



June 12, 2015

Job No. 1787-001-013

Mr. Robert Odle, Director of Planning  
City of Redmond  
PO Box 97010  
Mail Stop 2SPL  
15670 NE 85th Street  
Redmond, WA 98073-9710

**RE: Duke's Landing Plat Vacation Request  
File No. 2015-00496**

Dear Mr. Odle:

Please consider this letter and accompanying documents as our formal request for a plat vacation of a 30-foot wide right-of-way that is located within the Duke's Landing Preliminary Plat. That right-of-way is known as 164<sup>th</sup> Ave. NE, as it abuts King County Tax Parcels 555630-0067 and -0068, lying between NE 46<sup>th</sup> and NE 48<sup>th</sup> Streets. Please see the Legal Description and Assessor's Map included with this request. Currently the right-of-way is unopened and unimproved. Furthermore, the right-of-way is landlocked by developments to the north and south preventing it from being opened or used as a roadway.

The subject 30-foot right-of-way was originally dedicated to King County, and subsequently to the City of Redmond as part of the underlying historic plat of Miravista in 1926. Historically the subject right-of-way was entirely owned by, and a part of Miravista. The property to the west has never had an ownership interest in the land. As such, when vacated, that right-of-way will revert back to the vested owner, or Lot 1 Block 2 of the Miravista Plat, and in this case the Caffey's.

We request that the right-of-way be vacated using the plat vacation method instead of the petition vacation method as it would be more applicable to this situation. It appears that the Ridgemont Plat lying south and west of the subject right-of-way used this same plat vacation method to vacate a portion of this same right-of-way to the south. Please see the legal opinions provided by Stephens & Klinge LLP dated June 4, 2015 and Halinen Law dated May 22, 2015 included with this request. Both of these legal briefs provide greater detail on the background of the right-of-way and the legal justification for the property reverting to the underlying owner.

The plat vacation request is being made in conjunction with the Duke's Landing Preliminary Plat application. While this vacation will result in land returning to the underlying owners, ultimately the City will be receiving substantially more area of functional right-of-way that will be fully improved to current City standards. This right-of-way will provide connectivity through the neighborhood and will better serve the City.

ESM Federal Way  
33400 8th Ave S, Ste 205  
Federal Way, WA 98003  
253.838.6113 tel  
800.345.5694 toll free  
253.838.7104 fax

ESM Everett  
1010 SE Everett Mall Way, Ste 210  
Everett, WA 98208  
425.297.9900 tel  
800.345.5694 toll free  
425.297.9901 fax

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Mr. Robert Odle, Director of Planning  
June 12, 2015  
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We are not aware of a formal application or submittal standard for a plat vacation of right-of-way, but have provided the following materials for your review and consideration to initiate this request:

- This cover letter and narrative.
- King County Assessor's Map.
- Legal Description and Exhibit prepared by ESM Consulting Engineers.
- Copies of the Miravista and Ridgemont Recorded Plats.
- Legal opinion of Stephens & Klinge LLP dated June 4, 2015.
- Legal opinion of Halinen Law Offices dated May 22, 2015.

We appreciate your time and effort in reviewing this matter and hope to have your approval in a timely manner and in conjunction with the Duke's Landing Preliminary Plat as it is currently proceeding through approvals.

Please feel free to contact me if you have any questions or if there is any additional information that you need. We look forward to working with you on this request.

Very truly yours,

ESM CONSULTING ENGINEERS, LLC.



ERIC G. LaBRIE, A.I.C.P.  
President/Director of Planning

Enclosures

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STEPHENS & KLINGE LLP  
ATTORNEYS AT LAW

10900 NE 8<sup>TH</sup> STREET, SUITE 1325  
BELLEVUE, WA 98004

RICHARD M. STEPHENS  
CHARLES A. KLINGE  
W. FORREST FISCHER

TELEPHONE (425) 453-6206  
FACSIMILE (425) 453-6224

June 4, 2015

City of Redmond  
Planning and Community Development Department  
15670 NE 85<sup>th</sup> Street  
Redmond, WA 98052

**Re: Plat Vacation Request, 16410 NE 47<sup>th</sup> Street**

To Whom It May Concern:

The purpose of this letter is to provide the legal analysis in support of a plat vacation application for the property at 16410 NE 47<sup>th</sup> Street, owned by Kellie Lynn Caffey, Parcel Nos. 555630-0067, -0068, and -0069. This request is being made in conjunction with a preliminary plat application. The plat vacation request relates to a 30-foot strip of land on the west side of the property that is landlocked, but lines up with what would have been 164<sup>th</sup> Avenue NE. The legal analysis below explains that plat vacation method is the appropriate procedure, and not the petition method that applies to streets used for access by multiple parties.

### **BACKGROUND**

The site is within the historic Plat of Miravista recorded in King County in 1926. A copy of the Plat is submitted with the plat vacation request. The Plat included a large area north of what became NE 40<sup>th</sup> Street with 20 large lots in two blocks. The property to be platted includes a portion of Lot 1 in Block 2 of the Plat of Miravista, specifically the west half of the Lot. There are three King County tax parcel numbers 555630-0067, -0068, and -0069. The Plat included a dedication of land to the County for “public highway purposes” of the streets and avenues shown on the Plat, namely a 30-foot strip on the edges of the plat and a 60-foot wide strip between the blocks that became NE Bellevue Redmond Road between West Lake Sammamish Parkway NE and NE 40<sup>th</sup> Street.

The dedicated right-of-way included a 30-foot strip on the west and north sides of the Plat. The Plat indicates that the land to the west and to the north were unplatted at that time. Because the site, as part of Lot 1 of the Plat, is in the northwest corner of the Plat, it originally had a 30-foot road dedication on the north and west. However, the 30-foot road dedication to the north was previously vacated, and the entire 30-foot strip was transferred to the owners of Lot 1 and is now owned in fee by Caffey. Caffey is requesting the same outcome for the right-of-way west of Lot 1—vacation and transfer to Caffey.

The subject land sought to be vacated is the 30-foot right-of-way to the west of Lot 1 of the Plat of Miravista. The subject right-of-way was never opened as a street, and now is completely cut off and landlocked from any connection to other roads. The history of the right-of-way is as follows.

The Plat of Miravista was recorded in 1926 by the Baillargeons. With the assistance of the title company, we researched the property ownership in 1926. At that time, the property to the west of Lot 1 was owned by Edith Tosh (E ½ of the NE ¼ of the SE ¼ of Section 14, T25N, R5E). She married and became Edith Buetton. Edith Tosh/Buetton owned the property to the west of Lot 1 from 1922 until 1933, and sold the same land with no platting, dedication, or other change. The Plat of Miravista was recorded in 1926 by the Baillargeons, so there was no joint ownership by the plat of Miravista and the land to the west. That demonstrates that the 30' dedication in Miravista was solely owned by the Baillargeons. Edith Tosh/Buetton and hence her successors did not own any part of the dedicated right-of-way west of Lot 1 that was dedicated as part of the Plat of Miravista.

Subsequently, in 1978, the land to the west and north of the Lot 1 was subdivided as the Plat of Hampton Place. The design of that plat located houses on the north and west side of the site—Lot 1 of Miravista, and blocked access to the right-of-way sought to be vacated.

Immediately to the south of the site is the Plat of Ridgmont East. The Ridgmont East Plat was a subdivision of Lots 2 and 3 of the Plat of Miravista. The City vacated the portion of land that would have been 164<sup>th</sup> Avenue NE within the Plat of Ridgmont East in 1973. Ordinance 621 (November 20, 1973). The design of the Ridgmont East Plat places houses along the south side of the site and blocked the access to the right-of-way sought to be vacated.

Thus, the subject right-of-way was never opened as a street, and now is completely cut off and landlocked from any connection to other streets.

In summary, the result of the above described actions is that the right-of-way in question is completely landlocked and the City has no possible purpose for using the right-of-way for street purposes. The Plat of Ridgmont East to the south and the Plat of Hampton Place to the north and west results in the situation that the subject right-of-way is completely landlocked i.e. blocked by private land with no possibility of connecting to a public street.

### **LEGAL ANALYSIS**

The next step is to analyze the laws applicable to vacation. State law provides two different statutory means of vacating dedicated right-of-way—the plat vacation method and the petition vacation method. The analysis concludes that the plat vacation method is the appropriate process, and that the petition vacation method does not apply in this situation.

