



July 28, 2021

Honorable Alex Pedersen, Chair
Transportation and Utilities Committee
Seattle City Council
600 Fourth Avenue
Seattle, Washington 98104

Subject: Petition of Seattle City Light for the vacation of a portion of Diagonal Way South, west of 4th Avenue South in Seattle City Council District 2 and the Greater Duwamish Manufacturing/Industrial Center Clerk File 314451

Dear Councilmember Pedersen and Honorable Members of the Transportation and Utilities Committee:

We are returning the petition from Seattle City Light (“SCL” or “Petitioner”) for the vacation of a portion of Diagonal Way South between 4th Avenue South and 2nd Avenue South, described as:

Commencing at the most southwesterly corner of that portion of Diagonal Avenue South vacated under by City of Seattle Ordinance Number 112889, under King County Recording Number 86070I 0965, and amended by City of Seattle Ordinance 113226, under King County Recording Number 8701070967, said point of commencement also being the angle point at the intersection of the westerly and northwesterly lines of Lot 2 of the plat of Fourth and Duwamish Investment Park, recorded under King County Recording Number 8307280903; thence north 01°09'28" east along the west line of said vacated Diagonal Avenue South 59.69 feet to a point at the northwesterly corner of the southeasterly portion of said vacated Diagonal Avenue South and true point of beginning;

Thence north 43°14'20" east along the northwesterly line of the southeasterly portion of said vacated Diagonal Avenue South 355.61 feet to a point that bears north 46°45'40" west and is 40.00 feet distant from a point on the southeasterly margin of Diagonal Avenue South and 38.41 feet northeasterly of the southwest corner of Lot 4, Block 304, of the unrecorded plat of Seattle Tide Lands, said point also being an angle point in said vacated Diagonal Avenue South; thence north 46°45'40" west 40.00 feet to the southeasterly line of the northwesterly portion of said vacated Diagonal Avenue South; thence north 43°14'20" west along said southeasterly line 311.31 feet to the southwesterly corner of the northwesterly portion of said vacated Diagonal Avenue South; thence south 01°09'28" west 59.69 feet to the true point of beginning. Vacation contains 13,337.8 square feet, more or less.

The proposed vacation is 330 feet in length and approximately 40 feet in width (the width tapers) for a total of approximately 13,300 square feet of right-of-way.

Seattle Department of Transportation (SDOT) recommends the vacation be granted subject to conditions.

I. CITY COUNCIL DISTRICT

The proposed street vacation is in City Council District 2.

II. ACTIVITIES PRIOR TO FORMAL VACATION APPLICATION

In the policy revisions adopted in Resolution 31809 in 2018, the City Council formalized a number of procedural obligations that a developer must complete before filing a vacation petition. The policy revisions provide that these steps must be completed before SDOT should accept a vacation petition and before beginning the formal review of a proposed vacation.

The Council also imposed a much more rigorous and consistent plan to engage the community before the review process begins. This early work is intended to move beyond notification about a proposed vacation and create an opportunity for early input on a proposal and public benefit plan.

The pre-petition activities outlined in the Vacation Policies includes:

- Feasibility assessment: SDOT requires a developer to provide conceptual information about the proposal and how the vacation contributes to the development and an outline of the public benefit plan. SDOT staff can then provide information about the time frame, costs, and obligations of a vacation including the public benefit obligations and the appraisal process to determine the vacation fee. SDOT will, as needed, include other City staff such as SDCI, Department of Neighborhoods (DON), utility representatives, and the Seattle Design Commission (SDC). City staff will work to provide an initial feasibility assessment based on the information provided.
- Community Engagement Plan: The developer is required to consult with DON staff and develop a Community Engagement Plan that must be included in the vacation application.
- Conduct early community engagement: Consistent with the Community Engagement Plan, the developer must proceed with early community engagement.
- SDC early review: The vacation proposal must be presented to the SDC before any EDG meeting so that the SDC can provide input to the Design Review Board.
- Capital Improvement Projects (CIP): If a CIP project is proposed by the City or other public agency, the proposal including a vacation and a no-vacation alternative must be presented to the SDC at predesign or 15% review of the proposed facility.
- Early Design Guidance: If the project is subject to design review the EDG process must be completed before the vacation petition can be accepted by SDOT.

This early work can create opportunities for meaningful early input from the community and City staff and can assist a developer or public agency in determining whether to proceed with a vacation.

III. COMMUNITY ENGAGEMENT PLAN

A significant change in the revised Vacation Policies is the obligation that before a Petitioner can begin the formal vacation review, the Petitioner must work with DON on developing a Community Engagement Plan. The City first expanded the obligation to develop Community Engagement Plans in Ordinance 125429. This legislation added requirements to Seattle Municipal Code (SMC) 23.41 that all projects going through Streamlined, Administrative, or the Full Design Review program administered by SDCI must prepare a community outreach plan before scheduling the EDG meeting. SDCI Director's Rule 4-2081 and DON Director's Rule 1-2018 provide more guidance about the components of the plan.

The vacation review follows the guidance provided by the SMC and the Director's Rule. The developer can then work with DON on a plan that will be accepted by SDCI and SDOT.

