OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

REPORT AND RECOMMENDATION

TO THE CITY COUNCIL

PETITIONER: Puyallup Tribe of Indians (hereafter the "Petitioner").

FILE NO: HEX2026-001 (124.1463)

SUMMARY OF REQUEST:
A petition by the Puyallup Tribe of Indians requesting the vacation of the right-of-way ("ROW") air rights above East 30th Street approximately 400 feet easterly from the intersection of East Portland Avenue and East 30th Street, to build an elevated 20-foot by 80-foot pedestrian connection between the Emerald Queen Casino and a planned parking garage.

RECOMMENDATION OF THE HEARING EXAMINER:
The vacation petition is hereby recommended for approval, subject to any conditions set forth herein.

PUBLIC HEARING:
After reviewing Real Property Services' Preliminary Report (the "Report"—Exhibit C-1), and examining available information on file with the petition, the Hearing Examiner conducted a public hearing on the petition on January 15, 2026.[1] Senior Real Estate Specialist, Joseph Romero, of Real Property Services ("RPS") represented the City of Tacoma (the "City"). Tribal counsel, attorney Robert Hunter, and professional engineer Drew Harris of Momentum Civil Engineering Consultants appeared on behalf of the Petitioner. Testimony was taken, exhibits were admitted, and the record closed at the end of the hearing.

FINDINGS, CONCLUSIONS, AND RECOMMENDATION:

FINDINGS:

1. The Petitioner, Puyallup Tribe of Indians (again, the "Petitioner") has requested the vacation of the air rights above East 30th Street approximately 400 feet easterly from the intersection

[1] This hearing was conducted in the City Council Chambers of the Tacoma Municipal Building, together with participation available over Zoom at no cost. Petitioners and the City's representative were both present in person in Council Chambers. No members of the public appeared to testify either in the Council Chambers or over Zoom.

of East Portland Avenue and East 30th Street (collectively the "Vacation Area"). The Vacation Area is legally described as follows:

> THAT PORTION OF THE EAST 30TH STREET 80 FOOT WIDE RIGHT-OF-WAY AS SHOWN ON THE PLAT OF THE INDIAN ADDITION TO THE CITY OF TACOMA, RECORDED IN VOLUME 7 OF PLATS AT PAGE 30, RECORDS OF PIERCE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:
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> THE WESTERLY 20.00 FEET OF THE EASTERLY 375.55 FEET OF SAID EAST 30TH STREET RIGHT-OF-WAY LYING BETWEEN THE EASTERLY RIGHT-OF-WAY MARGIN OF PORTLAND AVENUE EAST AND THE WESTERLY RIGHT-OF-WAY MARGIN OF EAST R STREET AND LYING ABOVE THE ELEVATION OF 71.00 FEET AND BELOW THE ELEVATION OF 90.00 FEET RELATIVE TO THE CITY OF TACOMA DATUM NGVD29. *Exs. C-1~ C-3.*

2. The Petitioner's stated intention in requesting the vacation is to build an elevated 20-foot by 80-foot pedestrian connection between the Emerald Queen Casino and a planned parking garage. *Harris Testimony*; *Ex. C-1.*

3. East 30th Street is an 80-foot-wide ROW with an improved, 36-foot-wide asphalt street in the center. The remaining ROW includes sidewalk, curb, gutter, and has a slight downward grade from west to east. Also included within the ROW are a variety of driveways and landscaping improvements. *Ex. C-1.*

4. The City acquired the East 30th Street ROW in the Indian Addition to the City of Tacoma plat, as such is filed of record dated May 1, 1896 in the records of the Pierce County Auditor. *Ex. C-1, Ex. C-3*.

5. The requested vacation has been reviewed by outside quasi-governmental agencies, City departments/divisions, and utility providers. Reviewing agencies indicated that they have no concerns or objections to the proposed vacation. *Exs. C-1, C-4~C-14.*

6. The Petitioner's representatives were present at the hearing and testified to the public safety benefit the air rights vacation will provide from the pedestrian connection eliminating the risk of injury where pedestrians would otherwise have to traverse between the garage facility and casino at street-level with traffic. *Harris Testimony.*

7. No members of the public appeared at the hearing.

8. City staff presumed that the public would benefit from the proposed air rights vacation if additional property taxes are paid; however, in this instance the Petitioner is exempt from paying property taxes on the Vacation Area. As set forth in Finding 6, the public benefit from this air rights vacation will come from the added public safety the intended pedestrian connection will provide. *Harris Testimony*; *Ex. C-1*.

