

9:30am

Jefferson County  
Board of Commissioners  
Agenda Request

**To:** Board of Commissioners  
Philip Morley, County Administrator

**From:** Frank Gifford, Public Works Director *FG*

**Agenda Date:** June 20, 2011

**Subject:** Portion of Mumby Road, Road Vacation  
James Burnell & Andrea Vitalich, Petitioner  
Matt Lind, Representative

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**Statement of Issue:**

The Board is asked to consider the proposed road vacation pertaining to a petition to vacate all that portion of the westerly 184 feet of Mumby Road, CR #596609, reducing the overall County Road Log length from 0.613 miles to 0.578 miles beginning at the intersection with Flagler Road, also known as SR 116 at MP 9.33 left. Said usage right of way is located in the South 200 feet of the North 450 feet of Gov't Lot 1, Section 20, Township 30 North, Range 1 East, W.M., Jefferson County, Washington. This vacation affects parcel number: 021202012. Please see attached map.

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

The County Engineer has reviewed this portion of usage right-of-way (County Engineer's report attached) and finds no current or future need to provide for the overall public road circulation network; however the right-of-way currently provides access to three parcels. Two of the parcels are owned by the petitioner's family; one parcel is owned by another family who have expressed concern (on the record) with this petition due to an existing, although infrequently used, access off of this section of Mumby Road. A hearing was conducted on March 22, 2011. The Hearing Examiner's report (attached) recommended that the Board vacate this right-of-way as a vacation would not land lock any parcel. The Jefferson County code 12.10 indicates that at a regular public meeting, the Board shall review the Hearing Examiner's report and may take additional testimony. The Board may then approve, deny, or make separate or revised findings and conclusions with regard to the right-of-way.

**Fiscal Impact/Cost Benefit Analysis:**

Review of the road record for public expenditures has been made and the amount of funds spent to improve or maintain the portion of road to be vacated is minimal in recent years. Petitioner has paid administrative costs associated with the vacation.

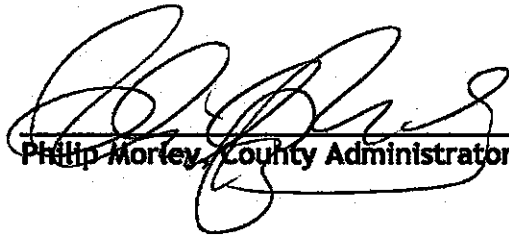
**Recommendation:**

Provided that no new information is presented as testimony and provided that the Board concurs that the right-of-way is not useful for the overall road circulation network beyond its use for the three parcels mentioned, it is recommended that the Board provide the petitioner and other property owners a period of time, not to exceed 6 months, to work together to resolve the access concerns which have been expressed. By postponing a decision on this matter, the Board will allow adequate time for the property owners to work together on this issue before making a final decision to approve or deny the petition. The time period should be set at a maximum of 6 months, but could be set at a shorter interval. The Board may also approve or deny the vacation without providing this additional time.

