



CITY OF KIRKLAND

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MEMORANDUM

To: Kurt Triplett, City Manager

From: Marius Eugenio Jr., P.E., Senior Project Engineer
Rod Steitzer, P.E., Capital Projects Manager
Darcey Eilers, Assistant City Attorney
Julie Underwood, Director of Public Works

Date: March 4, 2021

Subject: 124TH AVENUE NE ROADWAY IMPROVEMENTS—AUTHORIZE
CONDEMNATION

RECOMMENDATION:

It is recommended that the City Council approve the attached ordinance authorizing staff to proceed with acquisition of right-of-way and associated permanent and temporary property rights through eminent domain (condemnation) proceedings if necessary for parcels along the 124th Ave NE Roadway Improvements project (Project).

BACKGROUND DISCUSSION:

As part of a comprehensive and strategic vision to make Totem Lake a more walkable, vibrant, and green urban center, the Project, along with other public improvements in the area, will improve safety and enhance connectivity to the Cross Kirkland Corridor, the Village at Totem Lake, Totem Lake Park, and other local hubs.

The Project widens 124th Avenue NE between NE 116th Street and NE 124th Street from three travel lanes to five lanes, with two travel lanes in each direction and a two-way center turn lane (see Attachment A, Area and Vicinity Map). The work includes reconstruction of sidewalks, improves transit stops, adds buffered sidewalk-level bicycle lanes, signal and channelization improvements, landscape strips, and retaining walls. The typical section includes, 11-foot travel lanes, 10-foot center turn lane, up to 12-foot improvements for bikes and pedestrians, and a planter strip on both the east and west sides of the road. The improvements necessitate the acquisition of new property and property rights.

Right-of-Way Acquisition

Local governments regularly acquire private property needed for public projects by exercising powers of eminent domain or condemnation, which are terms that can be used interchangeably. The types of property required may range from fee simple title to an entire parcel; a partial taking of only a portion of a parcel, like a strip along the side or front yard;

lesser interests in real property, such as easements for slopes; and/or may be limited to temporary rights of access, such as a temporary construction easement. Title 8 of the Revised Code of Washington establishes the authority and procedures for condemnation of property by certain political subdivisions of the state, including cities. RCW 8.12.030 expressly grants cities and towns the authority "to condemn land and property" necessary for public uses, such as the improvements proposed for this Project. Statutory condemnation authority is granted to allow for the progress of improvements deemed in the public interest while affording property owners just compensation, meaning a fair market value for their properties.

In acquiring property through eminent domain, the City complies with state and federal right-of-way (ROW) acquisition procedures. This process includes:

1. Following preliminary design/configuration of a right-of-way capital improvement project, the City typically retains a right-of-way agent consulting firm to negotiate the necessary acquisition(s).
2. The City retains an independent, accredited appraiser to appraise the property and to prepare a report detailing the appraiser's determination of fair market value. The appraisal often involves an inspection of the property, and the owner can provide the appraiser information.
3. The City then obtains an appraisal review from another independent, accredited appraiser to ensure adequate, reliable, and reasonable data.
4. After approving the appraisal reports, the City will make a written offer to purchase the property. The offer includes, among other things, a description of the real property to be acquired and the City's proposed use of the property and the amount of the offer, which cannot be less than the appraised value. The City will pay the fair market value of the property being taken as well as compensation for any loss in value to the remaining property that is not offset by the benefits conferred by the project.
5. The property owner may hire an appraiser to evaluate the City's offer. The City provides the owner up to \$750 for this purpose, which is the amount required by statute.
6. The City and the property owner then negotiate just compensation. The City, to the greatest extent practicable, makes every reasonable effort to acquire property by negotiated purchase.
7. If negotiation efforts are unsuccessful, the City will proceed to the litigation process, which requires filing an eminent domain petition in superior court. In order to initiate formal eminent domain proceedings, the City Council must authorize condemnation by ordinance.

For the Project, both permanent and temporary property rights must be acquired from 14 parcels prior to beginning construction activity. The required acquisition from one parcel is complete, 12 are currently in negotiation, and the negotiation for one parcel is scheduled to begin March 22, 2021. A status summary of all properties is shown in Attachment B, Property Status Table. The table also provides a summary of outreach work to date.

Staff and the right-of-way consulting firm Abeyta & Associates continue to work diligently on negotiations with property owners. At the same time, Public Works staff has worked closely with the City Attorney's Office in preparing the attached condemnation ordinance (Attachment C) in order to fully comply with the requirements of the eminent domain process. Staff is

presenting this condemnation ordinance in parallel with the ongoing negotiations to ensure timely property acquisition. All property owners and/or their representatives have been notified of Council’s consideration of this ordinance.

