

BEFORE THE CITY OF TUMWATER HEARINGS EXAMINER

IN RE:) HEARING NO. TUM-25-0756
I-5 COMMERCE PLAT AND RIGHT-OF)
WAY VACATION,) FINDINGS OF FACT, ANALYSIS,
CONCLUSIONS OF LAW AND
DECISION

APPLICANT: Confederated Tribes of Chehalis Reservation
420 Howanut Road
Oakville, Washinton 98568

REPRESENTATIVE: Chris Carlson
Hatton Godat Pantier
30910 Martin Way East, Suite B
Olympia, Washington 98506

NATURE OF REQUEST:

The Applicant seeks to vacate a previously approved Plat and dedicated road right of way.

LOCATION OF PROPOSAL:

40.12 acres located at 9253, 9235, 9211, 9183, 9157, 9133, 9125, 9124, 9067, 9035, 9048 and 9010 Legacy Court SW, Tumwater, WA 98501. Tax Parcel Numbers 55520000100, 55520000200, 55520000300, 55520000400, 55520000500, 55520000600, 55520000700, 55520000800, 55520000900, 55520001000, 55520001100 and 55520001200.

SUMMARY OF DECISION:

The requested vacation of the plat and vacation of the dedicated right-of-way are **approved** subject to slightly modified conditions.

BACKGROUND

On October 14, 2020, Preliminary Plat approval was granted by the Hearing Examiner for the "I-5 Commerce Plat". As approved, the Applicant was granted preliminary plat approval to develop a 12-lot light industrial subdivision. As part of the approved preliminary plat, the developer was required to dedicate a roadway through the plat (Legacy Court).

*Findings of Fact, Analysis,
Conclusions of Law
and Decision - 1*

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1 Minor amendments were made to the plat in 2021, largely to address the required number
2 of trees needing to be replanted as part of site approval. These required changes were approved
3 by the Hearing Examiner on April 26, 2022.

4 The amended plat was submitted for plat approval on August 12, 2022. The plat was
5 recorded with covenants, conditions, and restrictions (CC&R's) and a stormwater maintenance
6 agreement. The site has since undergone ground development, but no buildings have been
7 constructed.

8 In 2024, the Chehalis Tribe inquired into vacating the approved plat and right-of-way
9 dedication in anticipation of its purchasing the property. These discussion led to the Tribe and
10 the City entering into an Intergovernmental Agreement in July of 2024, wherein the City agreed
11 to allow the Tribe to seek vacation of the plat and right-of-way in exchange for various promises
12 made by the Tribe.

13 The Chehalis Tribe has since purchased the property and, on September 16, 2025,
14 submitted a formal application to vacate the I-5 Commerce Plat and the right-of-way. No
15 development is proposed as part of the application to vacate the plat and right-of-way. City Staff
16 recommends approval of the vacation of both the plat and right-of-way subject to a few
17 conditions. The Applicant does not object to these proposed conditions. There has been no
18 public opposition to the requested vacation.

19 PUBLIC HEARING

20 The public hearing commenced at 4:00 p.m. on December 17, 2025. The hearing was
21 conducted in a hybrid format with interested parties appearing both in person and remotely. The
22 City appeared through Alex Baruch, Planner. The Applicant, the Confederated Tribes of
23 Chehalis Reservation, appeared through their consultant, Chris Carlson of Hatton, Godat,
24 Pantier. The Applicant's legal counsel also appeared but did not participate. There were no
25

1 members of the public present. All who testified were sworn under oath and a verbatim
2 recording was made of the proceedings.

3 Exhibits considered during the hearing included the following:

4 Exhibit 1. Staff Report December 10, 2025
5 Exhibit 2. Preliminary Plat Map 02-06-2020
6 Exhibit 3. Preliminary Plat HE Decision 10-14-2020
7 Exhibit 4. Plat Alteration Hearing Examiner Decision 04-26-2022
8 Exhibit 5. Recorded Plat 09-27-2022
9 Exhibit 6. Recorded CC&R 09-27-2022
10 Exhibit 7. Recorded Stormwater Maintenance Agreement 09-27-2022
11 Exhibit 8. Intergovernmental Agreement Between City of Tumwater and Confederated
12 Tribes of the Chehalis Reservation
13 Exhibit 9. Notice of Application and Notice of Public Hearing 11-28-2025
14 Exhibit 10. Public Notice Certification 12-01-2025
15 Exhibit 11. Application 06-19-2025
16 Exhibit 12. Dissolution of Association and Termination of CC&Rs 09-27-2024
17 Exhibit 13. Termination of CC&Rs 09-30-2024
18 Exhibit 14. Plat Vacation Map 10-20-2025
19 Exhibit 15. Draft Utility Easement Language
20 Exhibit 16. Neighborhoods Map Comprehensive Plan 2016
21 Exhibit 17. Squaxin Island Tribe Public Comment 12-09-2025