**Department Contact:**

Monte Reinders, P.E., County Engineer

**Reviewed By:**

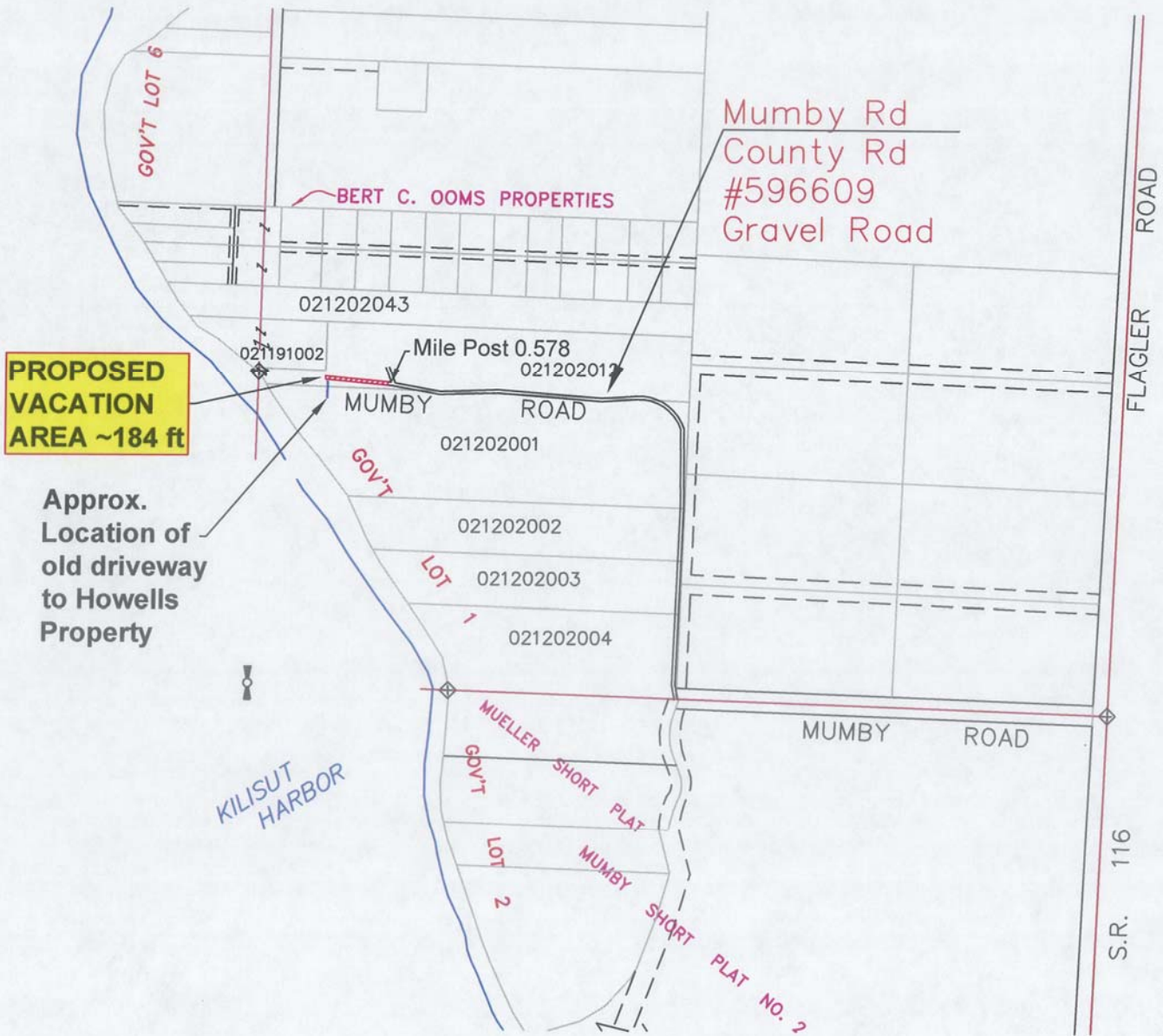
  
Philip Morley, County Administrator

6/15/16  
Date

# PROPOSED ROAD VACATION - MUMBY ROAD

PETITIONER, Mr. Burnell and Ms. Vitalich

Described as all that portion of the westerly 184 feet of Mumby Road, CR# 596609, reducing the overall County Road Log length from 0.613 miles to 0.578 miles beginning at the intersection with Flagler Road, also known as SR 116 at MP 9.33. Said usage right of way is located in the South 200 feet of the North 450 feet of Gov't Lot 1, Section 20, Township 30 North, Range 1 East, W.M.; APN 021202012.



**OFFICE OF THE HEARING EXAMINER**

**JEFFERSON COUNTY**

**REPORT AND RECOMMENDATION**

**CASE NO.:** County Right Of Way Vacation Petition

**PETITIONERS:** James Bumell and Andrea Vitalich  
4034-32<sup>nd</sup> Avenue West  
Seattle, WA 98199

**REPRESENTATIVE:** Matthew A. Lind  
P.O. Box 400  
19717 Front Street N.E.  
Poulsbo, WA 98370

**SUMMARY OF REQUEST:**

The applicant is requesting approval to vacate the westerly 184 feet of Mumby Road.

