STAFF REPORT

DATE: March 6, 2014
TO: Sam Gibbons, Director
    Community Development & Planning Department
FROM: Rachel E. Dietzman, P.E., County Engineer

ISSUE: The Planning Commission must review the road vacation petition for the unopened county road, Cross Drive, on San Juan Island and provide a recommendation to County Council on the relationship of the proposed road vacation to the goals and policies of the Comprehensive Plan.

STAFF RECOMMENDATION: The road vacation should be recommended for approval only if the applicant and neighbors comply with the conditions contained in the engineers report.

POLICY: SJCC 18.60.090C.5 requires that the San Juan County Planning Commission review all vacation applications and make a recommendation to the County Council.

KEY POINTS:
- The Planning Commission shall consider the relationship of the proposed vacation to the goals and policies of the Comprehensive Plan, an informal review is included below.
- The Planning Commission reviews the County Engineer's report.
- The Planning Commission makes a recommendation to the County Council.
- The County Council will schedule a public hearing on the vacation.

SAN JUAN COUNTY COMPREHENSIVE PLAN GOALS AND POLICIES:
- Section 6.2.2A General Goals calls for a safe, reliable, economically feasible, integrated transportation system.
  The constructed road system in the Plat of Yacht Haven (1940) weaves in and out of the dedicated Right of Way. Nevertheless, all of the lots are, or can be, served by the current County road system. Areas where the road is outside of the easement cannot be improved without land acquisition.

- Section 6.2.2A General Policies anticipates and monitors changes in the use of and demands for transportation facilities.
  The vacation of the unopened portion of Cross Drive makes changes to reflect the actual road system and reverts the land to developable properties. Leaving the situation unresolved could restrict private development.

- Section 6.2.2B Transportation Financing Goals and Policies addresses transportation financing strategies.
  The road vacation process, including staff time and expenses, is completely financed by the petitioners as required by state and local law.

- Section 6.5 Land Transportation Goals and Policies address public and private roads, bridges, parking, non motorized transportation facilities, and transit service.
  The proposed Cross Drive road vacation does not affect any element of the Land Transportation Goals or Policies.
Section 6.5. A Policies for Road Classification, Right-of-Way, Design and Construction addresses road vacations and states to refrain from vacating public road right-of-way needed to provide adequate road systems, access to private property, public access to or a view of water bodies and links to transportation systems. The vacation of unopened Cross Drive leaves an adequate road system and access to all private properties. Unopened Cross Drive does not provide access to or a view of any water bodies.

Section 6.5. A Policies for Road Classification, Right-of-Way, Design and Construction also calls for public and stakeholder participation during the design phase of major projects as well as preservation of the significant scenic, rural quality of certain island roads. The road vacation process includes a review by the San Juan County Planning Commission and a public hearing with the San Juan County Council. It is not a major project and impacts only 36 parcels.

APPENDICES:
A. Petition to Vacate “Cross Drive”
B. Vicinity Maps
C. County Engineer’s Report
APPENDIX A

Petition to Vacate "Cross Drive"

Includes a Grant of Right of Way Revised From Original Application

(21 pages)
November 22, 2013

Bob Jarman, Rick Hughes, Jamie Stephens
San Juan County Council
350 Court Street
Friday Harbor, WA 98250

Re: Petition to Vacate “Cross Drive”

Dear Council Members:

This office represents Garrison Bay Plantation, Inc, a corporation owned by Richard Shoret and Judson Shoret ("Shoret"). Garrison Bay Plantation owns Tax parcels 462632001100 and 462631001000, which are encumbered by a dedicated easement for a public right-of-way identified as "Cross Drive" that was part of the Yacht Haven Plat established in 1939. This 30' public "right-of-way" runs north east from the intersection of the existing Yacht Haven Road and Shoret Drive to Garrison Drive. (see attached plat map).

While this right-of-way exists on paper, it has never been put to use and runs through a heavily wooded area just to the south of Shoret Drive and Garrison Drive. Shoret Drive and Garrison Drive were built over 50 years ago and serve the purpose of the platted Cross Drive, however accomplish this by a slightly more northerly route. It is inconceivable that the old platted right-of-way is of any use to the County given the nearby established thoroughfare just to the north.

After conducting several meetings with county representatives, including Jon Cain, Public Works Director Frank Mulcahey, PW Engineer Rachel Dietzman, Bob Jarman and Mike Thomas, it was determined that the proper avenue for extinguishing Cross Drive was via a Road Vacation pursuant to RCW 36.97.040 and SJCC 18.60.090C. I believe the county to be supportive of the vacation.