The Community Engagement Plan uses a number of strategies to reach individuals and organizations in the neighborhood where a vacation is proposed. DON will guide the developer on the strategies to employ, organizations to contact or meet, and whether translation of materials or at meetings is necessary. DON provides support throughout the process.

SCL and its consultant worked with DON on a Public Outreach & Engagement Strategy that DON approved in May of 2019. The strategy included:

- Digital outreach,
- Emails,
- Website,
- Survey,
- Social media,
- Direct mailers,
- Posters,
- In-person public engagement,
- Delivery of door-to-door notices,
- Public meetings and presentations in SODO and Georgetown, and
- Stakeholder interviews.

SCL met with the Georgetown Community Council Open Space Committee who supported the use of the Flume property for public open space to be used as an off-leash area and as a trail connection. At a design charrette, several recommendations were made:

- Make this area a safe, walkable, rollable space,
- Add native trees and plants,
- Provide a historic connection/narrative, and

- Possibly add an off-leash dog park/run area.

The community work indicated that there were not concerns about the vacation of Diagonal Way and it was noted that the area had not been used for right-of-way purposes for many years. SODO representatives noted that since the vacation was in SODO at least a portion of the public benefit should be located in that neighborhood. Early comments on a proposed off-leash area noted the possibility of safety issues if the area was not well used.

SCL conducted a survey and the survey results indicated that 93% of responders support the vacation, 87% support the transfer of the Flume property, and 83% indicated that the proposed public benefit was fair.

IV. EARLY CITY COUNCIL REVIEW

The Vacation Policies provide that the Council may host a briefing on a new vacation petition. The purpose of the briefing is to provide the public with an early opportunity to give input on the vacation to the City Council, the Petitioner, and City reviewers. The briefing provides an opportunity for the Council to hear about the vacation, and to provide early feedback regarding the process.

If the Council chooses to hold a briefing it will be scheduled after a petition has been accepted and introduced at City Council and early in the review process. The goal is for the Petitioner to present the vacation to the City Council and the community before the elements of the formal review process such as SDC, Design Review Board meetings, SIP review, or other City procedures have begun to identify issues and work to refine the proposal.

An early Council briefing was held on July 17, 2018 at the committee then titled the Sustainability & Transportation Committee. This early briefing was held before SCL submitted a vacation petition when the Council was still engaged in the work to revise the vacation policies. During the briefing, the Committee heard from SCL, SDOT, Design Commission, and Council staff on the proposal. SDOT noted that it was important the public benefit be provided at the time the vacation occurs and was not an opportunity for a future public benefit. Several community representatives expressed strong support for the idea of using the SCL property in Georgetown known as the Flume property, for public benefit. The Committee expressed support for the proposed vacation and the use of the Flume property and noted that more detail about public benefit elements and timing of the public benefit work would be needed before approval.

V. BACKGROUND

Diagonal Way South in this location extends from 4th Avenue S to 2nd Avenue S where the street dead ends at the BNSF rail lines. This section between 4th Avenue S and 2nd Avenue S is a paved street that is approximately 730 feet in length. A previous vacation of the north and south margins of the street in 1996 narrowed it from 100 feet to 40 feet. Approximately 330 feet of the

west portion is fenced and gated for material and equipment storage operated by SCL with an SDOT street use permit.

SCL is proposing to vacate the west 330 feet of Diagonal Way South that it currently manages with a street use permit. The remaining 400-foot portion provides access to two parcels that also have access from 4th Avenue S. These parcels have driveways and sidewalks on Diagonal Way South. There is an existing curbed turnaround at the gate to the SCL South Service Center. The approximately 400-foot section of Diagonal Way South at 4th Avenue S is not a part of the vacation proposal and will remain as public right-of-way (“ROW”) providing access to the other property owners and the turnaround for vehicles to exit the area.

The ROW proposed for vacation is the segment of ROW adjacent to SCL’s South Service Center at 3613 4th Avenue S and is approximately 330 feet in length and 40 feet in width (the width tapers) for a total of approximately 13,300 square feet. SCL owns the property on both sides of the ROW and is the only property owner who abuts the portion of the ROW proposed for vacation.

A large Costco warehouse store is located just southeast of the SCL facility and the access to the store and its parking are from 4th Avenue S.

The project is in the Greater Duwamish Manufacturing/Industrial Center and the area is zoned Industrial General 1 (IG1). The IG zone is intended to support industrial activities. This zone allows for utility services without restrictions on height or size of use.

VI. REASON FOR VACATION

The vacation is sought to support SCL’s investment in upgrades in the ROW and its existing South Service Center site. SCL has used the ROW as an auxiliary, low-security yard for the storage of materials and equipment and some maintenance vehicles and trucks. While SCL has used the ROW with street use permits for many years at this time SCL needs to make investments to the site. SCL needs to provide major drainage upgrades to the site, provide covered space for activities such as industrial painting, and provide for security upgrades such as fencing and lighting. SCL has indicated that without the vacation it would not make the upgrades in property it does not own.