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### Plat Vacation Method

The first vacation method is the plat or subdivision vacation method. Vacation under this method is authorized based on a request by the property owners with an ownership interest in the right-of-way to be vacated and based on the lack of public use or interest in the right-of-way. As discussed below, Caffey is the only property owner with an interest in the right-of-way sought to be vacated and the right-of-way is of no use as a street because it is completely cut off from other streets.

The platting statutes are in Chapter 58.17 RCW. These statutes govern numerous aspects of platting. RCW 58.17.212 is entitled “Vacation of subdivision – procedure.” The statute reads in the first part as follows:

Whenever any person is interested in the vacation of any subdivision or portion thereof, or any area designated or dedicated for public use, that person shall file an application for vacation with the legislative authority of the city, town, or county in which the subdivision is located. The application shall set forth the reasons for vacation ***and shall contain signatures of all parties having an ownership interest in that portion of the subdivision subject to vacation.*** . . . .

The legislative authority [*i.e.* the city council] of the city, town, or county shall give notice as provided in RCW 58.17.080 and 58.17.090 and shall conduct a public hearing on the application for a vacation and may approve or deny the application for vacation ***after determining the public use and interest to be served by the vacation of the subdivision.*** If any portion of the land contained in the subdivision was dedicated to the public for public use or benefit, such land, if not deeded to the city, town, or county, shall be deeded to the city, town, or county unless the legislative authority shall set forth findings that the public use would not be served in retaining title to those lands.

This provision requires the signatures of those persons with “an ownership interest” in that portion subject to vacation. The ownership interest of right-of-way in a plat is not in doubt. In this situation, the 30-foot strip was originally dedicated by the predecessor owner of Lot 1 and so Lot 1 owns the fee title subject to City rights. This same statute makes that legal point abundantly clear: “When the road or street that is to be vacated was contained wholly within the subdivision and is part of the boundary of the subdivision, title to the vacated road or street shall vest with the owner or owners of property contained within the vacated subdivision.” RCW 58.17.212.

The law is settled that the property owners own the fee to the dedicated right-of-way while the City holds only an easement interest. “The law in this state is well settled that the fee to the street rests in the owner of the abutting property.” *Nystrand v. O’Malley*, 60 Wn.2d 792, 795 (1962). More recently, the State Supreme Court ruled that land dedicated to the public for road

purposes in a plat grants only an easement to the public with the property owner retaining the fee. *Kiely v. Graves*, 173 Wn. 2d 926 (2012). The fee title vests solely with the platlor's successors when the vacated area is, "wholly within the boundary of the dedicator's platted land," and other abutting owners have no fee interest and no right to half the land. *Christian v. Purdy*, 60 Wn. App. 798, 801 (1991). Thus, the City has only a nominal interest in the area sought to be vacated which amounts to an unused easement.

Also, there is no potential public use in the right-of-way sought to be vacated and no public interest in retaining it as a public right-of-way. The subject right-of-way has never been opened or improved for public use in any way, not by the property owners and not by King County (the jurisdiction that approved the plat) or the City of Redmond. The City has no potential use for the land as a street since it is cut off from other streets by existing homes that have alternative access to the City street system.

Thus, under the State statute, the City should vacate the right-of-way because Caffey is the only property owner with any interest in the land and there is no potential for public use and no public interest in retaining the public right-of-way for future street use.

The City has a provision matching State law in its Code entitled "Subdivision Vacation":

- (1) Any person interested in the vacation of any subdivision or part of a subdivision, ***or area dedicated for public use*** shall file an application for vacation at the Redmond Permit Center. The application shall set forth the reasons for vacation ***and shall contain signatures of all parties having an ownership interest in that portion to be vacated.*** . . . [deleting portion from state statute relating to restrictive covenants in the plat which is not applicable here].
- (2) The approval authority shall conduct a public hearing on the application for a vacation and may approve or deny the application for vacation of the subdivision after determining the public use and interest to be served. If any portion of the land contained in the subdivision was dedicated to the public for public use or benefit, such land, if not deeded to the City, shall be deeded to the City unless the approval authority adopts written findings that the public use would not be served in retaining title to those lands. Title to vacated property shall be governed by Chapter 58.17 RCW, Plats – Subdivision – Dedications. (Ord. 2118).

Redmond Community Development Guide (RCDG) 20F.40.150-070. This City Code provision implements the State law quoted above and requires the signatures of those persons with "an ownership interest" in that portion subject to vacation. This provision, like the State law, authorizes transfer of the vacated portion to the property owner when there is no public use to retain the right-of-way. For the same reasons above, under the City Code, the City should vacate the right-of-way.

It should also be noted that the City treats plat vacations entirely separately than vacation by the petition method. The City Code provisions addressing Administration and Procedures have a separate listing for “Plat Vacation” which requires the Type V permit process. RCDG 20F.30.50-020. The Plat Vacation process is clearly separate from the petition method and is the appropriate process for this situation.

### **Petition Method of Street Vacation**

The second vacation method is the petition vacation method applicable to streets. The petition method is governed by Chapter 35.79 RCW entitled “Streets – Vacation.” The petition method does not fit this situation because the right-of-way sought to be vacated was never a street—it is an unopened right-of-way that was never improved or used as a street. The first sentence of RCW 35.79.010 states:

*The owners of an interest in any real estate abutting upon any street or alley who may desire to vacate the street or alley, or any part thereof, may petition the legislative authority to make vacation, giving a description of the property to be vacated, or the legislative authority may itself initiate by resolution such vacation procedure.*

Thus, this section declares that the Chapter relates to vacation of “any street or alley.” Chapter 35.79 RCW is part of a number of Chapters on City Streets, and the reference to “street” is defined by the statutes. Specifically, RCW 35.78.010 requires the City Council to classify city streets as major arterials, secondary arterials, or access streets. Each reference assumes that the “street” provides access:

Access streets, which are defined as land service streets and are generally limited to providing access to abutting property. They are tributary to the major and secondary thoroughfares and generally discourage through traffic.

The right-of-way sought to be vacated is unopened and unimproved, and hence provides no access to any abutting property. Therefore, the street vacation statutes do not apply because this right-of-way provides no access to any property and has never been opened or otherwise utilized as a street.

The other statutes confirm that the purpose of the petition method is to address improved streets that provide access to one or more properties. The premise is that all of owners abutting a street considered for vacation actually take access from the street and hence have a vested interest in seeking or precluding vacation. The purpose of vacation would be to convert the street from public to private and the abutting property owners would become responsible for maintenance. Some property owners might support conversion to a private road and others might not, but all of the owners must have an opportunity to be heard on the issue.

Returning back to the first statute in Chapter 35.79, the provision authorizes a petition from the, “owners of an interest in any real estate abutting upon any street or alley,” or the City Council may initiate the vacation procedure.” RCW 35.79.010. This provision makes it clear that the owners of *any interest* may petition for vacation.

After declaring that any person with an interest may submit a petition, the provision then provides the two-thirds rule:

The petition or resolution shall be filed with the city or town clerk, *and, if the petition is signed by the owners of more than two-thirds of the property* abutting upon the part of such street or alley sought to be vacated, [the] legislative authority by resolution *shall fix a time* when the petition will be heard and determined by such authority or a committee thereof, which time shall not be more than sixty days nor less than twenty days after the date of the passage of such resolution.

Essentially, this rule says that if two-thirds sign the petition, then the City Council is forced to bring up the petition and make a decision. If less than two-thirds sign the petition, then the City Council has discretion on whether to consider the petition. This understanding is bolstered by the next provision which states in part:

*In all cases* where the proceeding is initiated by resolution of the city or town council or similar legislative authority *without a petition having been signed by the owners of more than two-thirds of the property* abutting upon the part of the street or alley sought to be vacated, in addition to the notice hereinabove required [general public notice], there shall be given by mail at least fifteen days before the date fixed for the hearing, a similar notice to the owners or reputed owners of all lots, tracts or parcels of land or other property abutting upon any street or alley or any part thereof sought to be vacated, as shown on the rolls of the county treasurer, directed to the address thereon shown: PROVIDED, *That if fifty percent of the abutting property owners file written objection to the proposed vacation with the clerk, prior to the time of hearing, the city shall be prohibited from proceeding with the resolution.*

RCW 35.79.020. This section assumes that a petition can be signed by less than two-thirds, and if so, then individual notice must be given to each abutting property owner. Again, the premise is that there is a street and that all abutting owners have a vested interest on whether the public street is converted to a private road. The statute creates a hard rule that 50% can stop the vacation.