Our clients are now officially petitioning the County to vacate “Cross Drive” since it serves no purpose and merely burdens the parcels and limits the owner's options for use of the land. We note that RCW 36.87.040 calls for an engineering report "when directed by the board." After meeting in June with Public Works, we asked in writing, pursuant to SJCC 18.60.090(C) (3) for an estimate of engineering expenses and costs for vacation. In a letter dated August 8, 2013 (copy attached) San Juan County Engineer Dietzman requested a $4,000 deposit, which is included with this letter.
While we understand the law to require the applicants to pay for the actual costs and expenses incurred in these proceedings (RCW 36.87.070), the law does provide for release of the balance to the Shoretts once all this is completed. We believe that Public Works time on this should be minimal. This is not the case that an "actual" road is being vacated, and that traffic flow is going to be changed or utility easements will be affected in any way.

The Shoretts are taking the laboring oar in this matter. We have prepared the legal descriptions and the maps for review. We look forward to accomplishing this simple matter in a timely and cost effective way. Our clients are willing to assume the task of making sure that the County receives a like-kind right-of-way over Shoretts Drive and the actual traveled way. The Shoretts are offering to dedicate a like-kind 30' right-of-way easement over the Shoretts Drive, which is the actual built traveled way, in consideration of the County approval of the Cross Drive Road vacation. This may also require the approval of the adjacent neighbor to the north, who owns TPN 462650109, who my clients believe will be cooperative in signing a right-of-way over the actual road.

RCW 36.87.010 states that when a county road is considered useless, the council may declare its intention to vacate and abandon the same and shall direct the county road engineer to report upon such vacation and abandonment. After the applicant files its petition, the council is to direct the county road engineer to report upon such vacation after examination of the circumstances. We have taken the liberty of preparing a Resolution that accomplishes just that, which uses the same format as the county has used in the past.

A road vacation also requires public hearing before the Planning Commission. Ultimately, the decision to vacate must be approved by the Council, after the engineers report, after the staff report and after the Planning Commission hearing.

In sum, Cross Drive is a paper easement. It is an inland road, has never been opened, maintained or used by the county or the public. As we see all over the county, when the road was built, it was built in a location different from the paper easement. It is in the public interest to clean this up.

San Juan Surveying has prepared the legal description for a new right-of-way over Shoretts Drive, which is attached, along with the draft initial Resolution, the necessary maps, and applicable codes, for staff review.

Very truly yours,

Stephanie Johnson O'Day

Cc: Frank Mulcahy, Rachel Dietzman, Public Works
Jon Cain
clients
That portion of Cross Drive as shown on the Plat of Yacht Haven, as recorded in Volume 1 of Plats, Pages 57 and 57A, records of San Juan County, Washington described as follows:

Commencing at the Southwest corner of said Section 26, from which point the South Quarter Corner of said Section 26 bears South 88°42'20" East; thence North 43°42'15" East 2218.47 feet to a 5/8" rebar with LS 46118 cap; thence North 88°52'30" West 291.57 feet to a 5/8" rebar with LS 46118 cap; thence North 0°30'02" East 200.06 feet; thence North 23°17'56" West 215.13 feet to a point on the North boundary of that parcel labeled “NEW LEGAL DESCRIPTION FOR TAX PARCEL #462631001” being described in that Exempt Boundary Line Adjustment recorded at Auditor’s File No. 94042930, records of said County; thence westerly along said North boundary South 60°28'53" West 266.23 feet; thence continuing along said North boundary South 67°49'45" West 54.25 feet; thence South 19°05'26" East 15.00 feet to the centerline of Cross Drive as it is shown on said plat and the True Point of Beginning; thence leaving said North boundary and continuing South 19°05'26" East 15.0 feet, more or less, to the South boundary of said Cross Drive; thence along said South boundary North 70°54'34" East 559.1 feet, more or less, to a point on the southerly boundary of Garrison Drive as shown on said Plat of Yacht Haven; said point lying 15.00 feet southerly of said North boundary as measured perpendicular to said North boundary; thence westerly and parallel with said North boundary to a point on the northerly boundary of said Cross Drive; thence leaving said parallelism and along the northerly boundary of said Cross Drive South 70°54'34" West 379.3 feet, more or less, to a point which also lies 15.00 feet southerly of said North boundary as measured perpendicular to said North boundary; thence westerly and parallel to said North boundary to the True Point of Beginning.
Chapter 36.87 RCW: ROADS AND BRIDGES — VACATION

RCW Sections

36.87.010 Resolution of intention to vacate.
36.87.020 County road frontage owners' petition — Bond, cash deposit, or fee.
36.87.030 County road frontage owners' petition -- Action on petition.
36.87.040 Engineer's report.
36.87.050 Notice of hearing on report.
36.87.060 Hearing.
36.87.070 Expense of proceeding.
36.87.080 Majority vote required.
36.87.090 Vacation of road unopened for five years — Exceptions.
36.87.100 Classification of roads for which public expenditures made — Compensation of county.
36.87.110 Classification of roads for which no public expenditures made — Compensation of county.
36.87.120 Appraised value as basis for compensation — Appraisal costs.
36.87.130 Vacation of roads abutting bodies of water prohibited unless for public purposes or industrial use.
36.87.140 Retention of easement for public utilities and services.
36.87.900 Severability — 1969 ex.s. c 185.