VII. NO-VACATION ALTERNATIVE

For many large-scale projects such as a full-block office tower located downtown or institutional expansion such as a new hospital building, the proposed project cannot be built without using the vacation process to connect property and create a site of sufficient size for development. For other projects, the vacation is requested because of the flexibility to develop the site to meet the functional and program goals of the developer. Site flexibility can provide for anything from a more desirable building orientation on the site or for a plaza area with more sunlight or visibility.

Without a vacation, as a City agency, SCL would likely be able to continue with permits to use the ROW and even accommodate the enhancements and upgrades SCL needs. SCL is not proposing any significant physical developments such as constructing permanent buildings for utility purposes, office or warehouse space, or permanent vehicle storage. None of those permanent uses could be accommodated with street use permits. Permits are adequate for the way that SCL is currently using the site, but permits do not provide a guarantee of permanent or even continued use. SCL does not wish to invest in the site without securing a vacation that allows SCL to own and use the site without time or permit constraints. SCL's upgrades at its adjacent facility include a large investment of approximately \$1.5M. SCL does not propose to make upgrades in the ROW unless a vacation is secured.

The no-vacation alternative would not require any public benefits and there would be no opportunity to develop the pedestrian and bicycle trail connection and the off-leash dog park.

VIII. PROJECT DESCRIPTION

SCL's capital improvement project (CIP) includes three components: improving drainage, reducing airborne particulates, and enhancing security at the site. Consolidating the ROW and the existing service center will also provide for efficiency in using the site and supporting the turning movements of oversize vehicles at the service center.

SCL's large, paved yard currently sends untreated runoff to the Duwamish River. SCL is proposing drainage upgrades that will protect the Duwamish River by improving the water quality runoff. This includes the constructing underground stormwater treatment that will collect and treat water before it flows into the Duwamish River. This would be constructed in the vacated ROW along the western edge of the site.

SCL conducts some industrial activity on the site including spray coating steel plates. The Washington State Department of Ecology has identified improvements that need to be made to the process of spray-painting steel plates so that particulates do not disperse into the air. SCL plans to enclose this activity in small structures to protect the air quality.

In addition, SCL has identified the need for security upgrades to the site. This includes upgrading the perimeter fencing, new security cameras and lighting, and a secured entry/exit to the site.

The CIP proposal includes:

- Improve water quality runoff into the Duwamish River by constructing underground stormwater treatment,
- Reduce airborne particulates from unprotected material by conducting activity such as spray coating in a covered space such as a post-tension structure,
- Remove internal fencing to allow for efficient use of the total site and improve circulation and provide for use by oversize vehicles,
- Construct state of the art perimeter fencing consistent with SCL security standards,

- Regrade and resurface the site to reduce flooding and freezing during heavy rain,
- Erect structures to enclose activity on the site,
- Install new security cameras and lighting, and
- Provide a secured entry/exit.

The public benefit package includes SCL's proposal to convey property known as the Flume property in part to Parks and in part to SDOT. This property in the Georgetown area is between E Marginal Way S and S Myrtle Street. The property would be used by Parks for an off-lease area for dogs. SDOT would develop its portion as a bike and pedestrian trail connection between the Georgetown and South Park communities. SCL will convey the property to Parks and SDOT and provide some site preparation such as stormwater treatment and lighting. An agreement between the three departments provides for SCL funding as well as commitments from SDOT and Parks. SDOT and Parks will conduct community work, do the design and installation as their share of development costs. The property and SCL support for the planning and development of the public benefit uses is about \$3.8M in value from SCL.

IX. CIRCULATION/ISSUE IDENTIFICATION

Vacations are generally associated with significant development proposals and will generally include a number of other review and regulatory procedure and obligations. The vacation review is coordinated with other regulatory and review procedures where applicable. In addition to the vacation review, the project may be subject to:

- Design Review Board review as required by SDCI,
- Major Institution Master Plan,
- Landmarks or Special Review District review,
- Master Use Permit (MUP) review,
- Environmental review or transportation analysis,
- Preparation of a SEPA Checklist,
- Street Improvement Plan (SIP) review, the SDOT process to review street design and utility issues, and
- Utility Major Permit, the process to review major utility changes.

As SCL is proposing a number of upgrades to its site, the proposal required a concurrent CIP review by the Seattle Design Commission (SDC) which included review at 15% or pre-concept, followed by concurrent and schematic reviews (30% and 60% respectively). The vacation proposal did not trigger other review procedures or environmental review beyond the CIP and vacation review at the SDC and the Community Engagement Plan.

The vacation review includes circulation of the proposed vacation, the development proposal, and the public benefit plan to various City departments, outside agencies, and community groups for comment. The purpose of the broad review of the vacation petition is to identify issues that need to be addressed through the vacation process by changes to the project or by adding

vacation conditions. All the comments received are a part of the record as presented to City Council and are not revised or amended by SDOT.

The public comments reflect the views and analysis of the group, organization, or individual for consideration by the City and do not reflect the analysis and conclusions of the City.

A number of City departments and outside agencies reviewed the SCL proposed vacation and did not identify any issues or concerns, including:

- SDOT Transit & Mobility,
- SDOT Maintenance Operations,
- Seattle Department of Construction and Inspections (SDCI),
- Seattle Fire Department,
- Office of Planning and Community Development (OPCD),
- King County Metro,
- King County Wastewater Treatment Division, and
- Century Link.