Together, these provisions provide for two procedural options. For Option 1, if two-thirds sign a petition in support, then it goes to the City Council for decision. For Option 2, if less than two-

thirds sign the petition (including a Council initiated vacation), then a vote of 50% of abutting owners can stop the vacation before City Council consideration.

For Option 1, the City Code incorporates this option at RCDG 20F.40.110-010, -020, -030, and -040(1) to (2). These Code provisions apply when the petition is signed by two-thirds of the abutting owners and hence the 50% veto rule is moot. Thus, the City sets up a preference for the two-thirds petition approach.

For Option 2, the City Code contains an “Alternative Method of Vacation” (RCDG 20F.40.110-040(3)) that incorporates the general statutory petition method of street vacation discussed above at Chapter 35.79 RCW.<sup>1</sup>

Again, these options make sense when applied to streets that provide access to properties because those property owners need to be heard about whether to convert from a public street to a private street. The situation here is totally different. The right-of-way to be vacated is not improved and is not used as a street at all. There are no interested parties except Caffey.

A related issue in the petition method applicable to street vacation is that the City “may” require compensation for the value of the street improvements. RCW 35.79.030, 20F.40.110-040(2).<sup>2</sup> The State Supreme Court held that the city cannot require payment for a street vacation because the city does not own the fee. *Puget Sound Alumni of Kappa Sigma, Inc. v. City of Seattle*, 70 Wn. 2d 222, 226 (1967). Thus, the statute allows compensation for street *improvements*, but not the fee value of the land. Requiring compensation for street improvements makes sense for a street vacation where the abutting property owners will gain the benefit of the improvements upon conversion to private road status. Here, there are no improvements maintained by the City for which the City is entitled to compensation.

In summary, the petition method applies to vacation of improved streets where property owners take access on both sides and have an interest in whether the street is vacated. The street vacation statutes clarify that: “No vested rights shall be affected by the provisions of this chapter.” Caffey has a vested right in fee ownership of the right-of-way sought to be vacated, which is not shared with any other owners. The petition method does not apply to this situation. The right-of-way sought to be vacated is unopened and unimproved right-of-way, not an improved street. The other abutting owners do not own the underlying fee title and have never used the area for access. Hence, the abutting owners have no property rights to be considered and are not entitled to have the City follow the petition method of street vacation.

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<sup>1</sup> The City Code provision refers to Chapter 35A.47 RCW and RCW 35A.47.020 addresses street vacation by incorporating Chapter 35.79 RCW.

<sup>2</sup> The State Supreme Court has ruled that: “The authority to require compensation is permissive. Nothing in the statute makes it obligatory for cities or towns to require compensation for street vacations.” *Greater Harbor 2000 v. City of Seattle*, 132 Wn. 2d 267, 282-83 (1997). The City Code is consistent in saying that compensation “may” be required.

Redmond Planning and Comm. Dev. Dept.  
June 4, 2015  
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STEPHENS & KLINGE LLP

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**CONCLUSION**

The City should process this request as a plat vacation and not under the petition method for street vacation. Caffey is the only interested party and the only one whose signature is needed. The City should conclude that there is no public use or public interest in the area to be vacated because the right-of-way is completely cut off from other streets and could not be utilized as a public street.

Thank you for your careful consideration of this request.

Sincerely,

STEPHENS & KLINGE LLP

  
Charles A. Klinge  
[klinge@SKlegal.pro](mailto:klinge@SKlegal.pro)



## HALINEN LAW

David L. Halinen, P.E., Attorney at Law

ATTACHMENT 6  
EXHIBIT G

davidhalinen@halinenlaw.com

Seattle ▪ 206.443.4684 ▪ Tacoma ▪ 253.627.6680 ▪ Fax ▪ 253.272.9876 ▪ Cell ▪ 206.713.0992  
Halinen Law Offices, P.S. ▪ 1019 Regents Blvd Ste 202 Fircrest, WA 98466-6037 ▪ halinenlaw.com

May 22, 2015

City of Redmond Department of Planning  
and Community Development  
PO Box 97010  
MS: 4SPL  
Redmond, WA 98073-9710

Attn: Robert Odle, Planning Director

RE: Contemplated Street Vacation of the Remaining "Island" Strip of 164th Avenue NE  
Street Right-of-Way (a Right-of-Way Dedicated by the 1926 Plat of Miravista)  
**Explanation Concerning Why, If the City Council Vacates That Right-of-Way Strip,  
the Strip's Ownership Will Vest Entirely in the Owner of the Abutting Property to  
the East (within Miravista Lot 1, Block 2)**

Dear Mr. Odle:

I am writing at the request of my client Terry Caffey. I understand that Kurt Seemann recently asked Mr. Caffey to have his attorney write the City a letter explaining in whom ownership of the above-referenced remaining island strip of 164th Avenue NE street right-of-way will vest if the City Council vacates that right-of-way. For the reasons I explain below, if vacated, the strip's ownership will vest entirely in the then-owner of the abutting property to the east of the strip (i.e., the owner of the west portion of Lot 1, Block 2 of the plat of Miravista), property that is currently owned by my client Kellie Lynn Caffey.

To demonstrate this, I will start with the facts (there are quite a few of them) and then apply the law to those facts.

City of Redmond Department of Planning and Community Development  
Attn: Robert Odle, Planning Director  
May 22, 2015  
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### Facts

The subject strip of unimproved 164th Avenue NE street right-of-way (herein, the “Subject Right-of-Way Strip”) is legally described on attached EXHIBIT A and depicted as “PROPOSED RIGHT OF WAY VACATION” on a companion land surveyor’s sketch—see attached EXHIBITS “A” and “A-1,” respectively, prepared by professional land surveyor Cynthia A. Flood of ESM Consulting Engineers, LLC. (Please note the reference to the plat of Miravista in the EXHIBIT “A” legal description, and please note the depiction of the west portion of LOT 1 BLOCK 2 MIRAVISTA, VOL. 28, PG. 35 on EXHIBIT “A-1.”) Also, in relation to a broader vicinity, the Subject Right-of-Way Strip is both (1) depicted by yellow shading on an excerpt from the online King County Assessor’s quarter section map for the SW¼ of Section 13, Township 25 North, Range 5 East, W.M. (see attached EXHIBIT “B”) and (2) outlined with a bright yellow line on a color King County iMAP aerial photo on which Assessor’s parcels are also depicted and numbered (see attached EXHIBIT “C”).

The property owned by my client Kellie Lynn Caffey (as her separate estate)—property that lies east of and abuts the Subject Right-of-Way Strip—is legally described on attached EXHIBIT “D.” The overall boundary of her property is outlined in red on attached EXHIBIT “C.”

In the Miravista plat’s DEDICATION text block, the dedicators of the plat of Miravista dedicated to the public “the streets and avenues shown [t]hereon, and the use thereof for any and all public purposes not inconsistent with the use thereof for public highway purposes.” The Subject Right-of-Way Strip along the west edge of Lot 1, Block 2 of that plat was a segment of one of those streets and avenues shown on the plat. A reduced-sized copy of that plat (on which I have had my legal assistant shade the Subject Right-of-Way Strip in a reddish color and label it in red-faced text) is set forth on the attached 11-inch-by-17-inch sheet labeled EXHIBIT “E.”

Note in the plat’s DEDICATION text block that the owners in fee simple of the property platted were identified as J. Ceibert Baillargeon and Katherine A. Baillargeon. (They signed the plat, and their signatures were notarized.) Note at the lower right-hand corner of the plat that the plat was filed for record by the County Auditor on February 23, 1926.