36.87.010
Resolution of intention to vacate.

When a county road or any part thereof is considered useless, the board by resolution entered upon its minutes, may declare its intention to vacate and abandon the same or any portion thereof and shall direct the county road engineer to report upon such vacation and abandonment.

[1969 ex.s. c 185 § 1; 1963 c 4 § 36.87.010. Prior: 1937 c 187 § 48; RRS § 6450-48.]

36.87.020
County road frontage owners' petition — Bond, cash deposit, or fee.

Owners of the majority of the frontage on any county road or portion thereof may petition the county legislative authority to vacate and abandon the same or any portion thereof. The petition must show the land owned by each petitioner and set forth that such county road is useless as part of the county road system and that the public will be benefited by its vacation and abandonment. The legislative authority may (1) require the petitioners to make an appropriate cash deposit or furnish an appropriate bond against which all costs and expenses incurred in the examination, report, and proceedings pertaining to the petition shall be charged; or (2) by ordinance or resolution require the petitioners to pay a fee adequate to cover such costs and expenses.


Notes:

Purpose — Captions not law — 1991 c 363: See notes following RCW 2.32.180.
36.87.030  
County road frontage owners' petition — Action on petition.

On the filing of the petition and bond and on being satisfied that the petition has been signed by petitioners residing in the vicinity of the county road or portion thereof, the board shall direct the county road engineer to report upon such vacation and abandonment.


36.87.040  
Engineer's report.

When directed by the board the county road engineer shall examine any county road or portion thereof proposed to be vacated and abandoned and report his or her opinion as to whether the county road should be vacated and abandoned, whether the same is in use or has been in use, the condition of the road, whether it will be advisable to preserve it for the county road system in the future, whether the public will be benefited by the vacation and abandonment, and all other facts, matters, and things which will be of importance to the board, and also file his or her cost bill.


36.87.050  
Notice of hearing on report.

Notice of hearing upon the report for vacation and abandonment of a county road shall be published at least once a week for two consecutive weeks preceding the date fixed for the hearing, in the county official newspaper and a copy of the notice shall be posted for at least twenty days preceding the date fixed for hearing at each terminus of the county road or portion thereof proposed to be vacated or abandoned.

[1963 c 4 § 36.87.050. Prior: 1937 c 187 § 51, part; RRS § 6450-51, part.]

36.87.060  
Hearing.

(1) On the day fixed for the hearing, the county legislative authority shall proceed to consider the report of the engineer, together with any evidence for or objection against such vacation and abandonment. If the county road is found useful as a part of the county road system it shall not be vacated, but if it is not useful and the public will be benefited by the vacation, the county legislative authority may vacate the road or any portion thereof. Its decision shall be entered in the minutes of the hearing.

(2) As an alternative, the county legislative authority may appoint a hearing officer to conduct a public hearing to consider the report of the engineer and to take testimony and evidence relating to the proposed vacation. Following the hearing, the hearing officer shall prepare a record of the proceedings and a recommendation to the county legislative authority concerning the proposed vacation. Their decision shall be made at a regular or special public meeting of the county legislative authority.

[1985 c 369 § 5; 1963 c 4 § 36.87.060. Prior: 1937 c 187 § 51, part; RRS § 6450-51, part.]

36.87.070
Expense of proceeding.

If the county legislative authority has required the petitioners to make a cash deposit or furnish a bond, upon completion of the hearing, it shall certify all costs and expenses incurred in the proceedings to the county treasurer and, regardless of its final decision, the county legislative authority shall recover all such costs and expenses from the bond or cash deposit and release any balance to the petitioners.

[1985 c 369 § 6; 1963 c 4 § 36.87.070. Prior: 1937 c 187 § 51, part; RRS § 6450-51, part.]

36.87.080
Majority vote required.

No county road shall be vacated and abandoned except by majority vote of the board properly entered, or by operation of law, or judgment of a court of competent jurisdiction.
C. Road Vacations.

1. This section shall apply to all applications to the board of County commissioners seeking vacation of a County road right-of-way or any portion of one.

2. Every petition to the board for vacation abandonment of any road right-of-way shall conform to the requirements of Chapters 35.79 or 36.87 RCW and shall be accompanied by the required fee.

3. Application shall be accompanied by the applicant’s choice of a bond or cash in the amount to be determined by the County engineer, payable to San Juan County, to cover estimated costs and expenses incurred in the examination, reports, and all proceedings pertaining to such petition to vacate, including the cost of appraisals.

