'vehicular' access in any 'replacement' easements that might be
20 recorded after the road is vacated. The Examiner finds and concludes that the simple term
"access" can include vehicular access. While access would be authorized in the proposed
easements, if the petitioner, or any grantee, wishes to improve conditions on the route from
21 those existing today – so that truck, car, or other vehicular access is possible – they must first
comply with all applicable County development regulations.

22 28. The 2022 Report confirms that five parcels abutting Ricky Beach Drive are under
23 separate ownership (Lots 9, 10, 19; Lot 8; Lot 57) and would need some alternative access if
24 the vacation is approved. Recommended conditions should be sufficient to address this
concern.

1 29. The updated County Engineer's Report explains that the 2001 Hearing Examiner
2 recognized that a road vacation would potentially landlock the remaining Ricky Beach Drive
3 parcels owned by Mr. Trask if he were to sell them in the future. No solution to this issue was
4 found during the previous hearing, although lot consolidation was discussed. It is now
5 generally agreed that these lots are not developable as discussed in the Geotechnical Report
completed for the Petitioner by the Stratum Group in 2019. Since these lots are
undevelopable, Public Works now recommends that they be consolidated into a single parcel
as discussed in 2001. (*County Engineer's 2022 Report, on page 5*).

6 30. The petitioner's hearing memo emphasizes the apparent value they see in the multiple
7 lots that they own, as they oppose any lot-consolidation condition suggested by Staff because
8 they want to retain the ability to take advantage of any "transfer of development rights"
9 ("TDR") opportunities that may present themselves at some point in the future – even though
current County codes do not allow for such transfers. The TDR argument is not persuasive.

10 31. However, the petitioner raises a more compelling argument against any lot-
11 consolidation requirement, explaining that individual lots may be purchased by other
12 adjoining lot owners to expand their acreage, and/or to increase their voting rights in the
plat's HOA.

13 32. The Examiner agrees that lot consolidation does not need to be a requirement imposed
14 as part of this road vacation. However, the petitioner and all future lot owners should be fully
15 advised and aware that any future use or activity on any lots within the plat must be in full
16 compliance with any and all County, State, or Federal regulations, including without
limitation those addressing critical areas, like steep slopes; shoreline management; forestry
management; fish and wildlife; building and grading codes; stormwater management; and
general environmental stewardship.

17 33. All future applications or reviews associated with development work of any kind on
18 lots within this plat should recognize that, as of this date, the petitioner does not dispute that
19 "waterfront lots, 9-19, and the nearby lots, 36-41 are considered unbuildable" (*Petitioner's*
20 *hearing memorandum, on page 5*), and that the County Engineer's 2022 includes the
21 un rebutted finding that "Lots accessed by the road [Ricky Beach Road] (including Lots 8, 9,
22 10, 19 and Lot 57, not owned by Petitioner or his LLC) are not buildable due to geotechnical
concerns with ongoing landslide movement (Geotechnical Report by the Stratum Group,
December 24, 2019, commissioned by the Petitioner)." (*See 2022 Report, on bottom of page*
3).

Review criteria for all road vacation petitions, found in JCC 12.10.110.

34. JCC 12.10.110, captioned "Review Criteria", mandates that road vacation petitions shall be reviewed according to the following criteria, numbered 1-7. Additional findings by the Hearing Examiner are provided in italics below each of the criteria:

(1) The proposed road vacation complies with the Jefferson County comprehensive plan and any other applicable plans, policies, or ordinances.

County staff from the Public Works and Community Development reviewed the petition in 2022 after the matter was remanded to the Hearing Examiner for a new Recommendation, and generated reports summarizing the previous road vacation petition process and recommendation of the County's hearing examiner in 2001, which was never completed. The County Engineer's 2022 Report "does not oppose" this requested road vacation, provided the Petitioner satisfies several specific conditions. (See County Engineer's 2022 Report, on page 8). The 2022 report appears to rely upon the 2001 report from Community Development staff (Ex. J), to find that this proposed road vacation will not be inconsistent with the County's Comprehensive Plan or development regulations. The Examiner agrees, and further finds that any subsequent action by property owners (possibly including the petitioner) to develop any portion of the potentially vacated roadway will require compliance with any and all County comprehensive plan policies and/or development regulations, including possible Shoreline, Critical Areas, and other environmental codes and policies, in effect at the time any complete application for such work might be submitted.