9. The Vacation Area is not being used at present for ROW, nor is air space needed for future public use. Therefore, granting the vacation petition will not adversely affect the public need. *Ex. C-1*.

10. The Vacation Area does not abut, nor is it proximate to a body of water and, therefore, the provisions of RCW 35.79.035 are not implicated. *Ex. C-1.*

11. No environmental review of the proposed vacation was conducted. *See Conclusion 3,* below.

12. RPS's Preliminary Report, as entered into the hearing record as Exhibit C-1 (the "Report"), accurately describes the requested vacation, general and specific facts about the abutting properties, and the Vacation Area and applicable laws and ordinances. The Report is incorporated herein by this reference as though fully set forth. Any conflict between this Recommendation and the Report should be resolved in favor of this Recommendation, however.

13. Public hearing notices were posted/published at the various locations and on the dates indicated below as follows:

On December 5, 2025-

a. A public notice memo was placed into the glass display case located on the First Floor of the Tacoma Municipal Building next to the Finance Department;

b. A public notice memo was advertised on the City of Tacoma web site at address: http://www.tacoma.gov/notices;

c. Public notice was advertised in the Daily Index newspaper;

d. A public notice mailing was sent to all property owners of record within a 300-foot radius of the Vacation Area; and

e. Public Notice was advertised on Municipal Television Channel 12.

On December 10, 2025-

a. A yellow public notice sign was posted on the southeast corner of Portland Avenue and East 30th Street; and

b. A yellow public notice sign was posted on the southwest corner of East R Street and East 30th Street.

14. Any conclusion hereinafter stated which may be more properly deemed a finding is hereby adopted as such.

CONCLUSIONS:

1. The Hearing Examiner has jurisdiction over the parties and subject matter in this proceeding to conduct a hearing and make a recommendation to the City Council. *See Tacoma Municipal Code (TMC) 1.23.050.A.5, TMC 9.22.070, RCW 35.79.030*.

2. The Hearing Examiner's role in street vacation proceedings is quasi-judicial in nature (making findings and conclusions based on evidence presented, but without a final decision), leading to a legislative determination by the City Council that is enacted by ordinance. *State ex rel. Myhre v. City of Spokane*, 70 Wn.2d 207, 218, 442 P.2d 790 (1967); *TMC 9.22.070*.

3. Pursuant to WAC 197-11-800(2)(i), the vacation of ROW, such as the Vacation Area here, is exempt from the threshold determination and Environmental Impact Statement requirements of RCW 43.21.C, the State Environmental Policy Act (SEPA).

4. "RCW 35.79.010 gives the legislative authority [of a municipality]—the city council—sole discretion as to whether a petition to vacate shall be granted or denied."[2]

5. Petitions for the vacation of public ROW must be consistent with the following criteria:[3]

    1. The vacation will provide a public benefit, and/or will be for a public purpose.

    2. The [petitioned-for] right-of-way vacation shall not adversely affect the street pattern or circulation of the immediate area or the community as a whole.

    3. The public need shall not be adversely affected.

    4. The petitioned-for right-of-way is not contemplated or needed for future public use.

    5. No abutting owner becomes landlocked or access will not be substantially impaired; i.e., there must be an alternative mode of ingress and egress, even if less convenient.

    6. The petitioned-for vacation of right-of-way shall not be in violation of RCW 35.79.035. *TMC* 9.22.070.

6. The Petitioner must demonstrate, by a preponderance of the evidence, that its vacation petition meets the foregoing criteria. *See TMC 1.23.070*. The Petitioner is entitled to rely on all evidence made part of the record, whatever the source of that evidence.