For purposes of my legal analysis, I needed to find out whether the Baillargeons owned the property to the west of Lot 1, Block 2 of the plat of Miravista as of its February 23, 1926 recording date. In order to secure that information, on January 29, 2015 I prepared and sent to John W. Jones, Senior Underwriter, Fidelity National Title, an email letter requesting that information—see attached EXHIBIT “F.” Attached to my email letter to Mr. Jones were the following items:

- (1) A PDF of the plat of Miravista;

City of Redmond Department of Planning and Community Development  
Attn: Robert Odle, Planning Director  
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- (2) A PDF of an excerpt of a recent online King County Assessor's quarter section map for the SW $\frac{1}{4}$  of Section 13, Township 25 North, Range 5 East, W.M. (a copy of which is labeled EXHIBIT "B" and attached to this letter);
- (3) A PDF of the circa-1969 King County Assessor's quarter section map for the entire SW $\frac{1}{4}$  of Section 13, Township 25 North, Range 5 East, W.M., on which I outlined in red by hand Kellie Lynn Caffey's property and shaded in green by hand the Subject Right-of-Way Strip (a copy of that quarter section map labeled EXHIBIT "G" is attached to this letter);
- (4) A PDF of the circa-1969 King County Assessor's quarter section map for the entire SE $\frac{1}{4}$  of Section 14, Township 25 North, Range 5 East, W.M. (which is the quarter section immediately to the west of the SW $\frac{1}{4}$  of Section 13, Township 25 North, Range 5 East, W.M.), on which I outlined by hand in red the west end of Kellie Lynn Caffey's property and shaded in green by hand the Subject Right-of-Way Strip (a copy of that quarter section map labeled EXHIBIT "H" is attached to this letter);<sup>1</sup> and
- (5) A PDF of a title commitment report (which was provided to Mr. Jones in order to provide him with the legal description of Kellie Lynn Caffey's property contained therein, a description that is the same as the legal description set forth in EXHIBIT "D" attached to this letter).

In response to my email letter to Mr. Jones, on February 6, 2015, Mr. Jones sent me the email labeled EXHIBIT "I" that is attached to this letter. Attached to it were abstracts of two recorded warranty deeds (see attached EXHIBIT "J" and attached EXHIBIT "K"), each deed conveying the entire East half of the NE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 14, Township 25 North, Range 5 East, W.M. Note that a portion of the east edge of that property abutted all of the west edge of what is now the Subject Right-of-Way Strip.

The EXHIBIT "J" deed, which was recorded May 12, 1922, conveyed the East half of the NE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 14, Township 25 North, Range 5 East, W.M. to "Edith E. Tosh." The EXHIBIT "K" deed, which was recorded March 16, 1933, was a deed by which "Edith E. Buettgen (formerly Edith E. Tosh), wife of Frank Buettgen, and Frank Buettgen" together conveyed that same property to a party named Lester.

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<sup>1</sup> Note that the maps now labeled EXHIBIT "G" and EXHIBIT "H" were provided to Mr. Jones to help him readily focus on the location of the Subject Right-of-Way Strip in regard to the abutting property to the west in the SE $\frac{1}{4}$  of Section 14, Township 25 North, Range 5 East, W.M.

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Attn: Robert Odle, Planning Director  
May 22, 2015  
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In view of the dates of those two deeds (the first date preceding and the second date following the February 23, 1926 date that the plat of Miravista was filed for record by the County Auditor), those two deeds prove that Baillargeons did not own any of the property west of and abutting the Subject Right-of-Way Strip as of the February 23, 1926 date that the plat of Miravista was filed for record by the County Auditor. The significance of that fact will become apparent below.

### Law

A summary of the law applicable to the subject circumstances is found in the 1991 Washington Court of Appeals decision *Christian v. Purdy*, 60 Wn. App. 798; 808 P.2d 164. Note the following excerpt from *Christian at 60 Wn. App. at 801-802*:

In Washington, the public has only an easement of use in a public street or highway, and the underlying fee rests in the owners of abutting property. *Bradley v. Spokane & I.E.R.R.*, 79 Wash. 455, 458, 140 P. 688 (1914). **By statute, when a public street or alley in any city or town is abandoned, title vests in adjoining landowners.** *Roeder Co. v. Burlington Northern, Inc.*, 105 Wn.2d 567, 575, 716 P.2d 855 (1986) (citing RCW 35.79.040). "Similarly, **at common law, the conveyance of land bounded by or along a highway carries title to the center of the highway unless there is something in the deed or surrounding circumstances showing an intent to the contrary.**" *Roeder Co.*, at 575. The basis for this rule is the presumption that the grantor intended to convey such fee along with and as a part of the conveyance of the abutting land. *Roeder Co.*, at 575.

The application of this general rule has been held to be dependent upon the "particular circumstances" of each case. *Michelson Bros., Inc. v. Baderman*, 4 Wn. App. 625, 630, 483 P.2d 859 (1971) (quoting *Rowe v. James*, 71 Wash. 267, 270, 128 P. 539 (1912)). **The rule is inapplicable where the dedicated street is wholly within the boundary of the dedicator's platted land, and the dedicator owns no property outside of that boundary; in that case, title to the vacated street vests solely with the dedicator or his devisees.** See *Rowe v. James*, supra at 271. **Abutting owners on the other side of the vacated street have no underlying fee interest under such circumstances and thus do not take to the center of the street on its vacation.** See *London v. Seattle*, 93 Wn.2d 657, 667, 611 P.2d 781 (1980).

The exception noted in *Rowe* is inapplicable here. **The Ottesens owned the property on both sides of Wagner Street at the time of its dedication. The property to the southwest of the street was subsequently sold to the Christians, while the property to the northeast was sold to the Purdys.** It is implicit in the reasoning of *Rowe* that **where an owner owns property on both sides of a street and conveys property abutting one side of the street, the conveyance carries title to the center of the street.** See *Rowe*, at 271. See also Annot., *Description With Reference to Highway as Carrying Title to Center or Side of Highway*, 49 A.L.R.2d

City of Redmond Department of Planning and Community Development  
Attn: Robert Odle, Planning Director  
May 22, 2015  
Page 5

982, 999 (1956) (where grantor owns property on both sides of highway, grantee of property on one side takes title to center of street).

(Boldfacing and underlining added; italics in the original.)

In *London v. Seattle*, 93 Wn.2d 657, 667, 611 P.2d 781 (1980), a case that was cited in the above excerpt from *Christian v. Purdy*, the Washington Supreme Court dealt with a challenge by a party named London to a vacation of street right-of-way that had been created by a deed to the City of Seattle from a party to the case (a hospital) named PMC. That deed recited that PMC "conveys and warrants to The City of Seattle, a municipal corporation, the following described Real Estate . . . For Street Purposes; . . ." (Legal description omitted.) In that deed, PMC had deeded the entire strip of land that became a portion of East James Street, the vacated strip in controversy. London owned land outside of and abutting the strip. Note the following excerpt from the Supreme Court's decision in *London at 93 Wn.2d 666-667*:

Affidavits from PMC representatives and responsible city officials involved in the 1963 transaction assert it to have been the intention and understanding of the parties that PMC convey to the City a street easement only. In its memorandum opinion, the trial court stated:

I further find that when the street is vacated, the fee title of the land reverts to the defendant, [PMC].

Although RCW 35.79.040 states that upon vacation an abutting property owner shall own one-half of the property, **RCW 35.79.050 states that "no vested right shall be affected by the provisions of this chapter."**

It would appear to me that **the hospital maintained a vested right in East James Street after dedicating the entire piece of land for the street.** *Rowe v. James*, 71 Wash. 267 [128 P. 539 (1912)], is authority for the rule that dedication of land for street purposes results only in an easement for the public, with the fee reserved to the dedicator. The language of the dedication document or deed would not affect the underlying fee title.

The general rule is that upon vacation of a street, the public easement is extinguished and the abutting property owners regain unencumbered title to the center of the street. *RCW 35.79.040*. **This rule is based on the presumption that the abutters or their predecessors, prior to dedicating the land for street purposes, originally owned the underlying fee to the center of the street.** 2 W. Elliott, *The Law of Roads and Streets* § 1191 (4th ed. rev. 1926). **The general rule, however, is subject to control by the particular circumstances of the case when one abutting owner is shown to have had no fee interest in the street and another the entire fee therein. In that instance, the abutter that had no underlying fee interest does not take to the center of the street upon its vacation.** See, e.g., *Rowe v. James*, 71 Wash. 267, 128 P. 539 (1912).

City of Redmond Department of Planning and Community Development  
Attn: Robert Odle, Planning Director  
May 22, 2015  
Page 6

**Here, London never possessed the underlying fee to any part of East James Street.** She acquired her property before this portion of East James Street was dedicated by PMC in 1963. ***RCW 35.79.050* mandates that vested rights are not to be affected upon street vacation. See *Taft v. Washington Mut. Sav. Bank*, 127 Wash. 503, 221 P. 604 (1923).** Here, the evidence is that the fee to the entire width of East James Street rested in PMC. **We agree with the trial court that upon vacation of the street and extinguishment of the public easement, title to all of East James Street remained vested in PMC.**

(Boldfacing and underlining added; italics in the original.)