(2) Roads should not be closed, vacated, or abandoned when land uses or development plans, or occurring patterns, indicate their usefulness for area circulation. Prior to a vacation decision, an examination should be made of its probable effect on overall area circulation in the neighborhood. Single or multiple vacations should be considered a positive tool toward improving neighborhood circulation and accesses.

The segment of roadway at issue has been closed to vehicular traffic since 1997, is a dead-end, and provides no circulation opportunities in the affected area.

The County Engineer's 2022 Report appropriately notes that "there is the question of access to the lots with frontage on Ricky Beach Drive. Lots accessed by the road (including Lots 8, 9, 10, 19 and Lot 57, not owned by Petitioner or his LLC) are not buildable due to geotechnical concerns with ongoing landslide movement (Geotechnical Report by the Stratum Group, December 24, 2019, commissioned by the Petitioner). Even so, the right-of-way does provide access to several lots not

1 owned by the Petitioner, including community lots which appear to be intended to
2 provide beach access for owners within the Plat of Termination Point (Lots 9, 10, and
3 19)." (County Engineer's 2022 Report, on page 3). Accordingly, the County
4 Engineer recommends Conditions intended to address this issue by ensuring that lot
5 owners and those who have access rights to these lots can continue to access them.
6 The Examiner has modified proposed conditions to achieve this objective.

7 The County Engineer's 2022 Report also raises the question of whether future access
8 will be limited to foot traffic, or whether vehicles will be able to access the road. The
9 Petitioner's representatives have stated a desire to potentially re-establish the road
10 as a vehicular access point for lot owners within the plat once the road is vacated.
11 This may be possible but would likely require a significant environmental permitting
12 process (SEPA, Shorelines, Critical Areas, etc.). Due to the deep-seated landslide,
13 ongoing maintenance of the road would be required when movement results in the
14 formation of cracks. The Petitioner has also mentioned kayak launching and
15 recreational beach access for plat owners among other ideas. Given the complexities
16 of the site, Staff asked that the Petitioner's representatives explain their "future
17 vision" during the Hearing, as it may impact Petitioner's compliance any Conditions
18 addressing access to lots owned by others. (2022 Report, on top of page 4).

19 The petitioner's hearing memorandum from counsel, Mr. Miller, addressed the
20 "vision" issue as follows: "While this is not a condition of the road vacation, TPP
21 has previously informed the County that it has no definitive plans for the portion of
22 the vacated road that will be allocated to its properties, other than the access as can
23 be made over the existing road. Development of improved access for vehicles and/or
24 pedestrian traffic would have to be both safe and cost-efficient, and no present
25 analysis has been undertaken to determine if it could be made so. TPP acknowledges
26 their obligation to obtain permits that may be required by improvements to the road
and the County's right to inspect the same." (Petitioner's hearing memorandum from
Mr. Miller, on bottom of page 4 [pages are not numbered]).

(3) The effectiveness of fire, medical, law enforcement, or other emergency services
should not be impaired by the closure, vacation, or abandonment of county roads.
Appropriate authorities should be consulted with respect to this policy.

The general effectiveness of emergency services will not be impaired by this road
vacation. It is a dead-end roadway that has been closed for 25 years and serves no
developed property. No opposition to the Notice of Intent to Vacate the subject right-
of-way was received from the Sheriff's office, the fire department, or JeffCom911.