22 Prior to the public hearing City Staff submitted a revised Staff Report with several
23 corrections to the original report highlighted.

24 Exhibit 18. Revised Staff Report

25 No other documents were presented during the public hearing.

The hearing commenced with the testimony of Alex Baruch, Planner. Mr. Baruch's
testimony was brief and relied extensively on the Amended Staff Report. Mr. Baruch began by
providing a history of the project similar to that set forth in the Background Section. Briefly, in
2020 the then owner of the property received approval for a Preliminary Plat to allow
development of the site as a 12-lot light industrial subdivision, TUM-20-0220. A Site
Development Grading Permit was issued and required infrastructure including stormwater tracts

1 and road improvements were constructed. In 2021, a minor plat amendment was made to revise
2 the requirements for tree planting. The required tree plantings per the amended plat were planted
3 and the owner otherwise satisfied all preliminary plat conditions. Final plat approval was
4 submitted on August 12, 2022 (TUM-22-0841). The final plat was recorded with Covenants,
5 Conditions and Restrictions and a Stormwater Maintenance Agreement on September 27, 2022.
6 Although the plat is approved and the infrastructure has been installed, no building construction
7 has occurred and the site remains undeveloped.

8 In 2024, the Chehalis Tribe notified the City that it was considering the purchase of the
9 property and was interested in having the final plat and right-of-way vacated. These discussions
10 let to an Intergovernmental Agreement between the City and the Confederated Tribes of
11 Chehalis Reservation (Exhibit 8) approved by the parties in July 2024 (the "Intergovernmental
12 Agreement"). Among other things, the Intergovernmental Agreement contains the City's
13 promise to assist the Tribe in its application to vacate the plat and right-of-way and, in return, the
14 Tribe agrees to maintain current wetland buffers; properly manage the onsite stormwater system;
15 cooperate in regional traffic management, etc.

16 The sale of the property to the Chehalis Tribe was completed on September 30, 2024.
17 Concurrently with the property's purchase by the Tribe, a plat vacation application was
18 submitted. The application requests the vacation of the I-5 Commerce plat as well as the
19 dedicate right-of-way running through the plat. Mr. Baruch explained the City regards the
20 Hearing Examiner as having jurisdiction over the request to vacate the plat as well as the request
21 to vacate the right-of-way. TUM 17.26.060 and RCW 58.11.212. Staff recommends that the
22 Hearing Examiner grant both requested vacations subject to a few conditions.

23 Mr. Baruch then addressed the project's compliance with SEPA and with requirements
24 for providing public notice of the hearing. Mr. Baruch confirmed that all of these requirements
25 have been met.

*Findings of Fact, Analysis,
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1 Mr. Baruch then reviewed the local and State requirements for plat and right-of-way
2 vacations found in Chapter 12.04 of the Municipal Code along with TMC 17.25.060 and RCW
3 58.17.212. Staff concludes that, as conditioned, all requirements for vacating both the plat and
4 the right-of-way have been satisfied. Both State and City Code require that the Applicant pay
5 50% of the appraised value of the road being vacated, or dedication of property of equal value.
6 Staff has conditioned approval of the vacation on this requirement being met (proposed
7 Condition No. 2). Staff has also conditioned approval on the City being provided an easement
8 for utility access. Subject to these two conditioned, Staff recommends that the final plat and the
9 dedicated right-of-way be vacated.

10 Following the City's presentation the Applicant appeared through its Consultant, Chris
11 Carlson. Mr. Carlson's testimony was equally brief. He explained that the Applicant has no
12 objection to the City's proposed conditions but asks that proposed Condition No. 1 be revised to
13 require a "service line agreement" rather than an "easement" for City utility access. The City has
14 no objection to this requested change to Condition No. 1.