One City department identified issues with the proposed vacation:

- Seattle Public Utilities (SPU) identified three major DWW sewer mains that are approximately 17 feet deep, including a 30” sewer main, 132” Pipe Sewer Drain (PSD), and a 48” PSD. SPU notes that these lines were installed in the 1950s and 1960s and are likely in poor soils with some contamination. These lines were installed to accommodate the weight of vehicular traffic but could not withstand permanent construction. SPU asks that the vacation be conditioned on SCL agreeing to the development of a Memorandum of Understanding (MOU) to address access and maintenance issues and guarantee SPU may expand its facilities as needed in the future.

The Seattle Design Commission (SDC) reviewed the proposed vacation at 3 meetings and held several informal meetings on the project and the proposed public benefit. As required by Council vacation policies, the SDC conducted a concurrent review of the proposed vacation and the CIP that would be developed should the vacation be granted.

October 2, 2019: This meeting was the initial pre-petition meeting and concurrent 15% CIP review. The SDC indicated support for the vacation and the proposed capital facilities upgrades that would be achieved from the vacation. The SDC provided the following direction:

- The vacation request is understandable given the investments proposed by SCL and the need for enhanced security at the South Service Center,
- The SPU concerns about access of its drainage facilities at the site must be addressed,
- Concern was expressed about the timing and funding for the public benefit at the Flume site and that a gravel road surface for any non-motorized connection in the near term was problematic,
- The Community expressed the need for trees and water at the proposed public benefit site, and

- SDC asked for clarification of code requirements for utility services and details of the proposed fencing to secure the South Service Center.

July 2, 2020: This was the Public Trust meeting with the concurrent 30% CIP review, which were approved 8-0; with the following recommendations.

- Ensure that community engagement is well documented and that it includes demographic data from public participation,
- Provide information about how the project team is addressing issues raised by the community,
- Provide information about SCL and interdepartmental funding commitments for the public benefit proposal,
- Provide a design alternative to address how the project could be constructed in phases,
- Provide additional information on departmental funding and project phasing to better understand how design elements will be implemented, and
- Consider additional screening of the adjacent parcel along the eastern edge of the project site.

September 3, 2020: the SDC approved the 60% CIP review and the public benefit 6-0 with the following conditions:

- Provide a presentation to a subcommittee once the design has been advanced,
- Provide information on funding and address accessibility,
- Site furniture and dog park elements such as water, wayfinding and the kiosk,
- Plantings, and
- The stormwater and sustainability and its place in the Duwamish watershed.

The SDC also had the following recommendations about additional design details for the public benefit site:

- Continue to consider accessibility for all ages and abilities as the design advances.
- Consider providing art and involving the community in a holistic way,
- Continue to consider who is being impacted and reach out to them intentionally,
- Strongly consider additional seating opportunities to encourage community members to gather and spend time in the space,
- Consider increasing the width of the gate,
- Green infrastructure is especially important at the south end of the site in relation to the Duwamish River, and
- We encourage partnerships with Duwamish River related organizations.

X. POLICY FRAMEWORK

Street vacation decisions are City Council decisions as provided by State statute and have not been delegated to any City department. There is no right under the zoning code or elsewhere to vacate or to develop public right-of-way. Vacating public right-of-way requires discretionary

legislative approval that must be obtained from the City Council, and the Council may not vacate public right-of-way unless it determines that to do so is in the public interest. The City uses a two-part test to determine whether a vacation is in the public interest. First, the City undertakes a “Public Trust Analysis”, a determination of whether the street is needed and whether the public interest can be protected if the street is vacated. Second, the City undertakes a “Public Benefit Analysis” assessing the Petitioner’s proposal to provide benefits to the public.

Established plans, policies, and standards guide this review as called for by the Vacation Policies. The City will not support vacations that conflict with City planning goals, particularly if the vacation would be inconsistent with the desired intensity of development and preferred uses, or if a clear harm would result. But land use policies and codes do not bind the Council’s decision to grant or deny a street vacation petition. The Council may condition or deny vacations as necessary to protect the public interest.

The City’s Street Vacation Policies provide that vacation requests may be approved only when they significantly serve the public interest. The Street Vacation Policies provide for a two-step review of any vacation petition to determine if the vacation is in the public interest. The Policies define the components of public interest as protecting the public trust and providing public benefit.

The Street Vacation Policies provide that during its review of the petition, the Council will weigh the public trust and land use effects of a vacation, the mitigating measures, and the public benefits provided by the vacation to determine if the vacation is in the public interest. In balancing these elements of the public interest, the Council places primary importance upon protecting the public trust it holds in rights-of-way.

This petition has been reviewed for its consistency with the vacation policies in Resolution 31809, adopted May 15, 2018.

XI. PUBLIC TRUST ANALYSIS

City streets are held in trust for the public and the City acts as a guardian for the public in reviewing vacations. The Council may approve vacations only when they are in the public interest. Streets will be retained unless it can be shown that they are not needed for a current or foreseeable public use and the Council is convinced the vacation is in the public interest. The policies define the public trust functions of rights-of-way as being circulation, access, utilities, free speech, public assembly, open space, light and air, and views.