The petitioner and affected property owners should be mindful that changes in use or
development activity on properties along the potentially vacated roadway will require

1 *full compliance with any and all emergency service provider requirements in effect*
2 *at the time of such action.*

3 *Based on Findings provided above, any road vacation should be conditioned to*
4 *reserve access rights along all sections of vacated right-of-way for County officials*
5 *for general emergency, public safety, and law enforcement purposes, expressly*
6 *including site-visits, inspections, or investigations related to law (regulatory)*
7 *compliance issues, including without limitation compliance with any conditions of*
8 *approval imposed as part of any road vacation approved by the Board of County*
9 *Commissioners.*

10 (4) Roads should not be closed, vacated, or abandoned when such routes can
11 effectively be used for utility corridors. Suitable utility easements could be retained
12 as a means of satisfying this policy. Public and private utility companies and their
13 plans should be consulted with respect to this policy. In compliance with
14 RCW 36.87.140, the board of county commissioners may retain an easement within
15 the subject vacated area for the construction, repair, and maintenance of public
16 utilities and services.

17 *No opposition from public or private utility companies or providers was received in*
18 *response to the Notice of Intent to Vacate the subject right-of-way. Staff did not just*
19 *rely on the 2001 utility notices, but instead “did the right thing” and issued new*
20 *notices to local utilities in October and November of 2022. (See Staff Report, dated*
21 *Dec. 7, 2022, on page 2, listing utilities and agencies receiving notices). Century*
22 *Link responded in writing, expressing no objection. Copies of all written comments*
23 *are included in the record. If necessary, and in compliance with RCW 36.87.140 and*
24 *JCC 12.10.130(2)(a), the Board of County Commissioners may retain an easement*
25 *within the vacated area for the placement, construction, repair, and/or maintenance*
26 *of public utilities and services in such easement area.*

(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.

Since the road is a dead-end, does not provide public access to water or a beach, and
the fact that there are no Jefferson County Parks located within or currently proposed
in the area, the subject right-of-way is not a prime candidate for a public trail or
pathway. Staff brought the matter up before the County’s Parks and Recreation
Advisory Board, which passed a motion in the last quarter of 2022, to the effect that
they reviewed the pending request for a road vacation and that they had no comments,

1 as it has no bearing on parks and recreation. (See email message from M. Tyler to
2 Ms. Kostelec, dated Dec. 6, 2022, included as part of Ex. 4).

3 However, Ricky Beach Road currently provides lot owners within the affected plat
4 with access to the beach over what are described as "community lots" (Lots 9, 10,
5 and 19, see illustration provided under Finding No. 10, above). This issue is not in
6 dispute.

7 To address the topic, the petitioner provided a draft easement intended to provide
8 continued beach access for all lots within the Plat of Termination Point, included in
9 the record as Ex. H. Although the draft easement excludes Lot 57, the petitioner's
10 hearing memorandum explains that the petitioner would not object to adding
11 language in a proposed easement that would provide the Lot 57 owners with the same
12 access rights as other lots in the Plat. (See previous finding no. 23, quoting
13 Petitioner's statement on the subject). Accordingly, the Examiner has modified
14 proposed conditions to mandate that petitioner's proposed easement (Ex. H) should
15 be revised to expressly include all lots within the plat, including Lot 57, providing
16 each lot owner with the same beach access rights provided to all other owners of lots
17 in the Plat. Proposed Ex. H should also be modified to expressly identify and describe
18 the lot, lots, or portions thereof, through which owners of lots in the plat hold rights
19 to access the beach, Lots 9, 10, and/or 19, as credibly demonstrated by the petitioner
20 using binding legal instruments, subject to review and confirmation by the County's
21 attorney.

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

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

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

The Examiner finds that the easements proposed by the petitioner, Exhibits H and I,
are sufficient to ensure that no parcels in the plat will be landlocked if the road is
vacated, provided that Ex. H should be revised to provide the owners of Lot 57 with
the same access rights as all other lot owners in the same plat, and addresses other
details explained in the Examiner's recommended Conditions. There is insufficient
evidence to mandate 'vehicular' access in any 'replacement' easements that might be

1 recorded after the road is vacated. Access is authorized in the proposed easements,
2 and if the petitioner, or any grantee, wishes to improve conditions on the route from
3 those existing today, they must comply with all applicable County development
4 regulations.