15 At the conclusion of Mr. Carlson's testimony the hearing was opened for public
16 testimony. Several individuals were present but all were affiliated with either the City or the
17 Applicant and there were no members of the public present wishing to testify.

18 At the conclusion of all testimony the Hearing Examiner asked the City and the Applicant
19 whether either would object to the Hearing Examiner imposing an additional condition which
20 would incorporate the conditions imposed upon the Applicant in the Intergovernmental
21 Agreement, commencing at page 3 of the Agreement and continuing to page 6. Both parties
22 indicated that they had no objection to incorporating these conditions but felt that doing so was
23 unnecessary as the Intergovernmental Agreement is already binding upon the parties, and
24 incorporating its conditions would therefore be redundant and unnecessary.

1 I concur with City Staff that, as conditioned, the application satisfies all requirements for
2 vacating the Preliminary Plat and the roadway dedication. I also concur with the parties that
3 incorporating the conditions imposed in the Intergovernmental Agreement is unnecessary as
4 those conditions are binding on the parties without being repeated in the Hearing Examiner's
5 Order.

6 Accordingly, I make the following:

7 **FINDINGS OF FACT**

8 1. Any Findings of Fact contained in the foregoing Background or Public Hearing
9 Sections are incorporated herein by reference and adopted by the Hearing Examiner as his
10 Findings of Fact.

11 **General Findings.**

12 2. The Applicant seeks approval to vacate the previously approved Preliminary Plat
13 known as I-5 Commerce Plat (the "Plat"). The final Plat was recorded on September 27, 2022.
14 along with Covenants, Conditions and Restrictions and a Stormwater Maintenance Agreement on
15 September 27, 2022 (Exhibits 5, 6 and 7).

16 3. The applicant also seeks to vacate the right-of-way dedicated as part of Plat
17 approval. The right-of-way ("Legacy Court") lies wholly within the Plat.

18 4. The grading of the site and the installation of utilities has occurred but no
19 buildings have been constructed and the site is currently undeveloped but for the construction of
20 utilities.

21 5. The Covenants, Conditions and Restrictions, and the Stormwater Maintenance
22 Agreement, have subsequently been dissolved (Exhibits 12 and 13).

23 6. The Applicant notified the City of its interest in purchasing the Plat. Thereafter,
24 the Applicant entered into negotiations resulting in an Intergovernmental Agreement wherein the
25 parties recognize the Applicant's interest in vacating the Plat and the City acknowledges its

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1 willingness to support the requested vacation subject to various conditions, all of which have
2 been accepted by the Applicant (Exhibit 8).

3 7. As previously noted, the property is located along Legacy Court and currently
4 consists of a 12-lot light industrial subdivision including open space tracts and a public road. The
5 site is relatively flat and has been prepared for development but no buildings have been
6 constructed. All site improvements required for final Plat approval have been completed.

7 8. The Applicant acquired the property on September 30, 2024 and submitted an
8 application to vacate the Plat and to vacate the right-of-way dedication.

9 9. The project is located in the Southwest Tumwater Neighborhood as designated in
10 the City's Comprehensive Plan (Exhibit 16). Its land use designation is Light Industrial.

11 10. If approved, the application would convert the property to a single property and
12 eliminate the public road running through the parcel.

13 11. The right-of-way dedicated to the City is solely for the benefit of the Plat: If the
14 Plat does not exist the need for the public road no longer exists.

15 12. Notice of the application and public hearing were mailed to property owners
16 within 300 feet of the subject property, affected agencies, posted onsite, and published in The
17 Olympian on November 28, 2025. No public comments were received. The only agency
18 comment was provided by the Squaxin Island Tribe requesting and Inadvertent Discovery Plan
19 (Exhibit 17). The Tribe was advised that site disturbance has already occurred and that no
20 additional land disturbances are currently envisioned.

21 13. Staff finds that the project is categorically exempt from SEPA review per WAC
22 197-11-800-6-A and WAC 197-11-800-2-I.

1 Findings Relating to Vacation of Plats and Right-of-Way. TMC 17.26.060 and RCW
2 58.17.212.

3 14. Chapter 12.04 TMC sets forth the procedures for vacating a dedicated right-of-
4 way including provisions for notice, public hearing, conditions and compensation.