Vacations affect the land use and development patterns in an area by adding to the developable land base, altering the local land division pattern, changing vehicular and pedestrian movement patterns, and increasing the development potential on the vacated and abutting streets. A vacation petition may be approved only when the increase in development potential that is attributable to the vacation would be consistent with the Comprehensive Plan.

Circulation: Streets provide for the movement of people, goods, and vehicles through the city as part of a network. If a part of the network is removed, there may be impacts to the transportation network. The City will only vacate right-of-way if it will not disrupt the movement of people, goods, and vehicles through the city, and only if it is consistent with the City's transportation plans.

The street proposed for vacation is a dead-end street that does not serve through traffic or services and currently ends at BNSF property. The portion of the street proposed to be vacated only provides access to property owned by SCL. The area proposed for vacation has been closed to the public and in use by SCL for a number of years for storage and other secondary uses for the South Service Center.

The portion of Diagonal Way South that abuts 4th Avenue S will remain as public ROW and provide access for adjacent property owners on both sides of the street. The remaining public portion of Diagonal Way South includes a turning space adjacent to the SCL boundary so that vehicles may make a safe turn to exit the area.

Access: Streets and alleys provide access between abutting property from the surrounding community. Streets are designed to provide for the range of transportation modes, including walking, bicycling, transit, and driving. The City will only approve vacations if they do not result in negative effects on the current or future needs of the City's vehicular, bicycle, or pedestrian circulation systems, or on access to private property. If the negative impacts can be appropriately mitigated, the City may choose to vacate the street.

No negative impacts were identified as the vacation would act to make permanent the current long-standing uses. The property owners adjacent to 4th Avenue S would continue to have access to their property and drives in the remaining public portion of Diagonal Way South. The turnaround remains in public ROW to accommodate anyone who uses Diagonal Way South to enter and turnaround safely. SCL will continue to access its site through an enhanced security gate in Diagonal Way South.

If the street use permit was not in place and the entire street was open from 2nd Avenue S to 4th Avenue S there is not enhanced access to any property owners. The private owners and SCL will continue to use the remaining public portion of Diagonal Way South for access to the abutting properties. The street terminates at 2nd Avenue S because of the railroad tracks so even without the limitation of access because of the street use permit, SCL and the other property owners have access with the remaining public portion of Diagonal Way South.

Utilities: City and private utilities use streets to serve their customers. The City will only vacate a street when all utilities using or potentially using the right-of-way can be adequately protected with an easement, relocation, fee ownership, or similar agreement satisfactory to the utility owner. The Council will require that future potential utilities can be accommodated.

During the review process Seattle Public Utilities (SPU) was the only utility that identified any impacts from the vacation. SPU noted that it owned three major Drainage and Waste Water (“DWW”) sewer mains that are approximately 17 feet deep in the ROW. This includes a 30” sewer main, a 132” Pipe Storm Drain (“PSD”), and a 48” PSD. These lines were put in place in the 1950s and 1960s and are in poor soils which likely have some contamination. The lines were designed and installed to accommodate a live load, meaning the lines can only accommodate the weight of vehicle and truck traffic and could not withstand a building being constructed over the line. SPU also has a catch basin in the area.

SPU also identified that Diagonal Way South is a critically important corridor for the addition of a new water main to increase reliability and seismic resiliency in the SODO service area. It will be difficult for SPU to transect the existing railroad tracks and SPU finds this location is possibly the most feasible option for doing so in the future. SPU needs to preserve its right to construct this water main in the Diagonal Way South ROW proposed for vacation.

SPU has requested that SCL and SPU craft a Memorandum of Understanding (“MOU”) on the use of the ROW and access to the SPU lines for maintenance, repair, and upgrades. Implementing the MOU may require a partial transfer of jurisdiction or another implementation document. SCL has agreed to this and the work is ongoing. Should the vacation be approved, this agreement will need to be completed and adequately provide for the identified SPU concerns before the final vacation ordinance will be passed. The completion of this agreement will provide appropriate mitigation for the issues identified by SPU.

The vacation should be conditioned on protecting SPU facilities through a binding agreement such as a partial Transfer of Jurisdiction, an MOU or other type of agreement.

Free Speech: The public has traditionally used Seattle’s streets to exercise constitutional rights under the First Amendment ranging from large scale protests to newspaper vendors. Streets will only be vacated if publicly accessible spaces on the site will be kept open for the same speech-related purposes.

The ROW proposed for vacation is in an industrial area and has been fenced and used as a part of the SCL South Service Center. There are no public buildings or significant public spaces or transportation hubs in the area that are likely to draw members of the public to the site to exercise free speech rights. The area to be vacated and the existing open section of Diagonal Way South currently do not provide an important space for free speech so the vacation will not have an impact on the public’s ability to exercise free speech rights.

The area does not provide opportunities for the exercise of free speech so the limitation in public access from the street use permit or the permanent loss of ROW through the vacation process are unlikely to have any impact on members of the public who wish to access public ROW for the expression of free speech.