**SUMMARY OF RECOMMENDATION:**

It is hereby recommended to the Board of County Commissioners of Jefferson County that the westerly 184 feet of the Jefferson County Road known as Mumby Road be vacated subject to meeting applicable regulations.

**PUBLIC HEARING:**

After reviewing the Jefferson County Department of Community Development Staff Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was opened on March 22, 2011, at 2:00 p.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

**SEE ATTACHED INDEX LIST**

MARA DOTSON appeared, presented the Department of Public Works Staff Report, and

introduced four additional exhibits.

MATT LIND, attorney at law, appeared on behalf of the request and introduced a Memorandum addressing each of the seven criteria set forth in JCC 12.10.110 concerning road vacations. The utility poles along Mumby Road terminate prior to the section proposed for vacation. The existing poles will remain on the county road. The vacation will not landlock a parcel of property. The road presently extends along the east and north property lines of the Howell parcel to the south. Approximately three quarters of the perimeter of the Howell parcel are bordered by the road. The Howells' use of their property is irrelevant as it is not landlocked. They are prepared to offer some testimony to rebut claims from the abutting parcel owner. The fact that they have used the road for access is not relevant. Their use of the property is overstated and is sporadic at best. The portion of Mumby Road proposed for vacation lies entirely on the petitioner's property. To gain access to their parcel from the portion proposed for vacation the Howells would trespass on the petitioner's parcel. The Howells have no easement for access. The County provided proper notice and the code does not provide for additional time to consider a vacation.

STEVE OLIVER, attorney at law representing the Howells appeared and testified that the Howells own the property abutting the petitioners' south property line. The Howells have used Mumby Road for access for 65 years. Jefferson County was not advised of that fact, as their driveway was not depicted on the maps. They made their concerns known to the County. The petitioners have not considered their access and yet continue to proceed. He disagrees with Mr. Lind's interpretation of the applicable criteria. Criteria 2 and 3 do not require an objecting property owner to establish that their parcel is landlocked. Both parcels abut the waterfront and the Howell parcel is heavily timbered and would require a lot of timber removal and other damage to construct the road from the east. The cost would be extensive. The petitioners wish to vacate the road so they can build a cottage on top of the road. The County should not grant the vacation petition at the expense of the Howells. They are not opposed to working out a reasonable solution on a neighborly basis and believe they can do so. They believe the third criteria is not met as emergency vehicles access is impaired. Such vehicles could not access the Howells' property. The west end of the road is within the petitioners' property as it lies about 30 feet to the north of the property line. The Howells' would have prescriptive rights to preclude development plans.

ROB JOHNSTON, professional surveyor, appeared and testified that he performed a preliminary survey of the road in early March. The power poles provide electric service to the Howells' property and the well. A driveway is visible from the road onto the Howell property. A portion of the road on the petitioners' parcel.

STEVE OLIVER then reappeared and testified that he wants more time to research the property issues. He supports the approach for a reasonable access for his clients. They do not oppose the vacation or the development plan. They just want to maintain their access.

JAMES BURNELL, applicant, appeared and testified that the Howells have owned their

property for 51 years and he acquired his property in 1961. They do not intend to build over the road and it will stay open. They are not planning on closing out access. They have allowed the Howells to park on their property and walk on their site, which is now cleared out. They will construct their cottage on their 50 feet of waterfront in an area not subject to the vacation petition. They have talked about a larger home. Easement interpretations are beyond the Examiner's jurisdiction. He offered several resolutions that would keep the road open and his intent is to back the public up from their home site. The parties have failed to reach an agreement. The property owner to the south of the house has clear cut its lot and now they have gotten notice of the Howells' objection. He does not feel what they were proposing was unreasonable.