5 15. Chapter 17.26 TMC sets forth the conditions for vacating a plat. TMC 17.26.060
6 declares that vacation of a plat shall be approved in accordance with RCW 58.17.212.

7 16. RCW 58.17.212 provides that when the application is for the vacation of the plat
8 together with the roads and or streets, the procedure for vacation found in Chapter 58.17 RCW
9 shall be used. Thus, the requirements for vacation found in Chapter 58.17 RCW shall apply to
10 both the vacation of the Plat as well as the vacation of the right-of-way.

11 17. RCW 58.17.212 requires that the application set forth the reasons for vacation and
12 contain signatures of all parties having an ownership interest in that portion of the subdivision
13 subject to vacation.

14 18. Staff finds that the application contains all necessary signatures; that the
15 Applicant has provided a purpose statement which states: "The purpose of this plat vacation is to
16 consolidate all of the lots and vacate all dedicated rights-of-way, City water easements, City
17 sewer easements, and City stormwater maintenance agreements resulting from the filing of the
18 I-5 Commerce Plat recorded under Thurston County Auditor File No. 4952603" (Exhibits 12, 13
19 and 14).

20 19. If the plat is subject to restrictive covenants which were filed at the time of plat
21 approval, and the application for a vacation would result in the violation of these covenants, the
22 application shall contain an agreement providing that the parties agree to terminate or alter the
23 relevant covenants to accomplish the purpose of the vacation of the plat.

1 20. As noted earlier, the Covenants, Conditions and Restrictions and Stormwater
2 Maintenance Agreement previously recorded have been dissolved (Exhibits 12 and 13) and there
3 are no conflicts between these documents and the vacation of the Plat.

4 21. When the application is for the vacation of a plat together with roads, vacations of
5 streets may not be made that are prohibited under RCW 35.79.035, and vacations of roads may
6 not be made that are prohibited under RCW 36.87.130.

7 22. Staff finds that the proposed vacation is not prohibited by either RCW 35.79.035
8 or RCW 36.87.130.

9 23. RCW 58.17.212 requires that vacation of right-of-way must be conditioned upon
10 payment of 50% of the appraised value of the road or dedication of property of equal value.

11 24. As noted earlier, the City and the Applicant have entered into an
12 Intergovernmental Agreement where, under Section 2.B.iv, the Applicant will either pay the City
13 50% of the appraised value of the road or, in lieu of monetary compensation, the Applicant may
14 satisfy this obligation by dedicating to the City for street or other municipal purposes, real
15 property useful for the intended purpose which has a fair market value of at least equal to the
16 amount of monetary compensation that would otherwise be required. The Plat's vacation has
17 been conditioned upon this requirement.

18 25. The City is required to give notice as provided in RCW 58.17.080 and 58.17.090
19 and conduct a public hearing on the application.

20 26. As noted earlier, all required public notices and hearings have been satisfied.

21 27. If any portion of the land contained in the subdivision was dedicated to the public
22 for public use or benefit, such land, if not deeded to the City, shall be deeded to the City unless it
23 is found that the public use would not be served in retaining title to those lands.

24 28. As noted earlier, the City has determined that there is no need to retain the public
25 right-of-way once the vacation of the Plat is completed as only one parcel will be served by the

1 street after the vacation is completed and no adjacent parcels will be landlocked by the vacation
2 of the right-of-way. No land other than the public right-of-way was dedicated for public use or
3 benefit.

4 29. Pursuant to RCW 58.17.212, title to the vacated property shall vest with the
5 rightful owner (Confederated Tribes of Chehalis Reservation). If the vacated land is land that
6 was dedicated to the public, for public use other than a road or street, and the legislative
7 authority finds that retaining title to the land is not in the public interest, title thereto shall vest
8 with the person owning the property on each side thereof. When the road or street that is to be
9 vacated was contained wholly within the subdivision and is part of the boundary of the
10 subdivision, title to the vacated road shall vest with the owner of property contained within the
11 vacated subdivision.

12 30. Staff finds that the street to be vacated is wholly within the subdivision and is a
13 part of the boundary of the subdivision. Therefore, after approval of the Plat and right-of-way
14 vacation, and recordation with Thurston County, the right-of-way will be released to the owner
15 of the property contained within the vacated subdivision.