Public Assembly: Streets also act as places for people to gather, to meet others in the community, space for children to play, and for all segments of society to interact. The role of the right-of-way can be particularly important for people who have the fewest resources. The Council will consider the importance of each street as a place for community activity in considering the street vacation.

The area proposed for vacation is not adjacent to any public buildings or spaces where it would be likely that the public would gather for any purpose. To the west, the street ends at rail lines, to the north is the SCL South Service Center where materials and vehicles are stored and to the south is a Costco facility. To the east, the street segment that remains public provides access for two commercial facilities. It is highly unlikely that the area would ever have value as a space for public assembly. As with the consideration of the free speech opportunities this industrial area seems a very unlikely location for public activity.

The vacation will not limit the opportunity for public assembly at this unlikely location. Should members of the public wish to gather in the area the remaining portion of Diagonal Way South could provide space for the public to gather or speak out on an issue.

Open Space: Streets provide spaces for people to gather, interact, and travel, and offer open space benefits. These benefits include space between structures, connection to open spaces, places for trees and vegetation, and contributions to the open space network. The open space roles of boulevards, green streets, urban trails, shoreline street ends, and future open space are of heightened importance; all streets and alleys provide these benefits.

The street proposed for vacation does not currently provide for any accessible open space as the area is fenced and not available for public use. Were the street use permits to be revoked the area could be open but would not be in a location that was accessible and usable to the public. As was noted in assessing free speech or public assembly, this location does not lend itself to access or use by members of the public.

Should the vacation be granted, the public will acquire useable open space as the public benefit. While the new public space will be in a different neighborhood to the south, the site will create a real opportunity for biking and walking and an off-leash area for dogs.

Light and Air: Streets and alleys maintain access to light and air to their users and to surrounding property. The Council will consider the loss of light and air, and shadow impacts in considering whether to approve a street vacation. Shadow impacts on public spaces will be given importance.

The street grid provides for consistency in the development pattern. Streets provide for open, undeveloped space and breathing room and access to sunlight between buildings. Streets provide for light and air onto buildings and public spaces. The street proposed for vacation is a closed segment of street in an industrial area that is not part of a continuous grid that creates a balanced pattern of space and buildings. SCL does not propose a large new building on the site but instead proposes upgrades for environmental purposes and

security enhancements. Whatever light and air are currently provided by the ROW will remain largely the same following the vacation.

Views: Street and alleys provide view to mountains, bodies of water, and the city itself. The City will protect designated view corridors along specifically identified streets. The City will consider impacts of a street vacation on views of designated public places and designated landmarks.

The portion of street right-of-way proposed for vacation does not provide views of any natural feature such as mountains or water and there are no urban views of civic or community landmarks. The street is located in an industrial area on level property and extends between BNSF rail lines and a major arterial, 4th Avenue S. With or without the vacation or street use permits the views only include industrial property and uses. There are no views of importance that will be lost by vacating this portion of Diagonal Way South.

Land Use and Urban Form: Streets and alleys also play a significant role in the shape of the city. The City considers the relationship between the intended character of the area as described in Seattle's Comprehensive Plan and other adopted neighborhood, subarea, or community plans. The width and spacing of streets, the presence and absence of alleys, and the location and path of boulevards and other linear open spaces have significant impacts on neighborhoods and how they function. The Council will pay attention to vacations that disrupt an existing pattern of development in the neighborhood. The Council may place conditions on a vacation to mitigate negative land use effects.

The Office of Planning and Community Development (OPCD) and the Seattle Department of Construction and Inspections (SDCI) reviewed the proposal for compliance with land use and development regulations and with planning goals for the area and noted the vacation would support existing functions of the South Service Center that are compatible with the industrial and manufacturing uses in the greater Duwamish area.

Nearby developments consist of warehouse buildings that are generally two or three stories in height with no new buildings being proposed in the ROW. The proposed vacation allows for permanent use of the area for increased security and infrastructure to support the South Service Center. The Land Use Code allows for large industrial uses in this zone. The expansion of the SCL property with the vacation would expand the developable area by a small amount as compared to the overall size of many of the nearby properties. The use proposed by SCL is consistent with the size, scale, and character of existing development in the area.

The vacation does not impact any Comprehensive Plan policies regarding the use of the land as the vacation will help support an existing industrial use it is consistent with City policies for the area. The proposal is consistent with uses anticipated in the Land Use Code.

No adverse land use impacts were identified.

XII. PUBLIC BENEFIT ANALYSIS

The Street Vacation Policies note that a vacation shall include a commitment to provide public benefits. The concept of providing a public benefit is derived from the public nature of streets. Streets, whether improved or unimproved, provide important benefits to the public. Among the various benefits are preserving the street grid that provides for consistency in the development pattern and influences the scale and orientation of buildings. Streets provide for breathing space, open space and views, natural drainage, and wildlife corridors. These benefits are in addition to the public functions provided by streets including moving people and goods in vehicles, on foot, or by bicycle; and providing for current and future utility services, for street trees, and for other amenities.

Vacations cannot be granted for a purely private benefit. Before this public asset can be vacated for private purposes, there shall be a permanent or long-term benefit to the public. To best address the needs of the community, a strong focus on race and social equity is important in assessing the public benefits included as a part of vacation petition. The Vacation Policies stress the importance of the public benefit proposal responding to the needs of those most vulnerable to the negative impacts of development.