4. Whenever the board shall direct the County engineer to report upon such vacation, the report shall include the following matters in addition to the requirements of Chapter 36.87 RCW:

   a. The fair market value of the area sought to be vacated as determined by appraisals or as determined by the County engineer based on property assessment of surrounding lands;

   b. A report from each utility addressing its need for continued uses of the area sought to be vacated. An easement for utility uses may be maintained if a vacation is granted;

   c. Whether public funds have ever been expended to improve or maintain the road;

   d. Whether the road is within a subdivision or short subdivision;

   e. Whether after vacating the road, access to a public road by another property would be impaired;

   f. A report on the cost of maintaining the section of road in question for the past three years.

http://www.codepublishing.com/wa/sanjuancounty/html/SanJuanCounty18/SanJuanCount... 8/21/2013
5. The planning commission and planning department will review all vacation applications and make a recommendation to the board. The board shall consider the relationship of the proposed vacation to the goals and policies of the Comprehensive Plan.

6. All petitions for road vacation shall be reviewed for the following:
   a. Roads that abut a body of fresh or salt water may not be vacated except as provided for in RCW 38.87.130.
   b. Roads that have a public amenity (e.g., scenic vistas or pull-outs) should not be vacated.
   c. Roads that provide a means of public access to the shoreline shall not be vacated.
   d. Roads that provide the only legal access to private property shall not be vacated until alternative access has been provided.

7. If the board denies a vacation, all sums paid to the County shall be forfeited to the County.

8. If the board approves a vacation, compensation to the County shall include all costs and expenses incurred in evaluation and in the hearing on the petition for vacation. The board may also require compensation to include all of, or a portion of, road improvements as well as the fair market value of the land vacated.

9. Approval of a petition to vacate a road shall not be effective until all fees and compensations have been paid.
GARRISON BAY PLANTATION, INC
2021 YACHT HAVEN ROAD 360-378-4757
FRIDAY HARBOR, WA 98250

10-7-18 Date
Pay to the Order of SAN JUAN County Public Works $4,000.00

Islanders Bank
P.O. Box 505, Friday Harbor, WA 98250
For Deposit Gross Roll Vacation

Richard H. Threlfall

$25107820::016851103595
RESOLUTION NO. __-2013

ACCEPT A CASH DEPOSIT FROM THE PETITIONERS AND DIRECT THE COUNTY ENGINEER TO MAKE A REPORT ON THE VACATION AND ABANDONMENT OF A PORTION OF UNOPENED COUNTY ROAD RIGHT-OF-WAY (CROSS DRIVE) IN GOVERNMENT LOTS 6 & 7, SECTION 26, TOWNSHIP 36 NORTH, RANGE 4 WEST, W.M.

WHEREAS, a petition was made to the County Council on November ___, 2013 for the vacation of a portion of unopened County Road right-of-way (Cross Drive) in Government Lots 6 & 7, Section 26, Township 36 North, Range 4 West, W.M., as shown on Attachment “A” and

WHEREAS, RCW 36.87.020 requires the petitioners to make an appropriate cash deposit or furnish an appropriate bond against which all cost and expenses incurred in the examination, report and proceedings pertaining to the road vacation shall be charged, and

WHEREAS, San Juan County Code 18.60.090.C, Road Vacations, requires the cash or a bond in the amount determined by the County Engineer to cover the estimated costs and expenses incurred in the examination, report and all proceedings pertaining to such petition to vacate, including the cost of appraisals, shall accompany the petition, and

WHEREAS, the petitioners have submitted a cash deposit of $4,000, and

WHEREAS, RCW 36.87.030 requires the County Council to direct the County Engineer to make a report on such vacation and abandonment, and

WHEREAS, RCW 36.87.060 requires the legislative authority to conduct a public hearing to consider the County Engineer’s report and to consider any evidence or objection against such vacation.

NOW THEREFORE BE IT RESOLVED, that the County Council accepts the cash deposit of $4,000.00 against which all costs and expenses incurred in the examination, report and proceedings pertaining to the road vacation of a portion of unopened County Road right-of-way (Cross Drive) in Government Lots 6 & 7, Section 26, Township 36 North, Range 4 West, W.M., as shown on Attachment “A”, and

BE IT FURTHER RESOLVED that the County Council directs the County Engineer to report on such vacation and abandonment.
ADOPTED on this _____ day of December, 2013.