16 31. In summary, Staff finds that the application, as conditioned, complies with all
17 requirements of RCW 58.17.212 for the vacation of both the Plat and the right-of-way
18 dedication. The Hearing Examiner concurs with these Findings.

19 Having entered his Findings of Fact, the Hearing Examiner makes the following:

20 **CONCLUSIONS OF LAW**

- 21 1. The Hearing Examiner has jurisdiction over the parties and the subject matter.
- 22 2. Any Conclusions of Law contained in the foregoing Background, Public Hearing
- 23 Sections or Findings of Fact are hereby incorporated by reference and adopted by the Hearing
- 24 Examiner as his Conclusions of Law.

3. The requirements of SEPA have been met.

4. All notice requirements have been met.

5. As conditioned, the application satisfies all requirements of TMC 14.12.010; TMC 17.26.060, and RCW 58.17.212 for the vacation of the Plat and the right-of-way dedication.

6. The application, as conditioned, is consistent with the City's Comprehensive Plan as well as the City's Transportation Plan.

7. The requested vacations should be approved subject to the conditions recommended by City Staff, provided, however, that proposed Condition No. 1 is amended to read as follows:

"1. Service Line Agreement for City utility access shall be recorded concurrently with the plat vacation."

DECISION

Now, therefore, the Applicant's request to vacate the I-5 Commerce Plat and to vacate the Legacy Court right-of-way shall be **approved** subject to the following conditions:

CONDITIONS

1. Service Line Agreement for City utility access shall be recorded concurrently with the plat vacation.

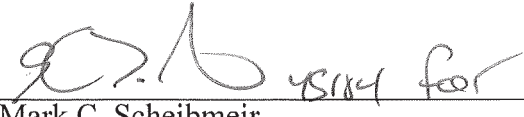
2. In order to vacate Legacy Court SW, City ordinances and State Code require the property owner to pay the City fifty percent (50%) of the appraised value of the road. The City and Tribe shall mutually agree upon an MAI appraiser to appraise the value of Legacy Court SW. All costs of the appraisal shall be the responsibility of the Tribe. In lieu of monetary compensation, the parties agree that the Tribe may satisfy this obligation by dedicating to the

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1 City for street or other municipal purposes real property useful for the intended purpose where
2 the property has a fair market value at least equal to the amount of monetary compensation that
3 would otherwise be required.

4 DATED this 24th day of December, 2025.

5
6 
7 Mark C. Scheibmeir
8 City of Tumwater Hearing Examiner
9

10 **HEARING EXAMINER**
11 **POST-DECISION PROCEDURES**

12 The following sections of the Tumwater Municipal Code outline procedures for requesting reconsideration of a
13 decision by the Tumwater Hearing Examiner and appealing a decision made by the Tumwater Hearing Examiner.

14 **2.58.135 Reconsideration.**

15 Upon the written request of a party of record filed with the city clerk within five working days of the hearing
16 examiner's written decision, such decision may be reconsidered at the discretion of the hearing examiner. The
17 request for reconsideration must state the grounds upon which the request is made. In the event reconsideration is
18 granted, the hearing examiner shall have an additional ten working days to render a written final decision.

19 **2.58.140 Notice of examiner's decision.**

20 Not later than five working days following the rendering of a written decision, copies thereof shall be mailed to the
21 applicant, other parties of record in the case, and all other persons who specifically request notice of decision by
22 signing a register provided for such purpose at the public hearing. The original of the decision shall be transmitted to
23 the city clerk.

24 **2.58.150 Appeal from examiner's decision.**

25 In cases where the examiner's jurisdictional authority is to render a decision, the decision of the examiner shall be
final and conclusive unless appealed to superior court within the applicable appeal period as set forth in TMC
2.58.180.

2.58.180 Judicial appeals.

Final decisions (after exhausting administrative remedies) may be appealed by a party of record with standing to file
a land use petition in the Thurston County superior court, except shoreline permit actions which may be appealed to
the shoreline hearings board. Such petition must be filed within twenty-one days of issuance of the decision as
provided in Chapter 36.70C RCW.

*Findings of Fact, Analysis,
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