City Council approval of the condemnation ordinance now does not require that the City begin eminent domain proceedings in court; rather, it will enable the City to move more efficiently toward construction should negotiations with any property owner reach an impasse. In addition, formal adoption of a condemnation ordinance has a tax benefit for property owners, as transfers of real property to public agencies under an imminent threat of the exercise of eminent domain are not subject to the real estate excise tax. Staff is committed to exhausting all reasonable means of coordination and negotiation work prior to a decision of filing a petition in court. Our best-case scenario will be to resolve all essential right-of-way transactions without undertaking any condemnation proceedings.

Budget

The Project’s budget combines five CIP projects for the improvements of this vital corridor totaling \$15,210,600, See Table 1 below.

Table 1: Project Funding vs. Anticipated Expenses

Funding	Total
STC0591100 – 124th Ave NE Roadway Improvements	\$1,195,400
STC0591200 – 124th Ave NE North Section ROW	\$2,216,700
STC0591300 – 124th Ave NE North Construction	\$9,400,000
STC1040000 – General ROW Acquisition	\$2,000,000
TRC0911100 – NE 124th/124th Ave Intersection	\$398,500
	\$15,210,600
Expenses	
Design/Inspection/Soft Costs	\$2,720,000
Construction	\$7,510,000
Right-Of-Way	\$4,036,640
Contingency (10%)	\$760,000
Total	\$15,026,640
Difference	\$183,960

Schedule

Currently staff is on track for finalizing the design by the end of 2021, with right-of-way certification and construction federal funding obligation anticipated by June 2022, which would meet the federal granting authority's (Puget Sound Region Council) funding deadline of June 1, 2022. The construction advertisement and contract award are scheduled for mid to late 2022; the optimum bidding time of year.

The acquisition process can take up to several months thus an in-place condemnation ordinance helps in the judicial process should it be required for any single parcel. Public Works staff has worked closely with the City Attorney's Office in preparing the attached ordinance with acquisition exhibits in order to fully comply with the requirements of the eminent domain process (see Attachment C, Condemnation Ordinance with Acquisition Exhibits). Staff will continue to work with the property owners to address their concerns, to offer fair market value for the property, and to negotiate in good faith a just compensation package.

Staff plans to return to Council in the near future to consider condemnation ordinances for two other projects: Juanita Drive Intersection and Safety Improvements and 100th Avenue NE Roadway Improvements.

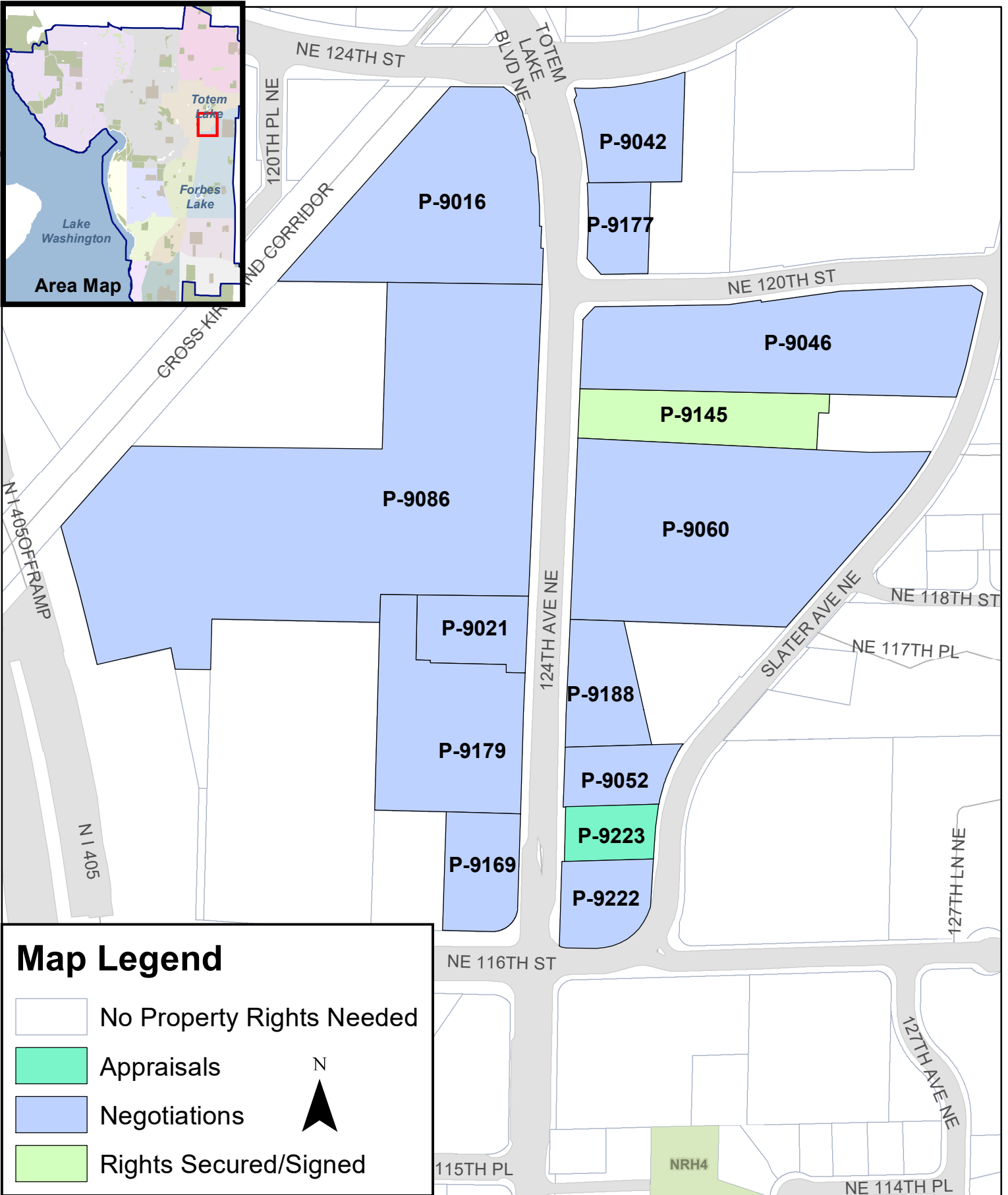
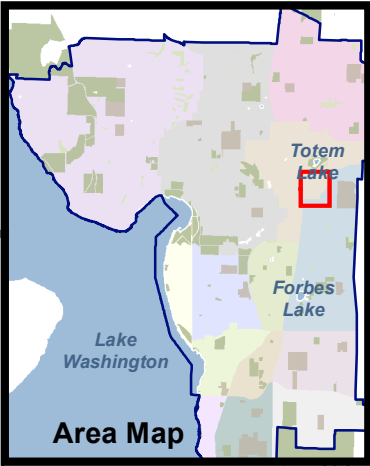
Attachment A: Vicinity Map with Area Map Inset

