



COUNTY COMMISSIONERS

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Gary Edwards

District Two

Bud Blake

District Three

HEARING EXAMINER

Creating Solutions for Our Future

BEFORE THE HEARING EXAMINER FOR THURSTON COUNTY

In the Matter of the Application of)	NO. 2017102347
)	
Port Blakely Tree Farms)	FINDINGS, CONCLUSIONS,
)	AND RECOMMENDATION
For vacation of a road right-of-way)	
)	

SUMMARY OF RECOMMENDATION

The Hearing Examiner recommends that the request to vacate the unopened Thurston County right-of-way known as Dempsey Road, lying adjacent to tax parcel numbers 13714110100, 13714410000, 13714110200, 13713210000, 13713300000, 13714110000, and 13712310000, be **APPROVED**.

SUMMARY OF RECORD

Request

Port Blakely Tree Farms (Applicant) seeks to vacate the Thurston County right-of-way described as follows:

All rights, title and interest in that right-of-way for the road known as Dempsey Road, as conveyed to Thurston County on November 11, 1907 by deed recorded at Auditor's File No. 38473, in Road Book No. 67 at Page 623, records of Thurston County, Olympia, WA. Being in Sections 12, 13, and 14, Township 17 North, Range 3 West, WM, being described as a strip of land 20 feet wide beginning at the southeast corner of the Northeast quarter of the Southeast quarter of Section 14, Township 17 North, Range 3 West; thence North along the section line to a point 3443 feet North of the corner to sections 13, 14, 23, and 24 of said township and range; thence West 20 feet; thence South to a point 20 feet West of the point of beginning; thence East 20 feet to the place of beginning. ALSO, a strip of land 40 feet wide, the centerline of which is described as follows: Beginning at a point on the section line between sections 13 and 14, Township 17 North, Range 3 West, 3443 feet North of the corner to Sections 13, 14, 23, and 24; thence North 40° West, 780 feet; thence North 9°22' East, 793 feet; thence North 9° 20' West, 161 feet; thence North 51°20' East, 303 feet to connect with existing road. Also, a 40-foot right-of-way along said existing road, in a Northerly direction across the land of

Patrick L. Dempsey (currently owned by Port Blakely Tree Farms). Lying adjacent to tax parcel numbers 13714110100, 13714410000, 13714110200, 13713210000, 13713300000, 13714110000, 13712310000.

Hearing Date

The Thurston County Hearing Examiner held an open record public hearing on the request on December 12, 2017.

Testimony

The following individuals submitted testimony under oath at the open record public hearing:

Kelli Larsen, P.E., L.G., Thurston County Engineer
Gareth Waugh, Port Blakely Tree Farms
Glynnis Nakai, Manager, Nisqually Wildlife Refuge, USFWS

Exhibits

The following exhibits became part of the official record at the open record public hearing:

EXHIBIT 1 Public Works Staff Report including the following attachments:

- Attachment a Notice of Public Hearing
- Attachment b Master Application and Supplemental Application submitted May 12, 2017, with letter from Cathrin Weis dated April 8, 2017 and maps labeled 1 - 5
- Attachment c Vicinity Map
- Attachment d Section/Township/Range Map
- Attachment e Quit Claim Deed (AFN 38473)
- Attachment f Historic Section/Township/Range Map showing Dempsey Road

Upon consideration of the testimony and exhibits submitted at the open record hearing, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. The Applicant seeks to vacate the Thurston County right-of-way described as follows:

All rights, title and interest in that right-of-way for the road known as Dempsey Road, as conveyed to Thurston County on November 11, 1907 by deed recorded at Auditor's File No. 38473, in Road Book No. 67 at Page 623, records of Thurston County, Olympia, WA. Being in Sections 12, 13, and 14, Township 17 North, Range 3 West, WM, being described as a strip of land 20 feet wide beginning at the southeast corner of the Northeast quarter of the Southeast quarter

of Section 14, Township 17 North, Range 3 West; thence North along the section line to a point 3443 feet North of the corner to sections 13, 14, 23, and 24 of said township and range; thence West 20 feet; thence South to a point 20 feet West of the point of beginning; thence East 20 feet to the place of beginning. ALSO, a strip of land 40 feet wide, the centerline of which is described as follows: Beginning at a point on the section line between sections 13 and 14, Township 17 North, Range 3 West, 3443 feet North of the corner to Sections 13, 14, 23, and 24; thence North 40° West, 780 feet; thence North 9°22' East, 793 feet; thence North 9° 20' West, 161 feet; thence North 51°20' East, 303 feet to connect with existing road. Also, a 40-foot right-of-way along said existing road, in a Northerly direction across the land of Patrick L. Dempsey (currently owned by Port Blakely Tree Farms). Lying adjacent to tax parcel numbers 13714110100, 13714410000, 13714110200, 13713210000, 13713300000, 13714110000, 13712310000.

Exhibits 1 (pages 1 -2), 1.B, and 1.E.