Note that a 2014 Oregon appellate court decision, *Howe v. Greenleaf*, 260 Ore. App. 692, 320 P.3d 641, has taken the same approach to the *exception* to the above-noted common law rule as did the *Christian v. Purdy* court in the above excerpt from that decision (and, in principle, to the exception to the “general rule” referred to in the above excerpt from the *London* decision). At 260 Ore. App. 692, the *Howe* court explains:

The common-law exception to the general presumption was created to address the situation **where properties on opposite sides of a road are under different ownership and the road is dedicated from land owned by only one of those owners.** That exception to the general rule makes sense because it avoids the possibility of taking a valuable property right from one party (the underlying fee ownership of the road) and giving it to another party who otherwise has no claim to it.

(Boldfacing, italics, and underlining added.)

### **Legal Analysis and Conclusion**

Unlike the factual circumstances summarized in the last paragraph of the above excerpt from the *Christian v. Purdy* Court of Appeals decision (where the Ottesens owned the property on *both sides* of a street at the time of the street’s dedication and, later, they conveyed property to the Christians on one side of the street and to the Purdys on the other side of the street, with each of those two conveyances by operation of law including the underlying fee title to the center of the street), the dedicators of the Subject Right-of-Way Strip (i.e., the Baillargeons, the dedicators of the Miravista plat) only owned the property within the plat (and not the abutting property to the west). Thus, when the Baillargeons later conveyed Miravista Lot 1, Block 2, they conveyed with Lot 1 by operation of law the underlying fee title beneath the *entirety* of the Subject Right-of-Way Strip.

As the current successor-in-interest to the Baillargeons’ interest in the portion of Miravista Lot 1, Block 2 abutting the Subject Right-of-Way Strip, under the rules of law set forth in the second paragraph of the above excerpt from *Christian v. Purdy* and set forth in the last two

City of Redmond Department of Planning and Community Development  
Attn: Robert Odle, Planning Director  
May 22, 2015  
Page 7

paragraphs of the above excerpt from *London v. Seattle* (rules of law that, based on my review of Washington law, are still applicable), Kellie Lynn Caffey is in the same position as was the hospital (PMC) in *London*: namely, she is the sole owner of the fee interest underlying the entire width of the street right-of-way strip in question. That ownership right underlying the entire width of the strip is a vested right that, under RCW 35.79.050, cannot be impaired by the vacation.

Thus, if the Redmond City Council vacates the Subject Right-of-Way Strip, title to the entirety of the strip will by operation of law remain vested in Kellie Lynn Caffey [or, if she conveys her property abutting the strip prior to the strip's vacation, title to the entirety of the strip will remain vested in her successor(s)-in-interest].

Please let me know if you have any questions.

Sincerely,

HALINEN LAW OFFICES, P.S.



David Halinen

Attachments: EXHIBITS "A," "A-1," "B," "C," "D," "E," "F," "G," "H," "I," "J," and "K"

cc: Terry and Kellie Lynn Caffey (via email and first class mail, with copies of attached exhibits)

Eric LaBrie, A.I.C.P., ESM Consulting Engineers, LLC (via email and first class mail, with copies of attached exhibits)



Caffey Property  
Job No. 1787-001-013-0004  
February 11, 2015

## EXHIBIT "A"

### LEGAL DESCRIPTION FOR PETITION FOR VACATION OF RIGHT-OF-WAY

That portion of west 30 feet of the southwest quarter of Section 13, Township 25 North, Range 5 East, W.M., City of Redmond, King County, Washington, lying northerly of the westerly extension of the southerly line of Lot 1 of Block 2 of the plat of Miravista as recorded in Volume 28 of Plats, Page 35, Records of King County, Washington AND lying southerly of the southerly line of Lot 5 of the plat of Hampton Place as recorded in Volume 107 of Plats, Pages 58 and 59, Records of King County, Washington

Containing 9,385 square feet, more or less.

See attached Exhibit "A-1".

Written by: CAF

\\asm81engr\esm-jobs\1787\001\013\document\ld-001.doc



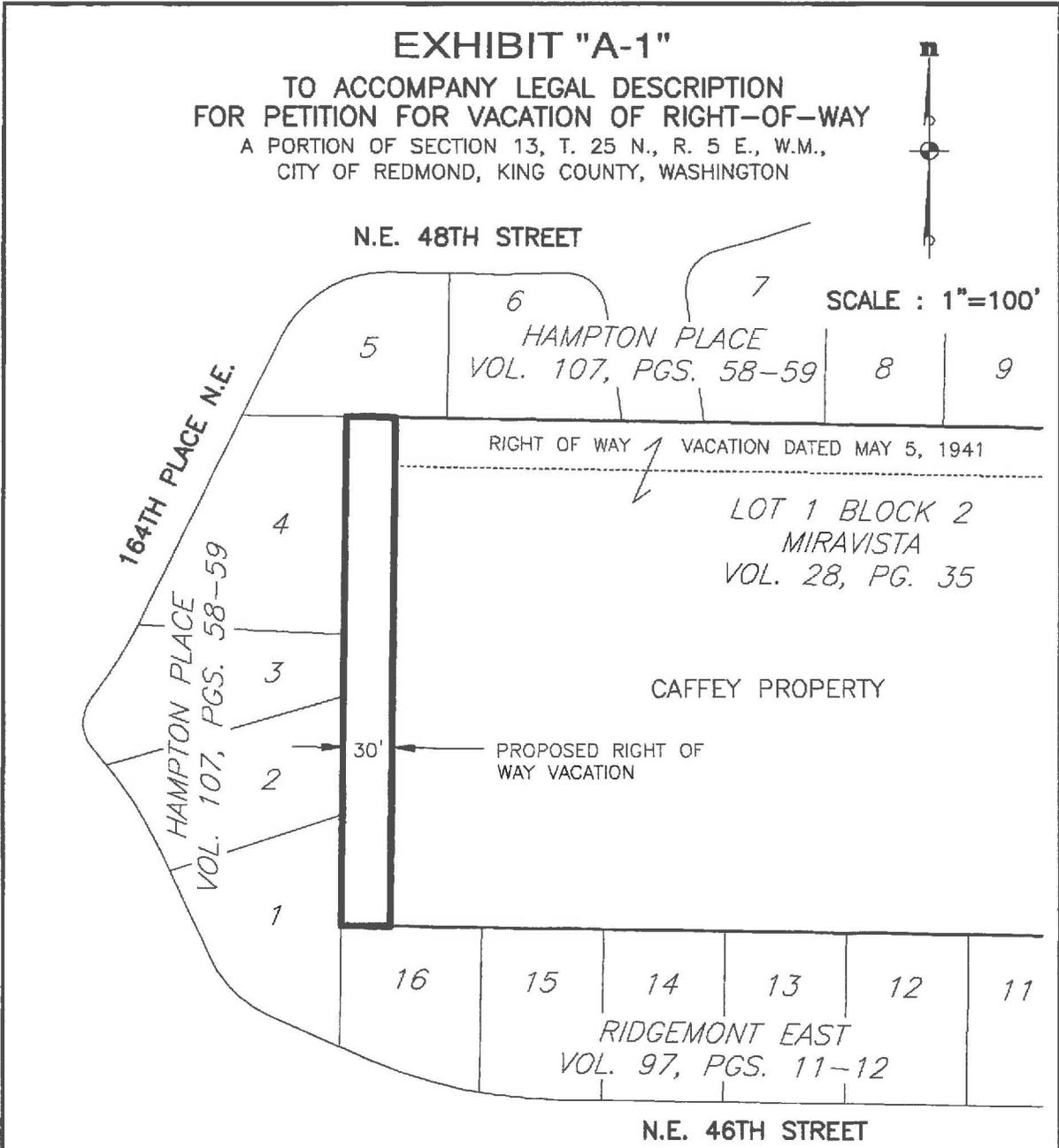
02-11-2015

ESM Federal Way  
33400 8th Ave S, Ste 205  
Federal Way, WA 98003  
253.838.6113 tel  
800.345.5694 toll free  
253.838.7104 fax