Proposed vacations may be approved only when they provide a permanent or long-term public benefit. Because the public permanently loses the street, short-term public benefits or public benefits that solely benefit individuals will not be considered. The Vacation Policies specify that the following are not public benefits:

- Mitigating the vacation's adverse effects,
- Meeting code requirements,
- Paying the required vacation fee,
- Facilitating economic development, or
- Providing a public, governmental, or educational service.

The vacation review looks very closely at the proposed public benefit package. SDOT, various City staff, and the SDC considered the amenities proposed for the vacation and whether the package was adequate.

About one-half of all vacation petitions are for public or government projects. This includes everything from schools, libraries, and hospitals to City utilities such as SCL's Denny Substation and this current petition for the Diagonal Way South vacation. The Vacation Policies state that while the nature of the project is a factor in deciding the adequacy of a public benefit proposal, it is not itself a public benefit. This has been interpreted as a need to provide a public benefit that serves the general public and not merely a benefit to those who reside in the building or access the services. When no significant impacts have been identified projects such as SCL's Diagonal Way South have proposed smaller and more moderate public benefit packages that implicitly recognize the public benefit in supporting the proposal.

In Section IV, A the policies note, in part, that the following factors are not public benefits, but may be considered when reviewing the public benefit package:

- Project compliance with City policies and goals,
- Proposals designed to improve race and social equity, improve access to opportunity, and reduce the threat of displacement by increasing the supply of affordable housing beyond City requirements,
- Providing affordable housing, and
- Neighborhood support or opposition.

Public benefit elements must also exceed elements required by the Seattle Municipal Code or mitigation required under the State Environmental Policy Act or other regulations and is in addition to vacation fees and other obligations. The public benefit proposal should recognize the loss of the benefits provided by the street to the public and the gains received by the Petitioner. The public benefit proposal should reflect the comments, ideas, and concerns voiced by the public during the early community engagement work. The public benefit must be more than just compensatory and should provide something of benefit to the public.

In addition to addressing the scale or amount of public benefit that must be provided, the policies are clear that the public benefit elements proposed must clearly benefit the general public and not merely the project's tenants. The policies provide that the public benefit proposed for a vacation must be separate and above amenities provided to meet code or other requirements.

SCL proposes to convey real property for the public benefit. SCL owns a parcel of land in the Georgetown neighborhood known as the Flume property. The Flume property is located between East Marginal Way S and S Myrtle Street. The property is long and narrow and includes approximately 46, 338 square feet. To the east of the site is Boeing field and to the west of the site is commercial buildings, including a motel. In its petition, SCL provided some background on the Flume property and noted its historic connection to the Georgetown community and the Duwamish River. A wooden flume was part of the drainage system from the historic steam plant to the Duwamish River. The wooden flume was removed, and the property has been vacant for a number of years.

The Georgetown community has worked with SCL for many years in the hope that the Flume property could be put to a community use. It was hoped that an active use of the property would create opportunities for the community and had to deter unwanted activities.

The idea of SCL transferring the property for open space use has been supported from the very beginning of the vacation process. While the idea was supported there were questions for SCL about what it was willing to do beyond the property transfer to guarantee a useable public space. SDOT identified that the Vacation Policies contemplated that the public benefit should be accomplished at the same time as the project is developed. The SDC had questions about the funding and timing of the proposal and how the City departments were working together to create this space.

The community was a very powerful voice in saying we are ready for this to happen now and we do not want to wait for a useable public space.

SCL heard this feedback and greatly enhanced their original proposal. SCL continued to work with Parks and SDOT and has increased its financial support to make sure the public open can be developed and open in around 2022.

SDOT also continued its work on trail planning. SDOT notes that the Georgetown and South Park communities have been asking for a walking and biking connection for the past 20 years. SDOT has looked at options for a trail location and design. In 2018 the community was able to secure \$600,00 for outreach, planning, and early design of a trail. In 2020 through the budget process the City Council provided SDOT with \$5.2M for construction of the trail. This trail will provide an important and long missing link between the Georgetown and South Park communities. The connection will support community use of amenities such as the South Park library.

Parks also continued its work to look at the design and options for an off-leash area in the Flume property. Parks worked with the community on design and considered ideas for the surface treatment and landscaping.

SCL, SDOT, and Parks have signed an agreement relating to design and construction obligations at the Flume property. The public benefit obligations reflect this agreement and outline the financial contributions required of SCL and what SDOT and Parks must provide. The vacation conditions and the interdepartmental agreement address the initial vacation obligations and do not address other funding such as the \$5.2M for SDOT construction of the trail. Once the property is conveyed and the vacation obligations are completed, SCL does not have a role in continued design, construction, maintenance, or operation of either site. SDOT and Parks will be the owners of the asset and be responsible for all ongoing maintenance. The trail portion of the site will always be open and accessible to the public. Parks will manage the off-leash area consistent with its management of other off-leash areas and will post signage about hours of operations.