DAVE HALLGREM appeared and testified on behalf of the Howells. The only clearing that occurred on their site was done by a weed eater. He has driven on the road many times in the past. He has spent many weekends on the site and his family goes to the site many times each year. A utility pole was right on the corner of their driveway and Mumby Road, but the power was shut off years ago. The lines are down and now come through the woods from the final pole east of the portion proposed for vacation. He feels they are giving up their access that they have enjoyed for 44 years. The road extends into their property and is their only access. They could construct a new road that intersects Mumby Road further up, but they would need to clear cut trees. He is not against closing the road so long as they maintain their access.

WILL BUTTERFIELD, Public Works, appeared and clarified Public Works' recommendation.

No one spoke further in this matter and the Examiner took the matter under advisement. The hearing was concluded.

**NOTE:** A complete record of this hearing is available in the office of Jefferson County Department of Public Works.

#### **FINDINGS, CONCLUSIONS AND RECOMMENDATION:**

##### **FINDINGS:**

1. The Hearing Examiner has heard testimony, admitted documentary evidence into the record, and taken this matter under advisement.
2. Appropriate notice was provided pursuant to the Jefferson County Municipal Code.
3. Road vacations are exempt from SEPA review.
4. Mumby Road, a Jefferson County Road established by public usage, has existed at its present location since at least the 1940's. Jefferson County has maintained

Mumby Road on the County Road Log since 1949 based upon its historical use as a County road. The County has found no deeds or other instruments transferring an ownership interest in the road to the County.

5. Mumby Road extends west from Fort Flagler Road (SR 116) to the southeast corner of Government Lot 1 where it turns north and then west. The western extension is located between the property lines of parcels owned by James Burnell and Andrea Vitalich (petitioners) on the north and Barbara Howell and the Howell Family Trust (Howell) on the south. The road dead-ends on petitioners' parcel and measures .613 miles in length. The road varies in width between 12 and 15 feet and has a gravel surface for its entire length.
6. Petitioners James Burnell and Andrea Vitalich request the Jefferson County Board of Commissioners to vacate the westerly 184 feet of Mumby Road. Such would reduce its length from .613 miles to .578 miles. The portion proposed for vacation measures 12 feet in width, 184 feet in length, and is located entirely on the petitioners' parcel.
7. Howell objects to the vacation, asserting that they have used Mumby Road to include the portion proposed for vacation for access to the western portion of their generally rectangular parcel. The Howell parcel measures 320 feet in a north-south orientation and 1,311 feet along the north property line. In addition to the westerly 184 feet of Mumby Road, Howell also utilizes a driveway for access to their parcel. Such driveway extends south from Mumby Road near its present terminus across petitioners' parcel for a distance of approximately 25 feet. Howell asserts that the vacation will eliminate access to the western, recreational portion of their lot that abuts the shoreline of Killsut Harbor. Petitioners' parcel likewise abuts Killsut Harbor.
8. Howell and petitioners dispute the amount of usage of the road and driveway by Howell. Petitioners assert that Howell's usage is sporadic at best, but Howell asserts that family members use the site consistently. Improvements on the Howell site include a drinking water well and a utility pole with an electric meter. However, Howell does not have electrical service at the site. The westernmost utility pole is located east of the portion of the road proposed for vacation as shown on the survey performed by Rob Johnston (Exhibit 6). Howell further asserts that they have acquired a prescriptive easement across petitioners' parcel from Mumby Road to their parcel, but petitioners' disagree.
9. Recognizing the above facts, all County departments and utility providers recommend approval of the road vacation. However, Public Works recommends that:

Any access impacts created by the proposed vacation should be resolved prior to vacation.

The Jefferson County Code (JCC) contains no procedures or guidelines for determining whether the parties have resolved a dispute or if the parties have attempted to resolve the dispute in the good faith. Public Works indicated at the hearing that should a dispute occur, the matter could be returned to the Examiner (and the Board) for resolution. The JCC likewise contains no criteria requiring consent of all property owners affected by the vacation, but requires inquiry into the usefulness of the road, whether the public will benefit by its vacation, and the probable effect of the vacation on the "overall area circulation in the neighborhood."