ATTEST: CLERK OF THE COUNCIL

By: ____________________________
    Ingrid Gabriel, Clerk          Date

REVIEWED BY COUNTY MANAGER

______________________________
Mike Thomas                    Date

APPROVED AS TO FORM ONLY
RANDALL K. GAYLORD

By: ____________________________ Date

APPROVED BY PUBLIC WORKS

______________________________
Frank Mulcahy, Director        Date

COUNTY COUNCIL
SAN JUAN COUNTY, WASHINGTON

______________________________
Bob Jarman, Chair              Date
District 1, Friday Harbor

______________________________
Rick Hughes, Vice Chair        Date
District 2, Orcas

______________________________
Jamie Stephens, Member         Date
District 3, Lopez
When recorded return to:
San Juan County
Public Works Department
915 Spring Street
Friday Harbor, W 98250

GRANT OF RIGHT-OF-WAY EASEMENT

Grantor: GARRISON BAY PLANTATION, INC. and OTIS B. HARLAN
Grantee: SAN JUAN COUNTY
Short Legal: Ptn GL 7, S26, T36N, R4W, W.M.
Document title: GRANT OF RIGHT OF WAY EASEMENT
Tax Parcel Nos. 462631001/462632001/ 462640109
Reference: AFN: ___________________
          Book of Surveys, Volume_____ Page _____
GRANT OF RIGHT-OF-WAY EASEMENT

The Grantors, GARRISON BAY PLANTATION, INC., owner of the property legally described in Exhibit “A-1” and “A-2”; and OTIS B. HARLAN, owner of the property legally described in Exhibit “B”; for an in consideration of the vacation of Cross Drive, hereby convey and grant unto San Juan County, for county road purposes, a thirty-foot (30’) right-of-way over, under, upon and across those portions of their lands legally described in this document as Exhibit “C”.

Together with the rights to construct, and thereafter use, maintain, repair and replace cut or fill slopes incorporated within the parcels burdened by said easement, being that cut or fill slopes are necessary to the functional use of said easement. If county improvements are required or undertaken on the south side of Shoret Drive, it will be the property owner’s responsibility to relocate affected portions of the existing drainfield located within the right-of-way on TPN 462632001000.

Also together with the rights to drain surface water runoff onto and across lands where the surface water runoff takes a natural course off of said easement.

This right-of-way shall run with the land and be binding upon the parties heirs, successors and assigns.

Dated: ____________________________

OTIS B. HARLAN

GARRISON BAY PLANTATION, INC.

By: Judson S. Shoret, President

By: Richard H. Shoret, Vice-President
State of Washington

County of San Juan

I certify that I know or have satisfactory evidence that OTIS B. HARLAN is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in this instrument.

Dated: _________________, 2014

Notary Public for the State of WA
Residing at: _______________________
My appointment expires: ______________

State of Washington

County of San Juan

On _________________, 2014, before me, the undersigned, a Notary Public in and for the State of Washington, duly commission and sworn, personally appeared JUDSON S. SHORETT and RICHARD H. SHORETT, to me known to be the President and Vice-President, respectively, of GARRISON BAY PLANTATION, INC., the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument.

Witness my hand and official seal hereto affixed the day and year first above written.

Notary Public for the State of WA
Residing at: Friday Harbor
My appointment expires: ______________
LAND DESCRIPTION
REVISED PARCEL C

That portion of Government Lot 7, Section 26, Township 36 North, Range 4 West, W.M., in San Juan County, Washington described as follows:

All those portions of: That parcel labeled "NEW LEGAL DESCRIPTION FOR TAX PARCEL #462631001" being described in that Exempt Boundary Line Adjustment recorded at Auditors File No.94042930, records of said County; AND of that parcel described by Auditors File No.2011-0823021, records of said County, which lie North and West of the following described line:

Commencing at the Southwest corner of said Section 26, from which point the South Quarter Corner of said Section 26 bears South 88°42'20" East; thence North 43°42'15" East 2218.47 feet to a 5/8" rebar with LS 46118 cap; thence North 88°52'30"W 291.57 feet to a 5/8" rebar with LS 46118 cap and the True Point of Beginning; thence said line runs North 0°30'02" East 200.06 feet; thence North 23°17'56" West 215.78 feet to a point on the North boundary of said "NEW LEGAL DESCRIPTION FOR TAX PARCEL #462631001"; AND from said True Point of Beginning said line also runs North 88°52'30" West 445.06 feet to a point on the West boundary of said "NEW LEGAL DESCRIPTION FOR TAX PARCEL #462631001".

EXCEPT County Roads.
LAND DESCRIPTION
REVISED PARCEL B

That portion of Government Lots 6 and 7, Section 26, Township 36 North, Range 4 West, W.M., in San Juan County, Washington described as follows:

Commencing at the Southwest corner of said Section 26, from which point the South Quarter Corner of said Section 26 bears South 88°42'20" East; thence North 43°42'15" East 2218.47 feet to a 5/8" rebar with LS 46118 cap and the True Point of Beginning; thence North 88°52'30" West 291.57 feet to a 5/8" rebar with LS 46118 cap; thence North 0°30'02" East 200.06 feet; thence North 23°17'56" West 215.13 feet to a point on the North boundary of that parcel labeled "NEW LEGAL DESCRIPTION FOR TAX PARCEL #462631001" being described in that Exempt Boundary Line Adjustment recorded at Auditors File No. 94042930, records of said County (said point being on the centerline of the traveled way of Cross Drive and Shurett Drive); thence Easterly along said North boundary (and centerline of the travelled way) to a point which bears North 0°00'00" West of the True Point of Beginning; thence South 0°00'00" East 385.13 feet to the True Point of Beginning.