ESM Everett  
1010 SE Everett Mall Way, Ste 210  
Everett, WA 98208  
425.297.9900 tel  
800.345.5694 toll free  
425.297.9901 fax

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Land Surveying      Landscape Architecture  
3D Laser Scanning      GIS

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ESM8\ENGR\ESM-JOBS\1787\001\013\EXHIBITS\SR-02

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	33400 8th Avenue S. Suite 205 Federal Way, WA 98003 <a href="http://www.esmcivil.com">www.esmcivil.com</a>	
Civil Engineering Public Works	Land Surveying Project Management	Land Planning Landscape Architecture

JOB NO. 1787-001-013-0004  
 DRAWING NAME : SR-02  
 DATE : 2015-02-11  
 DRAWN : C.A.F.  
 SHEET 1 OF 1



# 164TH AVE NE UNIMPROVED R/W PROPOSED FOR VACATION

**EXHIBIT "C"**



**Unimproved  
30-foot-wide  
164th Ave NE  
Right-of-Way  
Proposed for  
Vacation**

**CAFFEY  
PARCELS**

**Redmond**

(C) 2008 King County

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**EXHIBIT "D"**  
**CAFFEY PROPERTY**  
**LEGAL DESCRIPTION**

Parcel A:

That portion of Lot 1, Block 2, Miravista, according to the plat thereof recorded in Volume 28 of Plats, Page(s) 35, records of King County, Washington, described as follows:

Beginning at the most Easterly corner of said Lot 1;  
Thence South 88° 57' 25" West along the South line thereof, 576.89 feet to the true point of beginning;  
Thence North 5° 19' 43" West 156.11 feet;  
Thence South 88° 59' 12" West to the West line of said Lot 1;  
Thence Southerly along said West line of said Lot 1 to the South line of Lot 1;  
Thence Easterly along said line of Lot 1 to the point of beginning.

Situate in the County of King, State of Washington.

Parcel B:

That portion of Lot 1, Block 2, Miravista, according to the plat thereof recorded in Volume 28 of Plats, Page(s) 35, records of King County, Washington, described as follows:

Beginning at the most Easterly corner of said Lot 1;  
Thence South 88° 57' 25" West along the South line thereof, 576.89 feet;  
Thence North 5° 19' 43" West 156.11 feet to the true point of beginning;  
Thence South 88° 58' 12" West to the West line of said Lot 1;  
Thence Northerly along said West line of said Lot 1 to the North line of said Lot 1;  
Thence Easterly along said North line of Lot 1, 553.36 feet;  
Thence Southerly to the point of beginning;

Together with that portion of the vacated 30 foot strip adjoining said Lot 1 on the North, lying Westerly of the Northerly prolongation of the East line of the above described tract to the North line of said 30 foot strip;

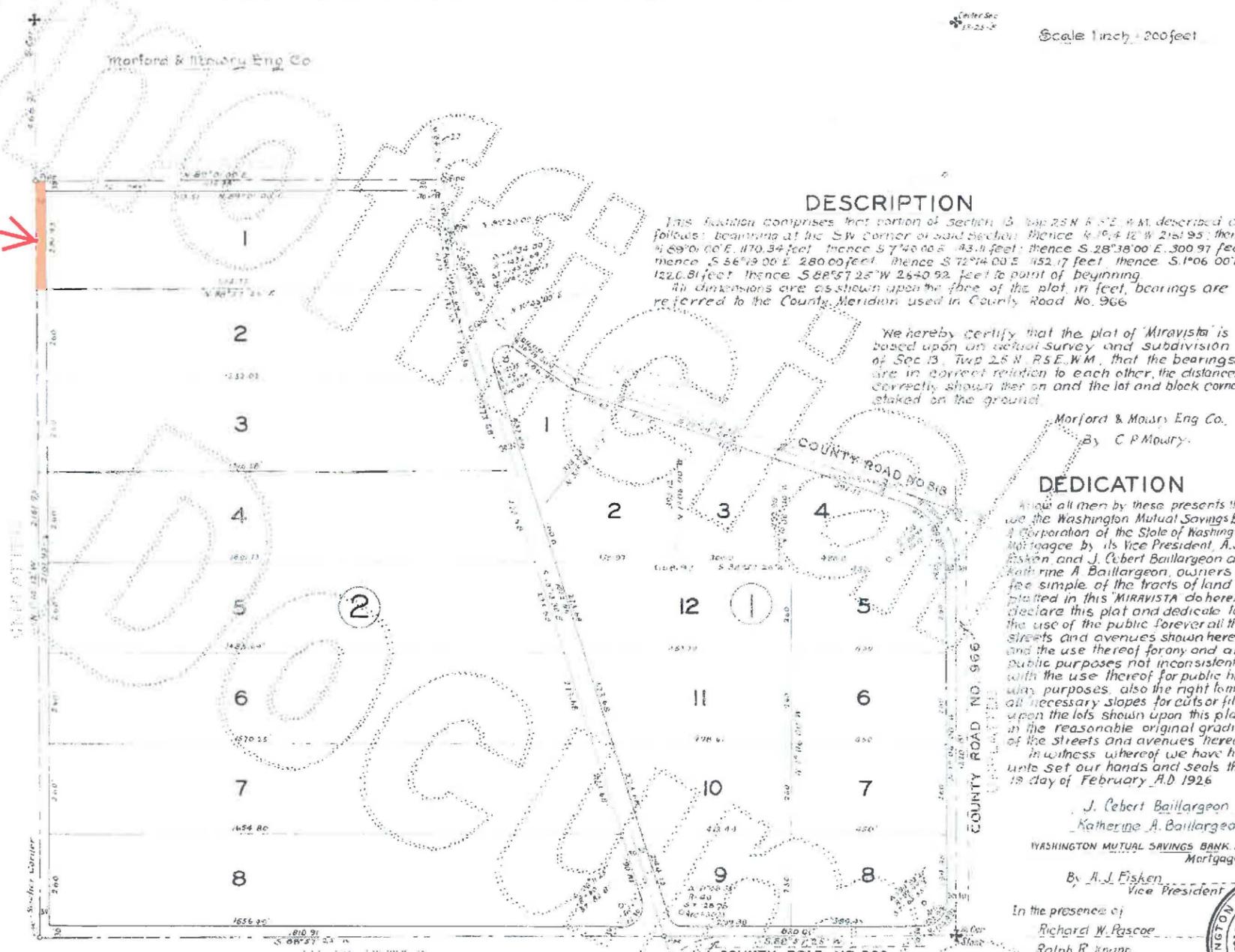
Situate in the County of King, State of Washington.

# MIRAVISTA

AN ADDITION TO KING CO.

EXHIBIT "E"

Subject  
Right-of-Way  
Strip



### DESCRIPTION

This addition comprises that portion of Section 13 Twp 25 N. R. 5 E. W.M. described as follows: beginning at the SW corner of said section thence N 36° 41' 12" W 2161.95 feet; thence N 69° 01' 00" E 1170.34 feet; thence S 74° 00' E 43.11 feet; thence S 28° 36' 00" E 300.97 feet; thence S 56° 19' 00" E 280.00 feet; thence S 72° 14' 00" E 152.17 feet; thence S 1° 06' 00" E 1220.81 feet; thence S 88° 57' 25" W 2640.92 feet to point of beginning. All dimensions are as shown upon the face of the plat in feet, bearings are referred to the County Meridian used in County Road No. 966.

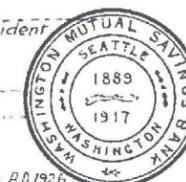
We hereby certify that the plat of 'Miravista' is based upon an actual survey and subdivision of Sec 13 Twp 25 N. R. 5 E. W.M. that the bearings are in correct relation to each other, the distances correctly shown thereon and the lot and block corners staked on the ground.

### DEDICATION

Know all men by these presents that we the Washington Mutual Savings Bank a Corporation of the State of Washington, Mortgagee by its Vice President, A.J. Fischen and J. Ceibert Baillargeon and Katherine A. Baillargeon, owners in fee simple of the tracts of land platted in this 'MIRAVISTA' do hereby declare this plat and dedicate to the use of the public forever all the streets and avenues shown hereon and the use thereof for any and all public purposes not inconsistent with the use thereof for public highway purposes, also the right to make all necessary slopes for cuts or fills upon the lots shown upon this plat in the reasonable original grading of the streets and avenues hereon in witness whereof we have hereunto set our hands and seals this 19 day of February, A.D. 1926.