10. All vacation petitions require the Board to consider the vacation criteria set forth in the JCC. In the present case, these criteria guide the Board in determining whether to vacate a portion of Mumby Road, a County public usage road. However, Howell raises for the Board's consideration a private dispute between Howell and the petitioners regarding whether a prescriptive easement was established by Howell over petitioners' parcel. Neither the Examiner nor the Board have jurisdiction to resolve such private issue. Therefore, issues appropriate for consideration in the present road vacation petition are as follows:
  - a. Does the Petition meet the standards set forth in Chapter 12.10 JCC entitled "Road Vacation"?
  - b. Is Howell's assertion that they have a prescriptive easement across petitioners parcel relevant to the vacation criteria?
  - c. Do the vacation criteria require consent of all property owners potentially affected by the vacation? If so, can one disgruntled property owner "hold a petitioner hostage" until an accommodation is reached?

For the reasons set forth hereinafter the vacation petition satisfies all criteria set forth in Chapter 12.10 JCC, and the remaining public portion of Mumby Road provides adequate circulation to Howell for both utility and access purposes. While Howell has used a portion of petitioners' parcel for access to their own parcel, they have not secured a written easement or other authority for such use. Howell has the ability to construct a driveway from the final power pole on Mumby Road to their existing driveway and utility pole with electric meter (as shown on the survey), a distance of approximate 220 feet. Such driveway and utilities would be located completely on their parcel.

11. Prior to obtaining a road vacation, petitioners must show that the request satisfies the criteria set forth in Chapter 12.10 JCC. Findings on each criteria are hereby made as follows:

Section 12.10.040(1) JCC provides that the petition must show as follows:

... The petition must show the land owned by each petitioner and set forth that such county road is useless as a part of the county road



system and that the public will benefit by its vacation and abandonment. . .

In the present case, Mumby Road dead-ends within petitioners' parcel and does not extend to the shoreline of Kilisut Harbor. Only those persons visiting petitioners or providing services to petitioners' parcel would use the westerly 184 feet of Mumby Road. Howell asserts that they use said portion of Mumby Road. However, no portion of the westerly 184 feet is on their property and a question exists as to the legality of Howell's access from Mumby Road to their parcel. Furthermore, Howell may provide access to all portions of their parcel directly from Mumby Road. Thus, the vacation benefits the public as the County will no longer have responsibility for maintaining what is in essence a private driveway.

Section 12.10.110 JCC sets forth seven criteria for reviewing road vacation petitions. Findings on each criteria are hereby made as follows:

- A. The Department of Community Development has determined that the proposed road vacation complies with the Jefferson County Comprehensive Plan and other applicable plans, policies, and ordinances. The proposed vacation tract is located within the Rural Residential 1:5 designation of the Comprehensive Plan and within the Rural Residential 1:5 zone classification. The Transportation Element of the Comprehensive Plan does not identify a proposed bike route for Mumby Road, and PUD No. 1 water is available throughout the area should parcels not have private drinking water wells. The road vacation will have no impact on geologically hazardous areas, seismic hazardous areas, wetlands, or the applicable conservancy shoreline designation.
- B. Criteria (2) provides that the Board should not vacate roads "when land uses or development plans, or occurring patterns, indicate their usefulness for area circulation." Said criteria requires an examination of the "probable effect on overall area circulation in the neighborhood." The westerly 184 feet of Mumby Road provides no neighborhood circulation as it dead-ends on the petitioners' parcel. No other County or private roads connect with the westerly 184 feet of said road. Development plans/patterns in the area do not show any future usefulness for the westerly 184 feet or that it will improve area circulation.
- C. Criteria (3) encourages consultation with the appropriate authorities in evaluating impacts of the road vacation on emergency service providers. Accordingly to the Public Works Staff Report and attachments, East Jefferson Fire Rescue (FPD No. 1) was notified of the vacation and provided no response. Since the Fire District provided no response, it is assumed that vacation will not impact emergency services.