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[2] *Puget Sound Alumni of Kappa Sigma v. Seattle*, 70 Wn.2d 222, 238-239, 422 P.2d 799, 808-809 (1967).
[3] For consistency, outline numbering of the criteria is kept the same as in the original TMC text.

7. Findings entered herein, based upon substantial evidence in the hearing record, support a conclusion that the requested vacation of air rights conforms to the criteria for the vacation of right-of-way set forth at Conclusion 5 above, provided the condition recommended below is met. The public would experience benefits from the economic development and increased street safety that the requested vacation will facilitate. The requested air rights vacation would not impair traffic circulation, landlock any abutting owner, or adversely affect the public need.

8. Given the foregoing, the Hearing Examiner recommends that the requested ROW vacation be approved subject to the following conditions:

A. SPECIAL CONDITIONS:

PAYMENT OF FEES

The Petitioners shall compensate the City in an amount equal to the full appraised value of the Vacation Area. One-half of the revenue received shall be devoted to the acquisition, improvement and maintenance of public open space land and one-half may be devoted to transportation projects and/or management and maintenance of other City owned lands and unimproved right-of-way areas. *TMC 9.22.010.*

B. USUAL CONDITIONS:

1. The recommendation set forth herein is based upon representations made and exhibits, including any development representations, plans and proposals, submitted at the hearing conducted by the Hearing Examiner. Any material change(s) in any such development plans, proposals, or conditions of approval imposed may potentially be subject to the review of the Hearing Examiner and may require additional review and hearings.

2. The approval recommended herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition precedent to the recommendation herein made, and is a continuing requirement of any resulting approvals. By accepting any resulting approvals, the Petitioners represent that any development or other activities facilitated by the vacation will comply with such laws, regulations, and ordinances. If, during the term of any approval granted, any development or other activities permitted do not comply with such laws, regulations, or ordinances, the Petitioners agree to promptly bring such development or activities into compliance.

9. Accordingly, the vacation petition is recommended for approval, subject to the conditions set forth in Conclusion 8 above.

10. Any above stated conclusion, which may be more properly deemed or considered a finding, is hereby adopted as such.

RECOMMENDATION:

The vacation petition is hereby recommended for approval, subject to the condition(s) contained in Conclusion 8 above.

DATED this 21st day of January, 2026.

JEFF H. CAPELL, Hearing Examiner

N O T I C E

RECONSIDERATION/APPEAL OF EXAMINER'S RECOMMENDATION

RECONSIDERATION:

Any aggrieved person or entity having standing under the ordinance governing the matter, or as otherwise provided by law, may file a motion with the office of the Hearing Examiner requesting reconsideration of a decision/recommendation issued by the Examiner. A motion for reconsideration must be in writing and must set forth the alleged errors of procedure, fact, or law and must be filed in the Office of the Hearing Examiner within l4 calendar days of the issuance of the Examiner's decision/ recommendation, not counting the day of issuance of the decision/recommendation. If the last day for filing the motion for reconsideration falls on a weekend day or a holiday the last day for filing shall be the next working day. The requirements set forth herein regarding the time limits for filing of motions for reconsideration and contents of such motions are jurisdictional. Accordingly, motions for reconsideration that are not timely filed with the Office of the Hearing Examiner, or that do not set forth the alleged errors shall be dismissed by the Examiner. It shall be within the sole discretion of the Examiner to determine whether an opportunity shall be given to other parties for response to a motion for reconsideration. The Examiner, after a review of the matter, shall take such further action as he/she deems appropriate, which may include the issuance of a revised decision/recommendation. (*Tacoma Municipal Code* 1.23.140)

APPEALS TO CITY COUNCIL OF EXAMINER'S RECOMMENDATION:

Within 14 days of the issuance of the Hearing Examiner's final recommendation, any aggrieved person or entity having standing under the ordinance governing such application and feeling that the recommendation of the Examiner is based on errors of procedure, fact or law may have the right to appeal the recommendation of the Examiner by filing written notice of appeal with the City Clerk, stating the reasons the Examiner's recommendation was in error.

Appeals shall be reviewed and acted upon by the City Council in accordance with *TMC* 1.70.