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

6 35. The County Engineer determined that this segment of roadway is a “Class B” right-
7 of-way. (*County Engineer’s Report, on page 6, finding no. 12*). JCC 12.10.120 requires the
8 Principal Petitioner to compensate the County for all Class A and Class B vacated rights-of-
9 way in compliance with RCW 36.87.120. Accordingly, any Board action approving vacation
10 of the subject right-of-way shall not be effective until compensation is provided as described
11 in the following findings.

12 36. RCW 36.87.120, cited above, is captioned “Appraised value as basis for
13 compensation— Appraisal costs”, and reads as follows:

14 “Any ordinance adopted pursuant to this chapter may require that
15 compensation for the vacation of county roads within particular classes shall
16 equal all or a percentage of the appraised value of the vacated road as of the
17 effective date of the vacation. In determining the appropriate compensation
18 for the road or right-of-way, the board may adjust the appraised value to reflect
19 the value of the transfer of liability or risk, the increased value to the public in
20 property taxes, the avoided costs for management or maintenance, and any
21 limits on development or future public benefit. Costs of county appraisals of
22 roads pursuant to such ordinances shall be deemed expenses incurred in
23 vacation proceedings, and shall be paid in the manner provided by RCW
24 36.87.070.”

25 37. JCC 12.10.120(1) provides: “*Base Payment. The Principal Petitioner shall pay, with*
26 *respect to the vacation of either or both Class A and Class B roads or rights-of-way a sum*
equal to one-half of the current fair market value (as of the date of the petition) of the area
so vacated if the county holds title through a dedication, or the full current fair market value
(as of the date of the petition) if the county acquired the subject rights-of-way other than by
dedication, e.g., fee simple interest.”

38. There is no dispute that the County holds title to Ricky Beach Road through a
dedication made at the time the Plat of Termination Point was recorded in 1961, so the
petitioner must pay a sum equal to one-half of the current fair market value of Ricky Beach
Drive. (*County Engineer’s 2022 Report, on page 2, Finding 1, citing Ex. B, 2001 Petition;*
JCC 12.10.120(1).)

39. The Examiner finds and concludes that language in current County codes should be read in a manner that is consistent with state statutes that empower counties to review and approve requests to vacate public right-of-way, particularly RCW 36.87.120, which allows the Board to require that compensation for the vacation of a county road within particular classes to equal all or a percentage of the appraised value of the vacated road as of the effective date of the vacation – instead of the “date of the petition” language found in JCC 12.10.120(1), quoted above.

40. This is a significant issue for this pending road vacation petition, which may have been filed at some point in 2001, but was remanded to the Hearing Examiner in 2022, and subject to a completely new public notice and hearing process.

41. As noted above, the vacated Ricky Beach Drive area would be approximately 99,000 sq.ft. (60 x 1,650), which is 2.27 acres (Acre size is 43,560 sq.ft.; $99,000/43,560 = 2.27$). The twenty-two-year-old compensation figure assigned to the right-of-way (\$4,951.25, as 50% of its assessed land value) is not credible and runs counter to known increases in property values throughout the region in the last two decades. Further, current assessed values of numerous parcels and lots abutting Ricky Beach Drive show valuations worth \$10,000, \$14,000, and up to \$70,000 per acre. (See *Jefferson County Assessor parcel values, available for parcels in the plat on the Assessor’s online portal*). Any action by the Board should update the compensation required for this right of way to reflect values as of the date that any road vacation ordinance or resolution might be adopted, something that is likely to be at least 50% of \$22,270.00 (2.27 acres x \$10,000 per acre), with credit for any payments already received. (See JCC 12.10.120(3) *Valuation Procedure, requiring the principal petitioner to provide a fair market appraisal for Class A or Class B right-of-way from an appraiser licensed by the state of Washington, explaining that Jefferson County shall have the right to review, accept or reject any appraisal and may do so with an internal report or an appraisal provided by a private state-licensed appraiser*).

