

FINDINGS, CONCLUSIONS AND DECISION  
OF THE HEARING EXAMINER FOR  
THURSTON COUNTY

CASE NO: PW-VAC-11-003 (Gravelly Beach Loop road vacation)

INITIATOR OF VACATION REQUEST:

The Thurston County Board of Commissioners has passed a resolution declaring its intent to vacate of portion of the right-of-way for Gravelly Beach Loop.

LOCATION OF PROPOSAL:

A portion of Gravelly Beach Loop right-of-way in unincorporated Thurston County, described at Exhibit 1, pp. 1-2 and depicted in the maps at Exhibit 1, Attachments d and e.

SUMMARY OF DECISION:

The petition for road vacation is recommended to be granted, with one condition.

HEARING EXAMINER DECISION IN NO. PW-VAC-11-003

**HEARING AND RECORD:**

The hearing on this request was held before the undersigned Hearing Examiner on October 17, 2011. The following exhibit is admitted as part of the record:

Exhibit 1. Staff Report by Thurston County Public Works Department for Case No. PW-VAC-11-003, prepared by Dale R. Rancour and dated October 17, 2011. This Exhibit includes the 4-page Staff Report and Attachments a through h, listed on Page 4 of the Staff Report.

At the hearing, the following individuals testified under oath:

Kelli Larson  
Real Estate Services  
Thurston County Public Works Department  
2000 Lakeridge Drive SW  
Olympia, WA 98502  
Jon Cushman  
Cushman Law Offices  
924 Capitol Way South  
Olympia, WA 98501

Alan Swanson  
Swanson Law Firm  
908 Fifth Avenue SE  
Olympia, WA 98501

**HEARING EXAMINER DECISION IN NO. PW-VAC-11-003**

After consideration of the testimony and exhibits described above, the Hearing Examiner makes the following findings of fact, conclusions of law, and decision.

### FINDINGS OF FACT

1. On September 13, 2011 the Board of Thurston County Commissioners adopted Resolution No. 14557, which (a) declared its intention to vacate a portion of the right-of-way of Gravelly Beach Loop NW, (b) directed the County Engineer to prepare a report on the proposed vacation, and (c) directed that a public hearing be held on the proposal before the County Hearing Examiner.
2. The portion of the Gravelly Beach Loop right-of-way proposed to be vacated is described at Exhibit 1, pp. 1-2 and depicted in the maps at Exhibit 1, Attachments d and e.
3. This portion of the right-of-way has never been used for Gravelly Beach Loop. As shown on the map at Exhibit 1, Attachment e, the actual roadway swings to the north off this portion of the right-of-way. The portion to be vacated is unopened and unimproved and is covered with native trees and underbrush.
4. Gravelly Beach Loop is functioning as it should, and there is no need to realign it within the actual right-of-way in this area. The County Engineer states that the portion to be vacated is unnecessary to the County road system.
5. The public would be benefited by the requested vacation, because the County

will no longer have the responsibility or expense of maintenance or administration for it, the County will be free of potential future liability for it, and the vacated right-of-way will increase the County tax base to a small degree when returned to the tax rolls.

6. The map at Exhibit 1, Attachment e shows that the adjacent property to the south is owned by the Hasenstabs and the adjacent property to the north is owned by the Smiths. The portion proposed to be vacated would become property of the Smiths upon vacation.

7. The map at Exhibit 1, Attachment e also shows that the Hasenstab parcel has access to the actual Gravelly Beach Loop through a driveway running in part over a portion of the right-of-way not to be vacated, over the portion to be vacated, and over a portion of the Smith parcel. The Hasenstabs ask that the Smiths grant them an easement preserving this access over the portion to be vacated and the small area of the Smith parcel over which the driveway runs. The County Public Works Department asks also that it be granted an easement over this same area to provide it access to the remaining right-of-way. The easement area needed to accomplish these purposes is shown on the "Combined Map" at Ex. 1, Att. h.

8. The Smiths have agreed to grant easements to the Hasenstabs and the County for the purposes and over the area described in Finding 7, above. The easement to the Hasenstabs is necessary to preserve access to their property, and the easement to the County will afford it reasonable access to the remaining right-of-way. For these reasons, the vacation should be conditioned on the Smiths granting the above-described easements.

9. Because the County has initiated this vacation request, it waives compensation

from the Smiths for the portion vacated.

### CONCLUSIONS OF LAW

1. As set out in RCW 36.87.040, the criteria which must be examined in deciding whether to vacate a public right-of-way are

"whether the county road should be vacated and abandoned, whether the same is in use or has been in use, the condition of the road, whether it will be advisable to preserve it for the county 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 . . ."

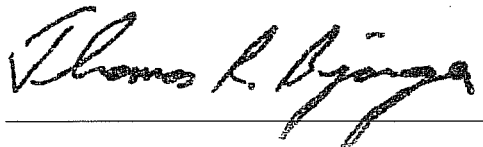
2. The public interest would not be served by approving a vacation that deprived an adjacent property owner of access to the property or that interfered with County access to the remaining right-of-way. The easements described above which the Smiths have offered to convey will avoid these problems. With a condition that those easements be conveyed, the Findings above show that the requested vacation meets the criteria of RCW 36.87.040 and should be approved.

### RECOMMENDATION

The Board of County Commissioners should approve the vacation of a portion of the Gravelly Beach Loop right-of-way described above on the following condition:

Before the vacation takes effect, the Smiths shall convey access easements to the Hasenstabs and to the County over the area shown on the "Combined Map" at Ex. 1, Att. h for the respective purposes noted in Finding No. 7, above.