J. Ceibert Baillargeon  
Katherine A. Baillargeon  
WASHINGTON MUTUAL SAVINGS BANK A CORP.  
Mortgagee  
By A.J. Fischen  
Vice President

In the presence of  
Richard W. Pascoe  
Ralph R. Knapp



### ACKNOWLEDGMENT

State of Washington } ss  
County of King }  
This is to certify that on this 19th Day of February 1926 before the undersigned a Notary Public, personally appeared A.J. Fischen vice President of the Washington Mutual Saving Bank, the corporation that executed the foregoing dedication and acknowledged the said dedication to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned.  
Witness my hand and official seal the day and year first above written.



H.G. Baldwin  
Notary Public in and for the State of Washington, residing at Seattle.

### ACKNOWLEDGEMENT

State of Washington } ss  
County of King }  
This is to certify that on this 19th day of Feb 1926, before the undersigned a Notary Public, personally appeared J. Ceibert Baillargeon and Katherine A. Baillargeon, his wife to me and to be the persons who executed the foregoing dedication and acknowledged to me that they signed and sealed the same as their voluntary act and deed for the uses and purposes therein mentioned.  
Witness my hand and official seal the day and year first above written.



Hollister T. Sprague  
Notary Public in and for the State of Washington, residing at Seattle.

Thomas H. Carter  
Draftsman

Examined and approved this 23rd day of February, A.D. 1926.  
By Thomas R. Beaman  
County Engineer.  
Examined and approved this 23rd day of Feb. A.D. 1926.  
Wm. A. Gaines  
Chairman Board County Commissioners.  
Wm. C. P. Gage,  
Dep. Clerk of Board of County Commissioners.



2143929

Filed for record at the request of County Engineer, Feb 23rd A.D. 1926, at 27 minutes past 3 o'clock P.M. and recorded in Volume 28 of Plats, page 35, Records of King County, Washington.

By \_\_\_\_\_  
Deputy County Auditor.

Color markups added by Halinen Law  
5/21/2015

**David Halinen**

---

**From:** David Halinen  
**Sent:** Thursday, January 29, 2015 1:39 PM  
**To:** John Jones (john.jones@fnf.com)  
**Cc:** Terry Caffey (Terry@barnescaffey.com)  
**Subject:** Caffey--request for copies of the deed(s) that would show who was in title on February 23, 1926 to the then-existing parcel(s) of land abutting the portion of Miravista's west boundary where the remaining strip of unimproved right-of-way is

**Attachments:** Miravista (AFN 192602232143929).pdf; Ptn of Assessor's Map (SW 13-25-05) with shading and labeling.pdf; APE OF CAFFEY PARCELS & SURROUNDING AREA.pdf; Assessor's qs SW 13-25-05 (circa 1969 with DLH 01-29-2015 color mark-ups ).pdf; Assessor's qs SE 14-25-05 (circa 1969 with DLH 01-29-2015 color mark-ups).pdf; Second Title Commitment (Rachel Norambuena--Imported on 05-24-2013 4-23-56 PM).pdf

Fidelity National Title  
Attn: John W. Jones, Senior Underwriter

Dear John:

In follow-up to my phone call with you this morning, I have attached the following items:

- (1) A copy of the plat of Miravista, which was recorded on February 23, 1926—the land owner (platters) were J. Cebert Baillargeon and Katherine A. Baillargeon;
- (2) A portion of the relatively current Assessors Quarter Section Map for SW 13-25-05 (on which the subject strip of street right-of-way proposed for vacation has been yellow-highlighted);
- (3) A color GIS map exhibit that my legal assistant created in March 2013 from the King County iMAP website (which illustrates the location of the Caffey property and the subject strip of street right-of-way proposed for vacation)
- (4) A circa 1969 Assessors Quarter Section Map for SW 13-25-05, on which I have color-sketched the Chaffey property and the subject strip of street right-of-way proposed for vacation; and
- (5) A circa 1969 Assessors Quarter Section Map for SE 14-25-05 (the quarter section west of and abutting the SW 13-25-05), on which I have (a) color-sketched the Chaffey property and the subject strip of street right-of-way proposed for vacation and (b) set forth my question to you.

In view of the question I marked-up on the attached circa 1969 Assessors Quarter Section Map for SE 14-25-05, **would you please get me copies of the deed(s) for the property west of and abutting at least the entire west edge of the remaining right-of-way strip (which is proposed for vacation) both (1) immediately prior in time to February 23, 1926 and (2) immediately after that date?**

From those deeds, I seek to learn whether the property owner(s) to the west of that strip were the same people that platted Miravista (namely, J. Cebert Baillargeon and Katherine A. Baillargeon).

I would appreciate receiving copies of those deeds from you within the next week.

By the way (for your reference), I have also attached a copy of the last title commitment you produced for us in 2013 concerning the Caffey property (while you were still with Stewart Title).

Thanks for your help.

Dave Halinen



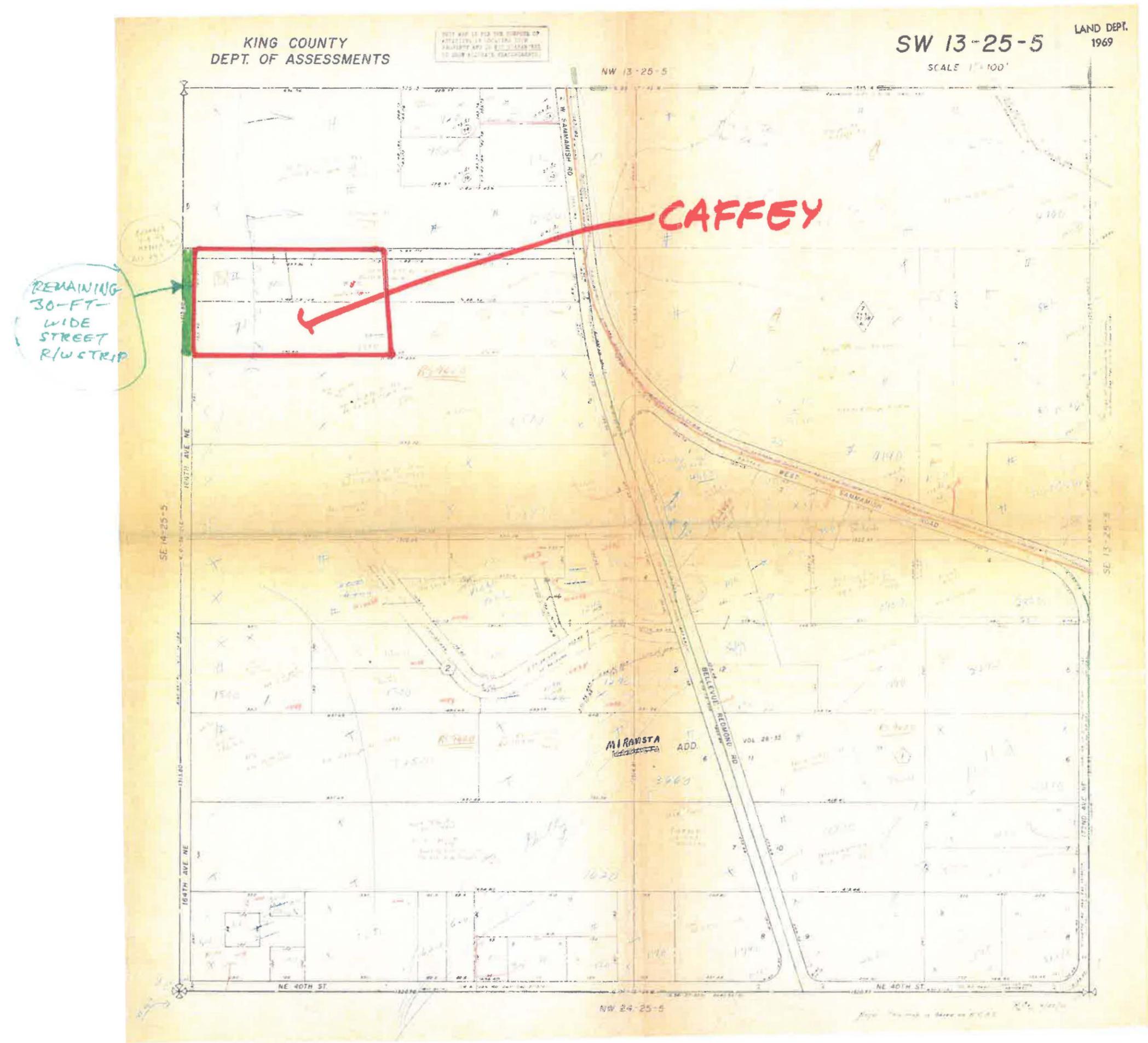
HALINEN LAW

David Halinen, P.E.  
Attorney at Law  
Seattle 206.443.4684  
Tacoma 253.627.6680  
[david@halinenlaw.com](mailto:david@halinenlaw.com)  
[halinenlaw.com](http://halinenlaw.com)