EXCEPT County Roads.

S.J.C. COMMUNITY
MAR 27 2013
DEVELOPMENT & PLANNING

San Juan Surveying, LLC
P.O. Box 611
Friday Harbor, WA 98250
(360) 378-2380 www.sanjuansurveying.com

2013-0627008 Page 14 of 20
SAN JUAN COUNTY, WASHINGTON
A portion of Government Lot 4, Section 26, Township 36 North, Range 4 West, W.N., Plat of Yacht Haven as recorded in Volume 3 of Plans, Page 47, records of San Juan County, Washington, described as follows:

All that portion of Tract D, said Plat of Yacht Haven, recorded in said county lying South and East of the following described line:

Commencing at a one-inch diameter iron pipe with a napkin and a chock and a 3.40-foot pole marking the Southeast corner of Lot 45 as shown on a certain Record of Survey recorded in Book 13 of Surveys, Page 36, records of said County; THENCE from the True Point of Beginning, THENCE North 21°56′20″ East, 344.64 feet; THENCE North 26°02′01″ West, 139.10 feet; THENCE South 91°34′26″ East, 134.61 feet; THENCE South 79°05′34″ East, 148.70 feet; THENCE South 79°05′34″ East, 379.66 feet; to the East boundary of said Tract E, Thence a one-inch diameter iron pipe, of unknown origin, at or near the boundary between lots 61 and 62, said Plat of Yacht Haven and as shown on said Record of Survey bears South 83°29′24″ East, 51.44 feet.

EXCEPT any portion of said Tract D South of the centerline of the current traveled way of Cross Drive and Shorette Drive as shown upon said Record of Survey.

ALSO EXCEPT any portion thereof lying within Forest Drive, Shorette Drive and Cross Drive as shown on said Record of Survey.
STRIP DESCRIPTION
DEDICATED RIGHT-OF-WAY

A thirty foot wide strip of land located in a portion of Government Lot 7, Section 26, Township 36 North, Range 4 West, W.M., in San Juan County, Washington the centerline described as follows:

Commencing at the Southwest corner of said Section 26, from which point the South Quarter Corner of said Section 26 bears South 88°42'20" East; thence North 43°42'15" East 2218.47 feet to a 5/8" rebar with LS 46118 cap; thence North 88°52'30" West 291.57 feet to a 5/8" rebar with LS 46118 cap; thence North 0°30'02" East 200.06 feet; thence North 23°17'56" West 215.13 feet to a point on the North boundary of that parcel labeled "NEW LEGAL DESCRIPTION FOR TAX PARCEL #462631001" being described in that Exempt Boundary Line Adjustment recorded at Auditor’s File No. 94042930, records of said County; thence easterly along said North boundary North 60°28'53" East 102.48 feet to the True Point of Beginning; thence returning along said North boundary South 60°28'53" West 368.71 feet; thence continuing along said North boundary South 67°49'45" West 54.25 feet to an angle point along said North boundary; thence, leaving said North boundary, South 67°49'45" West 110 feet, more or less, to the east boundary of Yacht Haven Road and Forrest Drive as shown on the Plat of Yacht-Haven in Volume I of Plats, page 57, records of said county and the terminus of said centerline, the southerly and northerly margins of said strip extending westerly to said east boundary of Yacht Haven Road; thence returning to the True Point of Beginning and along said North boundary South 69°16'05" East 53.33' to an angle point along said North boundary; thence South 85°01'47" East 87 feet, more or less to the West boundary of Garrison Drive and Shorette Drive as shown on the Plat of Yacht-Haven in Volume I of Plats, page 57, records of said county and the terminus of said centerline, the southerly and northerly margins of said strip of land to extend easterly to said West boundary of Garrison Drive and Shorette Drive; AND

EXCEPT Cross Drive as shown on said Plat of Yacht-Haven.
APPENDIX B

Vicinity Map
APPENDIX C

County Engineer's Report
INTRODUCTION: State and local law provides for vacation of county roads and road Rights of Way in RCW 36.87 and SJCC 18.60.090C. Road vacations can be initiated by citizen petition. Garrison Bay Plantation LLC has requested a road vacation for a portion of unopened Cross Drive which bisects their property.

NOTE: We have been asked to proceed with the road vacation analysis and public hearings prior to receiving all the information necessary to evaluate this petition. Areas needing further clarification will be in **bold and italics** below. Until all questions are answered, this must be considered a draft report.