- D. Criteria (4) discourages vacation of roads that "can effectively be used for utility corridors." Said criteria also encourages consultation with public and private utility companies and their plans. The Public Works Department did so and Puget Sound Energy responded by recommending approval of the requested vacation.
- E. Criteria (5) discourages vacation of roads that "can be effectively used for trails or pathways." In the present case, Mumby Road does not connect to a County park or trail and does not abut a body of salt or fresh water. According to the Jefferson County Parks, Recreation and Open Space Plan, no parks or trails exist in the immediate vicinity and the portion proposed for vacation would not provide for any future trail needs.
- F. As previously found, the road does not abut a body of salt or fresh water.
- G. The proposed vacation will not landlock any parcel of the property. The road abuts the entire 320 foot length of the Howell's east property line and will continue to abut almost 800 feet of the Howell's north property line.
12. In the Nordlund Garden Club road vacation matter wherein the Board and the Club petitioned to vacate a portion of Garden Club Road, the Examiner recommended denial in part because the Club had not reached an agreement with the Lucile M. Brown Trust that owned an abutting parcel. However, a large percentage of the road proposed for vacation was located on the Brown Trust parcel and vacation would affect circulation on said parcel more than on the Garden Club parcel. The Examiner agreed with Public Works' recommendation that prior to vacation the Garden Club and the Brown Trust reach agreement. By contrast, in the present case, the entire section of Mumby Road proposed for vacation lies completely within the petitioners' ownership and is used exclusively by petitioners with the exception of Howell. However, Howell has unrestricted access to their parcel from significant portions of Mumby Road. Requiring petitioners to reach agreement with Howell under the facts in this case would allow Howell to veto a road vacation that is in the public interest.
13. Petitioners submitted an appraisal of the value of the portion of Mumby Road proposed for vacation prepared by A.C.E. PS, Inc., dated January 21, 2011. The appraisal was based on an understanding that the area proposed for vacation measured 15 feet in width and 244 feet in length. The appraiser estimated the value of said area as \$5,500. The petitioners subsequently determined that the portion of Mumby Road proposed for vacation measured 12 feet in width and 184 feet in length. A.C.E. PS, Inc., revised its valuation to \$3,300. based upon the reduced area in a report dated March 11, 2011. Jefferson County Public Works agrees with the valuation.

**CONCLUSIONS:**

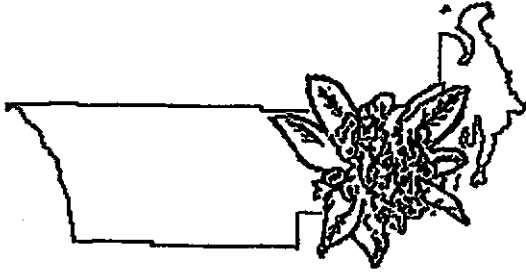
1. The Hearing Examiner has jurisdiction to consider and decide the issues presented by this request.
2. The Petition for road vacation satisfies all criteria set forth in Chapter 12.10 JCC. All portions of the road proposed for vacation lie on the petitioners' parcel. Issues concerning prescriptive easements are not within the jurisdiction of either the Hearing Examiner or the Board.
3. The JCC does not require a petitioner to reach accommodation with all affected parties. A petitioner must show that the proposed vacation satisfies all criteria in the JCC.

**RECOMMENDATION:**

It is hereby recommended that the Board of Jefferson County Commissioner's vacate the usage right-of-way of the westerly 184 feet of Mumby Road. Such would reduce the overall road length from .613 miles to .578 miles and would eliminate the responsibility of the County to maintain a public usage road that serves as a private driveway. Mumby Road begins at the intersection with Flagler Road also know as SR 116 at MP 9.33 left. Said usage right-of-way is located in the south 200 feet of the north 450 feet of Government Lot 1 Section 20 Township 39 North Range 1 East WM in Jefferson County, Washington. The Board should condition the vacation upon payment of the appropriate value as determined by the March 11, 2011, A.C.E. PS, Inc., appraisal and as required by the Jefferson County Code.