2. The subject right-of-way was dedicated to Thurston County by deed on November 11, 1907 (Auditor's File No. 38473, Road Book No. 67 at page 623). The southern portion of the right-of-way is 20 feet wide, and the northern portion is 40 feet wide. *Exhibits 1 (page 2), 1.B, and 1.E.*
3. The subject right-of-way is wholly contained within property owned by Port Blakely Tree Farms, and has no connecting access to public right-of-way. The road vacation would allow the Applicant to complete boundary line adjustments needed to convey approximately 759 acres of forest and wetlands to the United States Fish and Wildlife Service to be included in the Black River Unit of the Billy Frank Jr. Nisqually National Wildlife Refuge. *Exhibit 1 (page 2) and 1.B.*
4. The subject right-of-way has never been opened for or improved for public use. At present it contains a private gravel road. *Exhibit 1 (page 2) and 1.B.*
5. The subject right-of-way runs through forested and wetland areas and crosses Dempsey Creek. Road development within the right-of-way would potentially disturb these environmentally sensitive areas and the wildlife species that reside within them. *Exhibit 1.B.*
6. The County Engineer submitted that it is not advisable to preserve the right-of-way as a County road, and that the public would benefit from preservation of natural areas. *Exhibit 1, page 3.*
7. The County Engineer recommended that approval of the right-of-way vacation be conditioned on the Applicant providing compensation to the pursuant to TCC 13.36.030. An appraisal has not yet been submitted. *Exhibit 1, page 3.*

8. The US Fish and Wildlife Service sent a representative to the public hearing to present testimony in support of the application. The representative testified that Port Blakely's excellent stewardship of the land has resulted in very high quality habitat, which would be protected in perpetuity if the acreage is successfully conveyed. *Glynnis Nakai Testimony.*
9. If the vacation goes forward, the Applicant would provide an appraisal of the area requested for vacation consistent with TCC 13.36.030 in order to establish the amount of compensation due. Payment of compensation by the Applicant to the County would be a public benefit. Of note, however, pursuant to TCC 13.36.030.2.c, compensation is not required when environmental conditions exist. In this case, large portions of the subject right-of-way are adjacent to streams, wetlands, and associated buffers (see Exhibit 1, Attachment b, Maps 3 and 4). An Applicant appraisal would no doubt reflect the impacts of the presence of these critical areas on the value of the land to be vacated. *Exhibits 1 (page 3) and 1.B.*
10. Notice of the open record public hearing on the vacation request was published in The Olympian on November 28, 2017 and December 5, 2017, and posted in the vicinity of the request on November 21, 2017, at least 20 days in advance of the hearing, consistent with RCW 36.87.050. There are no adjacent property owners requiring mailed notice. *Exhibit 1 (page 2) and 1.A.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear this request for a vacation of a right-of-way and to make a recommendation to the Thurston County Board of County Commissioners pursuant to the Revised Code of Washington (RCW) 36.87.060(2) and Thurston County Code (TCC) 13.36.060.

Criteria for Review

Pursuant to TCC 13.36.010, county roads must be vacated in accordance with RCW 36.87. RCW 36.87 provides:

“...The [vacation request] must show the land owned by each [Applicant] and set forth that such county road is useless as part of the county road system and that the public will be benefited by its vacation and abandonment.” *RCW 36.87.020*

“...If the county road is found useful as a part of the county road system it shall not be vacated, but if it is not useful and the public will be benefited by the vacation, the county legislative authority may vacate the road or any portion thereof.” *RCW 36.87.060(1)*

“No county shall vacate a county road or part thereof which abuts on a body of salt or fresh water unless the purpose of 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 uses.” *RCW 36.87.130*

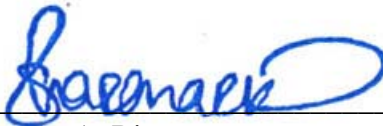
Conclusions Based on Findings

1. The right-of-way is not useful as part of the County road system. *Findings 3, 4, and 6.*
2. The public would benefit as a result of the requested right-of-way vacation, as it would facilitate expansion of the Nisqually National Wildlife Refuge and result in preservation of natural areas. Any compensation provided pursuant to TCC 13.36.030 would also be a public benefit. *Findings 3, 5, 6, 7, 8, and 9.*
3. A portion of the right-of-way abuts Dempsey Creek, but vacation of the right-of-way would allow for a public authority to acquire the vacated property for public purposes. *Finding 3.*

RECOMMENDATION

The Hearing Examiner recommends that the request for vacation of the unopened Thurston County right-of-way known as Dempsey Road, lying adjacent to tax parcel numbers 13714110100, 13714410000, 13714110200, 13713210000, 13713300000, 13714110000, and 13712310000, be **APPROVED**. The Board may wish to reduce or waive compensation for the vacated right-of-way, if approved.

Decided December 21, 2017.



Sharon A. Rice
Thurston County Hearing Examiner