SCL's proposal to convey the real property to SDOT and Parks will require legislation and a public hearing. SCL has been working with Law on the timing and legislation for the property transfer. There will also need to be legislation that identifies an existing encroachment in the Flume property. The property conveyance should be a condition of the vacation that requires SCL to complete this work before the final vacation ordinance can be completed.

The chart below outlines the public benefit package and provides an estimate of the cost to provide the public benefits. None of the public benefit components are required to meet any code or other obligations.

Public Benefit Element	Department Obligations on Cost Sharing			
	SPR	SDOT	SCL	Total
Site preparation			\$480k	
Off Leash Area: <ul style="list-style-type: none"> • Pedestrian access, • Benches, • Water to site, & • ½ stormwater treatment 	\$400k		\$195k	\$595k
Bike and Pedestrian Trail: <ul style="list-style-type: none"> • Street improvements, • Lighting, • Trees, & • ½ stormwater treatment 		\$400k	\$1.283M	\$1.683M
Total development costs	\$400k	\$400k	\$1.958M	\$2.758M
Property transfer: <ul style="list-style-type: none"> • Approx.46,338 sq ft • Property to Parks for Off Leash Park (36,626 sq ft) • Property to SDOT for Bike and Pedestrian Trail (9,712 sq ft) 			\$1.854M	\$1.854M
Grand total	\$400k	\$400k	\$3.812M	\$4.612M

The public benefit elements are intended to enhance the pedestrian and bike environment and provide a connection between the Georgetown and South Park communities and provide a park space for families and their dogs. This public benefit package responds to the priorities expressed by the community and reflect a great deal of cooperation between SCL, Parks, and SDOT. This very strong public benefit package meets the criteria established in the Vacation Policies outlining the public benefit obligations.

XIII. RECOMMENDATION

It is recommended that the vacation be granted upon the Petitioner meeting the following conditions. The Petitioner shall demonstrate that all conditions imposed by the City Council have been satisfied and all fees paid before the street vacation ordinance is passed.

1. The vacation is granted to allow the Petitioner to build a project substantially in conformity with the project presented to the City Council and for no other purpose. This approval constitutes the substantive Council approval of the vacation, and the Petitioner may proceed with the permitting and development of the project, consistent with the conditions of this approval.
2. Any street improvements that may be required at the vacation site or at the public benefit site shall be designed to City standards, as modified by these conditions to implement the Public Benefit requirements and be reviewed and approved by SDOT through a Street Improvement Permit, as necessary.
3. The utility issues shall be resolved to the full satisfaction of the affected utility before the final vacation ordinance is approved. Before starting any development activity on the site, the Petitioner shall work with the affected utilities and provide protection for the utility facilities. SPU has a number of lines in the area and has requested a Memorandum of Understanding (MOU) to detail access for service and repair to its current facilities and the need for future facilities. A partial Transfer of Jurisdiction or other accountability measure may be required to implement the agreement. This may include an MOU, easements, restrictive covenants, relocation agreements, or acquisition of the utilities, which shall be at the sole expense of the Petitioner.
SPU facilities include:
 - 30” sewer main,
 - 132” PSD,
 - 48” PSD; and
 - Need for future new water main in Diagonal Way South.
4. It is expected that development activity at the vacation site will commence within approximately 18 months of this approval and that development activity will be completed within 5 years. To ensure timely compliance with the conditions imposed by the City Council, the Petitioner shall provide SDOT with regular reports, following City Council vacation approval, providing an update on the development activity, schedule, and progress on meeting the conditions and anticipated date of project completion and opening. The Petitioner shall not request or be issued a Final Certificate of Occupancy until SDOT determines that all conditions have been satisfied and all fees have been paid as applicable.
5. In addition to the conditions imposed through the vacation process, if the project as it proceeds through the permitting process is subject to SEPA review it may be subject to conditioning pursuant to City codes through the regulatory review processes.
6. The Petitioner shall convey the real property known as the Flume property to Parks and to SDOT as outlined in the signed agreement between the three departments. Once the property is conveyed the receiving department shall bear the responsibility to complete the public amenities and shall be responsible for ongoing maintenance. The SDOT trail

connection shall be open to the public at all times. The Parks off-leash area shall be open and managed consistent with other off-leash areas and the public signage should indicate the hours of operation. Public signage shall be consistent with signage provided at SDOT trails and Park off-leash areas. The signage shall be clearly visible to the public. The property transactions to convey the real property must be completed before SCL may proceed with the final vacation ordinance.

7. Parks and SDOT shall be responsible for the process to meet with the community and complete the final design of the trail connection and the off-leash area and securing any necessary permits. The final design of the public benefit elements and schedule for construction shall be provided to SDOT Street Vacations to demonstrate compliance with the vacation conditions. SDOT Street Vacations may require additional review by the Design Commission if any significant changes are proposed. The public benefit requirements are outlined in the following chart.

PUBLIC BENEFIT MATRIX

Public Benefit Element	Department Obligations on Cost Sharing			
	SPR	SDOT	SCL	Total
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Grand total	\$400k	\$400k	\$3.812M	\$4.612M

Sincerely,



[Sam Zimbabwe \(Jul 14, 2021 13:49 PDT\)](#)

Sam Zimbabwe
 Director, City of Seattle Department of Transportation

Enclosures