**RECOMMENDED** this 8th day of April, 2011.

  
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**STEPHEN K. CAUSSEAU, JR.**  
Hearing Examiner



Jefferson County  
Department of Public Works

623 Sheridan St.  
Port Townsend, WA 98368  
(360) 385-9160

*Frank Gifford, Public Works Director*  
*Monte Reinders, P.E., County Engineer*

**MEMORANDUM**

**TO:** Board of County Commissioners  
Jefferson County Hearing Examiner

**FROM:** Monte Reinders, P.E., County Engineer *MR*

**DATE:** March 9, 2011

**SUBJECT:** Engineers Report  
Petition to vacate a portion of Mumby Rd, County Road #596609  
Petitioner James Burnell & Andrea Vitalich, Represented by Barbara Blowers  
Project No. 97011001

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In accordance with Ch 36.87 RCW, I have examined the above referenced right of way and submit the following report.

**FINDINGS**

1. The request is to vacate: All that portion of the westerly 184 feet of Mumby Road, CR #596609, reducing the overall County Road Log length from 0.613 miles to 0.578 miles beginning at the intersection with Flagler Road, also known as SR 116 at MP 9.33 left. Said usage right of way is located in the South 200 feet of the North 450 feet of Gov't Lot 1, Section 20, Township 30 North, Range 1 East, W.M., Jefferson County, Washington.; APN 021202012. Please refer to attached map.
2. Jefferson County has maintained Mumby Road on the County Road Log since 1949 for a distance of 0.613 miles. The right of way requested for vacation was established as county right of way by usage because of its historical use as a county road. No deeds for the roadway have been found. This county road establishment is in accordance with RCW 36.75.070 & 36.75.080. The portion of county road proposed for vacation is a 12 foot wide graveled road way that runs solely on the petitioners land, James Burnell and Andrea Vitalich.
3. Review of the road record for public expenditures has been made and the amount of funds spent to improve or maintain the portion of road to be vacated is minimal in recent years.

Attachment "B"

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4. The portion of Mumby Road proposed to be vacated has the potential to serve three (3) parcels including parcel #02102012 (Burnell) on which it is situated, parcel #021191002 (Burnell) to the west, and parcel #021202001(Howell) to the south as shown on the attached map. A boundary line adjustment filed under Auditor's File Number (AFN) 515076 on August 13, 2006 provides a 10-foot wide ingress/egress/utility easement for parcel 021191002 to the west. A letter received by the Public Works Department from Christopher Howell dated March 4, 2001 states that the portion of Mumby Road to be vacated provides access to parcel #021202001 located to the south and has been used for that purpose for more than 65 years.
5. There is no current or anticipated future public need for this right-of-way to provide for the overall public road circulation network; however the right-of-way has the potential to provide access for the three (3) parcels as discussed in paragraph 4 above. Any access impacts created by the proposed vacation should be resolved prior to vacation.
6. The effectiveness of emergency services will not be impaired by this vacation.
7. The right of way does not abut a body of salt or fresh water (See RCW 36.87.130).
8. The public may benefit by this vacation in that the addition of this area to the petitioners' property will enhance the ability for development and may provide additional tax revenue to the County.

#### RECOMMENDATION

Therefore, based on the foregoing findings, the County Engineer recommends that the Board of County Commissioners declare its intent to vacate this portion of Mumby Road contingent upon receipt of acceptable evidence that the access issues of all of the potentially affected adjacent property owners have been resolved. Furthermore, the County Engineer recommends that the Board of County Commissioners establish that its final resolution either approving or denying this vacation petition will be made when acceptable evidence is produced resolving access issues or within 12 months of the date of intent, whichever comes first, in accordance with JCC 12.10.120.

# PROPOSED ROAD VACATION - MUMBY ROAD

PETITIONER, Barbara Blowers representing Mr. Burnell and Ms. Vitalich  
Described as all that portion of the westerly 184 feet of Mumby Road, CR# 596609, reducing the overall County Road Log length from 0.613 miles to 0.578 miles beginning at the intersection with Flagler Road, also known as SR 116 at MP 9.33. Said usage right of way is located in the South 200 feet of the North 450 feet of Gov't Lot 1, Section 20, Township 30 North, Range 1 East, W.M.; APN 021202012.