Attachment B: Property Status Table

Ordinance

Exhibit A to Ordinance: Acquisition Table

Exhibit B to Ordinance: Acquisition Exhibits



Map Legend

- No Property Rights Needed
- Appraisals
- Negotiations
- Rights Secured/Signed



Tracking Parcel #	Tax Parcel #	Property Owner	Property Address	Property Rights To Be Acquired	Property Rights Documentation	1st Request for Reponse	2nd Request for Reponse	3rd Request for Reponse	Other Notes
1	2826059016	P S Prop XVI Inc.	12249 NE 124TH ST	Appraisal, Appraisal Review	Right-of-Way Acquisition (ROW), Temporary Construction Easement (TCE), Slope Easement (SE)	9/3/2020	12/2/2020		
2	2826059021	WWX LIMITED LLC	11727 124TH AVE NE	Appraisal, Appraisal Review	ROW, TCE	9/3/2020	12/2/2020		
3	2826059042	124 @ 124 LLC	12409 NE 124TH ST	Administrative Offer Summary (AOS)	ROW, TCE	10/9/2020	12/2/2020		
4	2826059046	LMJ ENTERPRISES	11930 124TH AVE NE	Appraisal, Appraisal Review	ROW, TCE	9/3/2020	12/2/2020		
5	2826059052	Kirkland Totem Real Estate Partners, LLC	11800 124TH AVE NE	Appraisal, Appraisal Review	ROW, TCE	9/2/2020			
6	2826059060	Kirkland Totem Real Estate Partners, LLC	11800 124TH AVE NE	Appraisal, Appraisal Review	ROW, TCE, SE	9/2/2020			
7	2826059086	Totem Square Partners	11961 124TH AVE NE	Appraisal, Appraisal Review	ROW, TCE, SE	9/3/2020	12/2/2020		
8	2826059169	Sang M. & Chun O. Kim	11613 124TH AVE NE	Appraisal, Appraisal Review	ROW, TCE, SE	9/2/2020	12/2/2020		
9	2826059177	RTL LLC	12415 NE 124TH ST	AOS	TCE	9/3/2020	12/2/2020		
10	2826059179	WWX LIMITED LLC	11727 124TH AVE NE	Appraisal, Appraisal Review	ROW, TCE	9/3/2020	12/2/2020		
11	2826059188	CHAPMAN DAVID	Not addressed	Appraisal, Appraisal Review	ROW, TCE	9/3/2020	12/2/2020		
12	2826059222	YEN YIAO JEAN	11600 124TH AVE NE	Appraisal, Appraisal Review	ROW, SE	10/15/2020	12/2/2020		
13	2826059223	TACO BELL OF AMERICA LLC	11624 124TH AVE NE	Appraisal, Appraisal Review	ROW, TCE				
14	2826059145	BUCHAN BROTHERS INVESTMENT	11902 124TH AVE N	Appraisal, Appraisal Review	ROW	9/3/2020	12/2/2021		Signed City offer on 1/22/2021. Not part of Condemnation Ordinance.