42. Commissioners are well aware of the Washington Constitution’s prohibition on making a gift of public funds or property. (See WA Constitution, Article 8, Sec. 7, which expressly provides that: “No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.” (*emphasis added*)).

43. Any road vacation should require payment for an amount representing 50% of the appraised value of the vacated road as of the effective date of the vacation – not at some point over 20-years ago.

1 44. JCC 12.10.120(2), imposes an “Additional Payment” requirement with respect to
2 vacation of a Class B road or right-of-way, reading in relevant part as follows:

3 “With respect to vacation of a Class B road or rights-of-way, and in addition to the base
4 payment described above, the principal petitioner(s) shall pay to the county an amount
5 equal to the amount of public expenditures made in improvement or maintenance of the
6 road or rights-of-way (or a portion of any road or rights-of-way) that is the subject of the
7 proposed vacation, and all other administrative costs incurred by the county in vacating
8 the road. To the extent the county can not, because of missing, destroyed or incomplete
9 records, determine the precise amount expended for the improvement or maintenance of
10 a road or rights-of-way (or a portion of that road or rights-of-way) that is the subject of a
11 proposed vacation, then the county shall be entitled to compensation equal to the amount
12 spent on “improvement and maintenance” of that road or rights-of-way between January
13 1, 1994, and the date of the petition.”

14 45. The County Engineer’s 2022 Report credibly explains why any “Additional Payment”
15 amount for public expenditures made to improve or maintain Ricky Beach Drive should be
16 waived, mostly because the road has been closed since 1997 and no public monies were used
17 on the road since that time. *(2022 Report, on page 6, item 12).*

18 46. Because Ricky Beach Drive is a Class B roadway, there is no dispute that the
19 Petitioner must pay all administrative costs incurred by the County in connection with this
20 road vacation petition. Such payment is required whether or not the vacation is ultimately
21 approved. These administrative costs would include, without limitation, the 2022 and 2023
22 costs associated with preparing for and conducting a hearing with the Hearing Examiner,
23 preparation and issuance of the Hearing Examiner’s report, reviewing documents submitted
24 by the Petitioner, document recording fees, possible appraisal fees, and other associated
25 expenses incurred by the County.

26 47. Based on credible evidence in this record, particularly unrebutted evidence showing
that ongoing ownership of the road right-of-way is of no benefit to the general public, because
it comes with risks and management/maintenance oversight costs – or if none are incurred,
and inaction is the result, perceived neglect might reduce public confidence and trust in how
the County manages its portfolio of properties and rights-of-way – the Examiner finds that
this road vacation should move forward, subject to updated conditions of approval, that
ensure proper compensation is made, and that affected property owners continue to have
access of the sort they have before any road vacation, which in this case, is minimal.

48. The County Engineer’s 2022 Report includes a section addressing “Alternatives to
Road Vacation.” For reasons explained above, the Examiner finds that vacation is probably
the best result for the County and would be in the public interest, provided the petitioner
satisfies all of the conditions of approval provided in this Recommendation. If the Board
exercises its discretion to deny the requested road vacation, then the alternatives raised by
Staff should be addressed without delay.

26 **RECOMMENDATION TO APPROVE PETITION TO
VACATE RICKY BEACH ROAD
– COUNTY ROAD NO. C504809**

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

1 49. Based on consideration of all evidence in the record, subject to the recommended
2 conditions of approval, and subject to payment of all compensation due, the Hearing
3 Examiner finds and concludes that the petition satisfies all approval criteria and should be
granted by the Board of County Commissioners.

4 V. CONCLUSIONS OF LAW.

5 1. The Hearing Examiner has jurisdiction and responsibility to consider issues presented
6 in this petition and issue this detailed report and recommendation to the Board of County
Commissioners.