Dated this 4th day of November, 2011.

A handwritten signature in black ink, reading "Thomas R. Bjorgen", written over a horizontal line.

Thomas R. Bjorgen

Hearing Examiner



Project No. <u>PW-VAC 11-003</u> Appeal Sequence No. _____
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**RECONSIDERATION OF HEARING EXAMINER RECOMMENDATION**

THE REQUESTOR, after review of the terms and conditions of the Hearing Examiner's recommendation hereby requests that the Hearing Examiner take the following information into consideration and further review under the provisions of Chapter 13.36.090 of the Thurston County Code.

(If more space is required, please attach additional sheet.)

**REQUEST FOR CONSIDERATION BY THE BOARD**

TO THE BOARD OF THURSTON COUNTY COMMISSIONERS COMES NOW:

\_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_\_\_,  
 as an AGGRIEVED PARTY in the matter of a Hearing Examiner's recommendation rendered on  
 \_\_\_\_\_, by \_\_\_\_\_ relating to \_\_\_\_\_.

THE AGGRIEVED PARTY, after review and consideration of the reasons given by the Hearing Examiner for his recommendation, does now, under the provisions of Chapter 13.36.100 of the Thurston County Code, give written notice of REQUEST OF CONSIDERATION by the Board of Thurston County Commissioners of said recommendation and alleges the following errors in said Hearing Examiner's recommendation:

Specific section, paragraph and page of law:  
 Road and Bridges--Vacation, RCW Chapter 36.87

(If more space is required, please attach additional sheet)

AND FURTHERMORE, requests that the Board of Thurston County Commissioners, having responsibility for final review of such recommendations will upon review of the record of the matters and the allegations contained in this request, find in favor of the aggrieved party and reverse the Hearing Examiner's recommendation.

~~Signature required for both Reconsideration and Board Consideration Requests~~

\_\_\_\_\_  
 AGGRIEVED PARTY NAME PRINTED

\_\_\_\_\_  
 SIGNATURE OF AGGRIEVED PARTY

Address \_\_\_\_\_

\_\_\_\_\_  
 Phone \_\_\_\_\_

**Please do not write below - for Staff Use Only:**

Fee of \$595.00 for Reconsideration or \$820 for Board Consideration Received (check box): Initial \_\_\_\_\_ Receipt No. \_\_\_\_\_  
 Filed with the Development Services Department this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

## THURSTON COUNTY

### PROCEDURES FOR RECONSIDERATION OF HEARING EXAMINER RECOMMENDATION AND REQUEST FOR CONSIDERATION BY THE BOARD

#### - ROAD VACATION -

**NOTE:** THERE MAY BE NO EX PARTE (ONE-SIDED) CONTACT OUTSIDE A PUBLIC HEARING WITH EITHER THE HEARING EXAMINER OR WITH THE BOARD OF THURSTON COUNTY COMMISSIONERS ON APPEALS (Thurston County Code, Section 2.06.030).

If you do not agree with the recommendation of the Hearing Examiner, there are two (2) ways to seek review of the recommendation. They are described in A and B below and can also be found in Chapter 13.36 of the Thurston County Code (TCC).

#### A. RECONSIDERATION BY THE HEARING EXAMINER

1. Any aggrieved party who disagrees with the recommendation of the Examiner may request reconsideration.
2. Written request for reconsideration and the appropriate fee must be filed with the Permit Assistance Center of the Thurston County Development Services Department within twenty (20) days of the date of the written decision. The form to file such a request is provided on the opposite side of this notification.

#### B. CONSIDERATION BY THE BOARD OF THURSTON COUNTY COMMISSIONERS

1. Any aggrieved party may file a request for consideration of the Examiner's recommendation with the Board of Thurston County Commissioners. The form to file such a request is provided on the opposite side of this notification.
2. A written request for consideration and the appropriate fee must be filed with the Permit Assistance Center of the Thurston County Development Services Department within twenty (20) days of the date of the Examiner's written recommendation. If the Examiner was requested to reconsider the recommendation, the written request to the Board for consideration must be filed within ten (10) days of the date of the Examiner's decision on the reconsideration request.
3. The request for consideration shall specify the error or issue which the Board is asked to consider, and shall cite by reference to section, paragraph and page, the provisions of law which are alleged to have been violated. Issues which are not so identified need not be considered by the Board. The request shall be accompanied by any written memorandum which the requesting party may wish considered by the Board. The request shall not include the presentation of any new evidence and shall be based only upon facts presented to the Examiner.
4. The Thurston County Roads and Transportation Services Department shall notify parties of record pursuant to TCC 13.36.100(a)(2) that a request has been filed and that copies of the request may be obtained from the Clerk of the Board.

- C. FILING FEES AND DEADLINE. If you wish to request a reconsideration or consideration by the Board of the Examiner recommendation, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$595.00** for a request for reconsideration or **\$820.00** for consideration by the Board. Any request for reconsideration or consideration by the Board must be **received** in the Permit Assistance Center of the Thurston County Development Services Department on the second floor of Building #1 in the Thurston County Courthouse complex no later than **4:00 p.m.** per the requirements specified in A2 and B2 above. **Postmarks are not acceptable.** If your application fee as well as completed application form is not filed by this time, you will be unable to request reconsideration or a consideration by the Board of the Examiner recommendation. This deadline may not be extended.