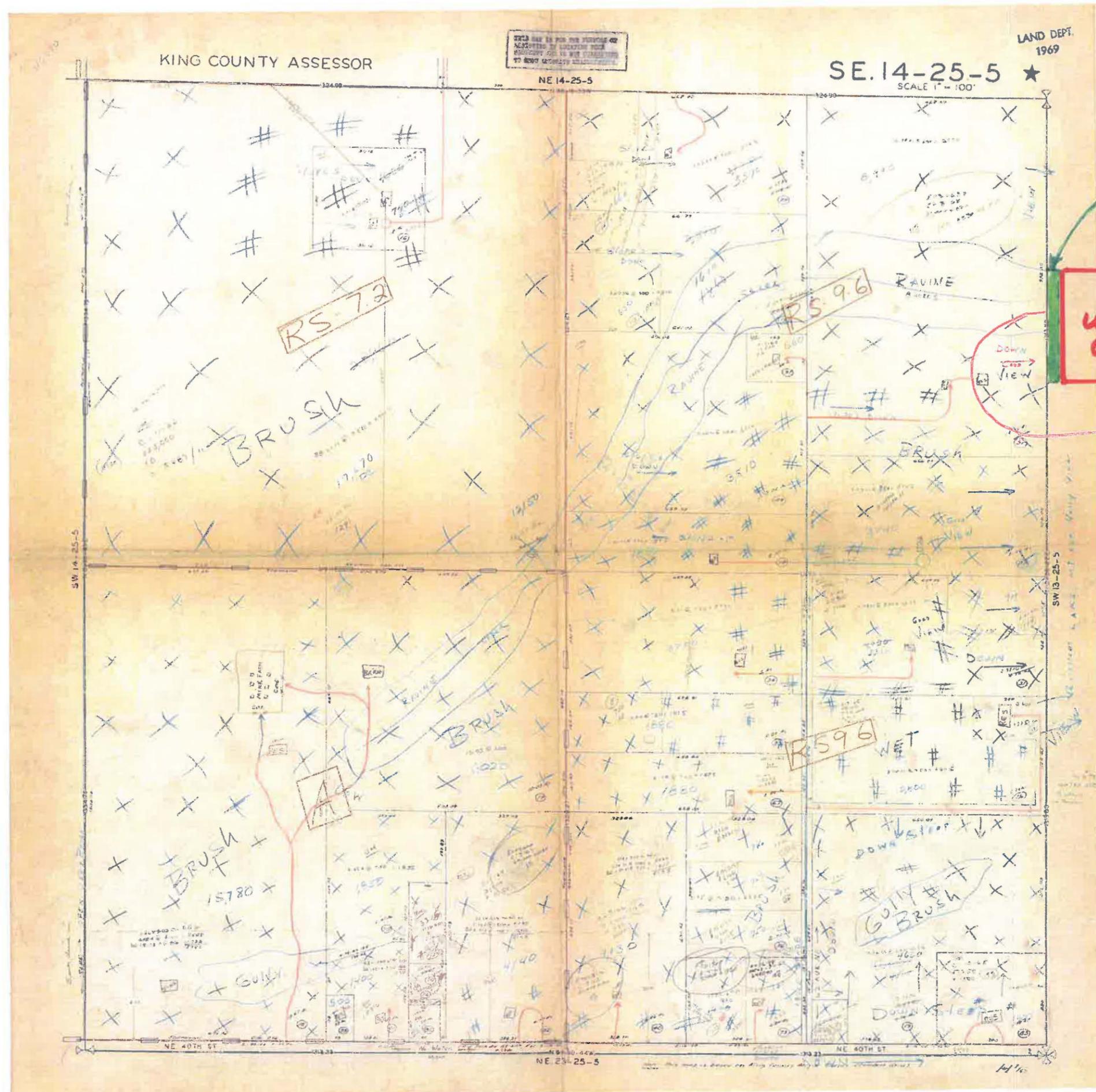
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**EXHIBIT "G"**



**EXHIBIT "H"**



REMAINING  
30'-WIDE  
STREET R/W  
STRIP

**WEST END OF  
CAFFEY PROPERTY**

QUESTION:  
WHO OWNED  
ABUTTING  
PROPERTY TO  
THE WEST  
OF THE NOW-  
REMAINING  
R/W (R/W THAT  
WAS CREATED  
BY THE MIRAVISTA  
PLAT) ON THE  
DATE THAT  
MIRAVISTA  
WAS RECORDED  
(I.E., FEB. 23,  
1926)?

**David Halinen**

---

**From:** Jones, John [john.jones@fnf.com]  
**Sent:** Friday, February 06, 2015 9:07 AM  
**To:** David Halinen  
**Subject:** Caffey  
**Attachments:** 2752464.pdf; 1615272.pdf

Prior deed is into Tosh in 1922 and deed out was from Buettgen formerly Tosh in 1933

*John*

**John W. Jones**  
**Senior Vice President**  
**Senior Commercial Underwriter**  
Fidelity National Title  
Major Accounts Division  
600 University Street  
Suite 2424  
Seattle, WA 98101  
(206) 262-6305 Direct  
[John.Jones@fnf.com](mailto:John.Jones@fnf.com)



**Fidelity National Title**

National Commercial Services

---

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161 5271-1

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Sec 13, th N in Lot 5 of Sec 13 pl) with sd Sec 1n and 3 ft E  
thof to the S ln of the Co road No. 115 with the rt to go upon  
sd ld for the constn, operation and maintenance of sd water  
pipe, the top of wch is to be buried to a depth of 18 inches  
below the surface of the ground, for the common use of the  
afors and gress hin their h exrs adm suc and a

Sarah A.Sullivan  
John Sullivan  
Robert A.Tosh  
Margaret J.Dingwall  
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Agnes A.Tosh  
Julia B.Davis  
G.A.Davis

2 wit

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hh Agnes A.Tosh a spine bef Herbert S.Upper np for we  
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(M) Edith Tosh, 2218 14th Ave So City)

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D May 12-22

1-48

1615272

May 9-22 31.

Sarah A.Sullivan and John Sullivan, hh, Robert A.Tosh, a widr  
ever since acquiring this prop, Margaret J.Dingwall and Dan M.M  
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to Edith E.Tosh, a spine

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Sarah A.Sullivan  
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Margaret J.Dingwall  
Dan M.Dingwall  
Agnes A.Tosh  
Julia B.Davis  
G.A.Davis

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kow May 9-22 by Sarah A.Sullivan, John Sullivan, Robert A.Tosh  
Margaret J. Tosh, Dan M.Dingwall, Julia B.Davis G.A.Davis,  
Agnes A.Tosh, bef Herbert S.Upper np for we res at s ne May 7-24  
(M) sp 2218 14th Ave So City)

*Dingwall*

*1178/3*

fld by L Kleidy route 3 box 1130 AUGUSTA GA

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526 2752164

D Mar 16 1933

Mar 16 1933 \$10 and o v c 10cirs x  
Edith E Buettgen fmy Edith E Tosh wf of Frank Buettgen and Frank  
Buettgen

to Edward Lester, a d Carrie C Lester  
fp cy and war to sp the f ld in kw;

east half of the NE 1/4 of the SE 1/4 of sect 14, twp 25 n r 5 ewm  
subj to all taxes now a lien against ad pty  
Edith Buettgen, fmy Edith E Tosh  
Frank Buettgen

kw Mar 16 1933 by Edith E Buettgen fmy Edith E Tosh, f of  
Frank Buettgen, and Frank Buettgen bef Henry S Noon ap for wa res  
at s n May 9 1933 fld by sp 1016, 2nd no

---  
(FOR)