7 2. Based on findings provided above, the pending request to vacate Ricky Beach Drive
8 as described in the County Engineer's Report satisfies all review criteria provided in JCC
9 12.10.110, subject to the recommended conditions included in this document.

10 3. The proposed conditions of approval included as part of this Recommendation are
11 supported by a preponderance of evidence in the record, consistent with applicable law, and
in the public interest.

12 4. There appears to be some difference of opinion as to the discretion held by the
13 Jefferson County Board of Commissioners in deciding whether to grant, deny, or condition
14 the pending petition for a road vacation. The memorandum submitted by the petitioner's
15 counsel appears to argue that the petition must be approved, because the petitioner claims
that all conditions recommended by a previous hearing examiner more than 20 years ago
have finally been satisfied. The County Engineer disagrees. County staff is correct.

16 5. Petitioner's argument is not supported by applicable caselaw, including 118 years of
17 unbroken precedent established by the Washington Supreme Court that a local government
18 decision as to whether a road should be vacated is a *legislative action* – meaning that the
19 Board of Commissioners holds broad discretion on the subject, and they are not bound or
20 required to follow a recommendation from any hearing examiner, planning commission, or
other entity that does not hold the express powers to determine whether a right-of-way should
be vacated.

21 6. It has long been the rule in Washington state that road vacation³ actions are a
22 "legislative matter". See *Kakeldy v. Columbia & P.S.R. Co.*, 37 Wash. 675 (1905), ("The
23 question whether the street should be vacated or not was one for legislative decision, resting
with the city council, and, unless that discretion was abused, the courts will not interfere."),
affirmed by *Hoskins v. Kirkland*, 7 Wn.App. 937 (1972). "The legislature has power to

24 ³ County codes use the term "road vacation", but the terms "street vacation" and "right-of-way vacation" mean
25 the same thing for purposes of this Recommendation.

1 vacate streets, and may delegate such power to the municipal corporations of the state. Such
2 delegation has been made by chapter 84, Laws 1901 [predecessor of current road vacation
3 statutes]. Such power having been so delegated, the exercise thereof rests within
4 the discretion of the municipal authorities, and being a political function, will not be reviewed
5 by the courts except upon a clear showing of collusion or fraud.” *Ponischil v. Hoquiam Sash*
6 & *Door Co.*, 41 Wash. 303, 83 P. 316 (1906).

7 7. “There can be no question [that], under our decisions, the power of vacation of streets
8 and alleys or portions thereof belongs to the municipal authorities, and the exercise of that
9 power is a political function which, *in the absence of collusion, fraud, or the interference*
10 *with a vested right, will not be reviewed by the court...*” (See Washington Supreme Court
11 holding in *Capitol Hill Methodist Church v. Seattle*, 52 Wn.2d 359, 324 P.2d 1113 (1958),
12 citing history of previous Supreme Court decisions addressing the same topic,
13 including *Ponischil v. Hoquiam Sash etc. Co.*, 41 Wash. 303, 83 Pac. 316; *Freeman v.*
14 *Centralia*, 67 Wash. 142, 120 Pac. 886; and *Taft v. Washington Mutual Savings Bank*, 127
15 Wash. 503, 221 Pac. 604.” (italics/emphasis used by the Washington Supreme Court)).

16 8. Washington Courts have also addressed challenges to road vacations where the
17 legislative body (a city council, board of county commissioners, and the like), received a
18 recommendation from another entity, and disagreed with such recommendation, upholding
19 the power of the legislative body to do so. In *Hoskins v. Kirkland*, 7 Wn. App. 957, 503 P.2d
20 1117 (1972), the plaintiff challenged the Kirkland City Council’s decision to vacate a public
21 street, partly based on concerns that the legislative body [the City Council] ignored a
22 recommendation against the street vacation from the Kirkland City Planning Commission.
23 The *Hoskins* decision includes the following discussion, which is instructive in this matter:

24 “The [planning] commission's recommendation represents a difference of opinion
25 concerning the competing values involved between the planning commission and the
26 Kirkland City Council. However, the power to vacate the street is vested in the Kirkland
27 City Council and not in the commission. RCW 35.79.030 [statute addressing City powers
28 to vacate public right-of-way]. [NOTE: the companion road vacation statutes applicable
29 to Counties are found in Chapter 36.87 RCW]. Necessarily, the City Council, in the good
30 faith discharge of its legislative responsibilities, is free to evaluate the force and effect of
31 the commission's reasons and to disagree with the commission's recommendation. Such
32 disagreement alone does not amount to bad faith, arbitrary or fraudulent action, the
33 existence of which would overcome the presumption of validity and negate an express
34 finding of public use or benefit. See *Kakeldy v. Columbia & Puget Sound R.R.*, 37 Wash.
35 675, 80 P. 205 (1905); *Banchemo v. City Council*, *supra*.” (*Hoskins v. Kirkland*, 7 Wn.
36 App. 957, 503 P.2d 1117 (1972)).

37 9. In accord with controlling legal authority, including the *Hoskins* case cited above, the
38 Jefferson County Board of Commissioners, in the good faith discharge of its legislative
39 responsibilities, is free to evaluate the force and effect of any hearing examiner’s reasons for

1 recommending denial, approval, or approval with conditions, of any petition for a road
2 vacation, and to disagree with any hearing examiner recommendation.

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

6 **VI. RECOMMENDATION.**

7 Based upon all evidence in the record, and all findings and conclusions provided
8 above, the Hearing Examiner respectfully recommends that the Board of County
9 Commissioners should formally vacate Ricky Beach Drive, County Road No. 504809,
10 subject to Conditions of Approval set forth below:

11 A. Beach Access Rights. Provide a mechanism, possibly in the form of one or more
12 easements, for alternative access for all owners of all lots within the Plat of
13 Termination Point – including without limitation Lot 57 – to access community beach
14 lots (Lots 9, 10, and/or 19), with appropriate language expressly identifying and
15 describing the lot, lots, or portions thereof, through which owners of lots in the plat
16 hold rights to access the beach, as credibly demonstrated by the petitioner using
17 binding legal instruments, subject to review and confirmation by the County's
18 attorney. The petitioner's draft easement for beach access, included in the record as
19 Exhibit H, is currently inadequate, and would require revisions to comply with this
20 condition;

21 B. Shine Road Access Rights. Provide a mechanism, possibly in the form of one or
22 more easements, providing access to and from Shine Road, benefitting all lots within
23 the Plat of Termination Point, and any other lot or lots that currently rely upon Ricky
24 Beach Road for access to Shine Road – including without limitation Parcel Nos.
25 721022004 and 721022002, and Lot 8. This condition requires reference to all lots
26 and parcels as they exist on the date any road vacation is approved, whether under
common ownership by the petitioner or others, regardless of whether a lot may obtain
access via some other route or through another lot under common ownership. Such
document(s) shall be subject to review and approval as to form and compliance with
this condition to the satisfaction of the County's attorney. The petitioner's draft
easement for road access, included in the record as Exhibit I, is currently inadequate,
as it only addresses Lot 57, and tax parcel 721022002;

C. The mechanisms or easements required by the two previous conditions A and B,
may be accomplished using one legal instrument, subject to review and approval as
to form and compliance with these conditions to the satisfaction of the County's
attorney.

1 D. Record a Restrictive Covenant, easement, or other binding legal instrument,
2 granting access to County officials along the vacated right-of-way for general
3 emergency, public safety, and law enforcement purposes, expressly including site-
4 visits, inspections, or investigations related to legal (regulatory) compliance issues,
5 including without limitation compliance with any conditions of approval imposed as
6 part of any road vacation approved by the Board of County Commissioners. Such
7 document shall be subject to review and approval as to form and compliance with this
8 condition to the satisfaction of the County's attorney; and

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

11 ISSUED this 7th Day of March, 2023

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13 _____
14 Gary N. McLean
15 Hearing Examiner
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