BACKGROUND: A petition was received from Garrison Bay Plantation LLC on November 22, 2013 requesting the unopened County Road Right-of-Way known as Cross Drive be vacated. The request included a $4,000 request to cover expenses. This dollar amount was estimated by Public Works based on historical road vacation costs and presented to the petitioner on August 8, 2013.

The petitioners propose to relocate a 30 foot unopened easement over the centerline of an existing road. This would essentially be a swap of one easement for the equal function of another easement. This swap, however, is complicated as it requires two other property owners, Otis Harlan and the San Juan Preservation Trust, to dedicate land for the new easement yet receive no benefit from the vacated easement.

Cross Drive was dedicated to the public forever as one part of road system for the Plat of Yacht Haven (Book 1 of Plats, page 57 & 57A). It is a 30 feet wide Right of Way for public highway purposes recorded in October 26, 1940 - see Attachment A.

The existing county road system at Yacht Haven was originally constructed as part of the plat in 1940, and continued to be developed over the years. Some of these roads do not align with the dedicated county road Rights-of-Way.

At some point, either in 1940 or later, Shorett Drive and Garrison Drive were constructed. These roads provide essentially the same access that the Cross Drive easement was intended to provide. Shorett Drive is not in the Cross Drive Right of Way except at the beginning. Garrison Drive extends beyond the deeded area, past Cross Drive, to connect with Shorett Drive. The County maintains both these roads.

The petitioners have provided a proposed Grant of Right of Way Easement for consideration.

LEGAL GUIDELINES: The Revised Code of Washington in section RCW 36.87 calls for a bond to be attached to an accepted petition and that the board (County Council) direct the County road engineer to make a report on his or her opinion as to whether the County road should be vacated. Conditions of concern are the use, condition, future need of the road and whether the public will be benefited by the vacation.
The council shall hold a public hearing to consider the Engineers Report and any other evidence provided by the petitioners and public. All costs for these activities shall be borne by the petitioners. This may include the value of the property. Public utility and service easements may remain over the vacated road.

The San Juan County Council enacted San Juan County Resolution No. 40-2013 on December 17, 2013 to accept a cash deposit of $4,000.00 from the petitioners and direct the County Engineer to prepare a report on the road vacation and abandonment of a portion of unopened Cross Drive.

The San Juan County Code in SJCC 18.60.090.C has additional requirements in the evaluation of a road vacation petition. A review of the petition must be conducted by the planning commission and include a recommendation to the County Council. This step is to evaluate the relationship of the proposed vacation to the goals and policies of the Comprehensive Plan.

The Engineers report must consider the following matters:

- The fair market value of the area proposed to be vacated as determined by appraisal or as determined by the County Engineer based on property assessment of surrounding lands. The petitioners propose that the land swap does not necessitate appraisals. The area of Cross Drive to be vacated is calculated at 0.34 acres and the area of the proposed Grant of Right-of-Way is calculated at 0.39 acres. We consider the Grant of Right-of-Way easement area to be fair market compensation for the proposed land to be vacated, from the County’s perspective. As for the fair market compensation to Mr Harlan and the San Juan Preservation Trust, this is not clear.

- A report from each utility addressing its needs for continued use of the area sought to be vacated. Cross Drive does not contain public utilities. The buried utilities of CenturyLink and OPALCO are adjacent to the existing county roads of Shorette Drive and Garrison Drive.

- Whether public funds have ever been expended to improve or maintain the road. The portion of Cross Drive proposed for vacation is an unopened forested County road right-of-way. No public funds have been expended here.

- Whether the road is within a subdivision or short subdivision. The unopened County Road right-of-way is within a subdivision from 1940.

- Whether after vacating the road, access to a public road by another property would be impaired. The vacation of the unopened portion of Cross Drive does impair the platted legal access to other properties. The existing roads of Shorette Drive and Garrison Drive, however, fulfill the access needs to these parcels by "prescriptive" or "usage" rights.

- A report on the cost of maintaining the section of road in question for the past three years. See Attachment B.

The review of the petition shall consider the following:

- Roads that abut a body of fresh or salt water may not be vacated except as provided for in RCW 36.87.130.
The portion of Cross Drive proposed for vacation does not abut fresh or salt water.

- Roads that have a public amenity (e.g., scenic vistas or pull-outs) should not be vacated. The portion of Cross Drive proposed for vacation has no public amenities.

- Roads that provide a means of public access to the shoreline shall not be vacated. The portion of Cross Drive proposed for vacation does not provide a means of public access to the shoreline.

- Roads that provide the only legal access to private property shall not be vacated until alternate access had been provided. The portion of Cross Drive proposed for vacation does provide legal access to private properties. The existing roads of Shorette Drive and Garrison Drive, however, also provide such access.

The proposed Grant of Right-of-Way Easement (see Attachment C) provides for a 30 foot easement over the existing road system of Shorette Drive and Garrison Drive. This consists of 15 feet from the petitioners and 15 feet from their neighbors. Currently, we do not know if the adjacent property owners are willing to grant 15 foot easements over their properties.

ENGINEERING EVALUATION: Shorette Drive is a narrow, minimally maintained gravel road. It serves approximately 36 parcels, 17 of which have houses on them. When the road is not in an easement, our jurisdiction only extends to the areas we touch. This is referred to “prescriptive” or “usage” rights. Future improvement projects will be difficult.

We have no improvement projects planned for this road in the next 20 years. We have no plans to increase maintenance activities. From Public Works perspective, there is no need to change the existing situation.

The property owners, however, are impacted. There is a 30 foot swath of land over which they cannot construct anything permanent. It is a mark on their title and could impact future land sales.

Cross Drive is heavily forested over most of the easement, but contains an unknown portion of a private drainfield on the westerly end. A portion of this drainfield may be contained within the proposed new Right-of-Way.

An important consideration in any road vacation is whether there is a public benefit to the action. In this instance, cleaning up the legal rights to a county road used, maintained, and accepted by the public is a benefit. This would permit future improvements, both by franchisees and the county, without concerns for deed rights.

In past road vacations approved by the County Council, the petitioners provided public benefits that had a direct impact on travelers, as well as whatever legal clarity was achieved. The road vacation of unopened Newton Street on Orcas Island in 2011 included the removal of a home site from the shoreline. The road vacation of a portion of Deer Harbor Road on Orcas Island in 2011 included a public turnaround, constructed by the applicant. This turnaround required an additional dedication of land due to the geometry of the turnaround.
Shorett Drive and Garrison Drive are narrow and provide no public turnaround. Both are dead ends. Shorett Drive is wide enough with has several larger driveways to provide passable turnaround opportunities. Garrison Drive is approximately 10 feet wide with trees and vegetation all along the edge of the road. It serves 12 parcels with six residences. There are no good turnaround opportunities for anything larger than a passenger vehicle.

**RECOMMENDATION:** Based on this draft analysis, it is recommended that this road vacation as shown in Attachment D be approved with the following conditions:

**Conditions:**

1. The requirement for removal of a drainfield within the proposed Grant of Right-of-Way Easement by the property owner shall not restrict the actions of the county that trigger this removal to "the south of Shorett Drive" and shall include the requirement to relocate the drainfield outside of the Right of Way.

2. The neighboring property owner to the north, Otis B. Harlan, execute a 15 feet wide Grant of Right-of-Way Easement centered over the existing road system of a portion of Shorett Drive.

3. The neighboring property owner to the east, San Juan Preservation Trust, execute a 15 feet wide Grant of Right-of-Way Easement centered over the existing road system of a portion of Garrison Drive.

4. The petitioners, Garrison Bay Plantation, LLC provide a Grant of Right-of-Way Easement for the purpose of a public turnaround on Garrison Drive

5. The petitioners, Garrison Bay Plantation, LLC construct a public turnaround in the new easement on Garrison Drive.

6. The petitioners, Garrison Bay Plantation, LLC shall pay for all expenses incurred by San Juan County including land acquisition costs:

7. Permanent monuments shall be installed at angle points of the proposed Grant of Right-of-Way Easement limits and a Record of Survey be prepared by the petitioners.

Rachel E. Dietzman, P.E.  
County Engineer  

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Partial

GRANT OF RIGHT-OF-WAY EASEMENT

The Grantors, GARRISON BAY PLANTATION, INC., owner of the property legally described in Exhibit "A-1" and "A-2"; and OTIS B. HARLAN, owner of the property legally described in Exhibit "B"; for an in consideration of the vacation of Cross Drive, hereby convey and grant unto San Juan County, for county road purposes, a thirty-foot (30') right-of-way over, under, upon and across those portions of their lands legally described in this document as Exhibit "C".

Together with the rights to construct, and thereafter use, maintain, repair and replace cut or fill slopes incorporated within the parcels burdened by said easement, being that cut or fill slopes are necessary to the functional use of said easement. If county improvements are required or undertaken on the south side of Shorett Drive, it will be the property owner’s responsibility to relocate affected portions of the existing drainfield located within the right-of-way on TPN 462632001000.

Also together with the rights to drain surface water runoff onto and across lands where the surface water runoff takes a natural course off of said easement.

This right-of-way shall run with the land and be binding upon the parties heirs, successors and assigns.

Dated: ______________________________     OTIS B. HARLAN

GARRISON BAY PLANTATION, INC.

By: Judson S. Shorett, President               By: Richard H. Shorett, Vice-President