

Please reference the project plans, environmental reports, and SSP report for additional information on the proposed activities within the shoreline jurisdiction. *See Exhibit List at page 29.*

VII. Street Vacation

The project includes a proposal to vacate portions of several historic unopened platted rights of way that bisect the Property. These rights of way were dedicated in the past without consideration for topography, environmental features or other site characteristics, and are not practical or necessary for the City to improve. In exchange for the vacation of these rights of way, the project includes the dedication of pedestrian access easements, new public rights of way, and the construction of public road and utility improvements within the new rights of way. The right of way vacation and right of way dedication are similar in area, with the vacation area including 113,807 square feet of right of way, and the dedication area including 76,489 square feet of right of way. The proposal is illustrated in the Right of Way Vacation Exhibit included with this application. *See Exhibit J.*

The City Council has adopted policies for review of street vacation requests. These policies are included with the street vacation request application, which is consolidated with this application. The proposed street vacation is consistent with these policies as discussed below, and the City Council should support the vacation.

CITY COUNCIL ADOPTED STREET VACATION POLICIES

It is the policy of the City of Bellingham to grant vacation of a street right of way when it is determined both that such right of way is not needed presently or in the future for public access (including vehicular, pedestrian, and visual access) and that such vacation advances the public good. All of the following policies should be met prior to the vacation of a right of way.

The proposed right of way vacations is consistent with the adopted policies listed below. The sections of right-of-way proposed for vacation are not needed presently or in the future for public access, including vehicular, pedestrian and/or visual access, and the vacation would advance the public good.

- 1. The proposed vacation should be determined to be necessary to the public good either in terms of needed development or when such vacation will result in a better or more desirable situation. In some instances a more desirable situation may be a better road pattern in terms of safety, or when an exorbitant amount of land is devoted to unneeded right of way.*

The vacation will allow for a better and more desirable situation while improving public access through the site. The existing rights of way are laid out in such a way that they could not be reasonably constructed, or that they generate unnecessary environmental impacts, occur within buffers, and do not connect to navigable portions of the Property. They are relics of a historic development concept for the site that cannot be reconciled

with current regulations or existing site conditions. The vacation will include the dedication and improvement of new, more functional rights of way within the Property. The new road pattern that is proposed with the project will result in a better and safer design alternative and will facilitate the proposed residential development with less infrastructure related construction impact, less environmental impact, and less construction cost. Equivalent or better vehicular access will be provided with the new public right of way dedications and road improvements, and better public pedestrian accessibility will be provided through a new trail easement from Viewcrest Road to Sea Pines Road, where existing, safe public access to Chuckanut Bay already exists. These factors will result in public benefit when compared to a development project on the Property that retained the existing rights of way. Accordingly, the proposed vacation is “necessary to the public good”.

- 2. The right of way must be determined to be of no value to the circulation plan of the City either now or in the foreseeable future. The circulation plan is assumed to include vehicular pedestrian, or other modes of transportation.*

The proposed portions of right-of-way to be vacated have no value for circulation purposes at this time or in the future, for vehicular or pedestrian purposes. These rights of way bear no relationship to the land, and it would be unreasonable to construct vehicular or pedestrian improvements within them. They do not connect to other properties, and the City does not have any identified future road plans that would require the full right-of-way width to be retained.

- 3. No vacation will be allowed if such action landlocks any existing parcel, lot of record, or tract. Access to a right of way of less than 30 feet in width does not constitute adequate access. One ownership of all the lots on a right of way does not circumvent this policy and in this it will be necessary to vacate lots prior or together with vacation action.*

The proposed portions of right-of-way to be vacated will not generate a scenario whereby any parcel, lot of record, or tract becomes landlocked. Neighboring properties all have access to the existing City Street system.

- 4. State law (R.C.W. 35.79.035) "(1) A city or town shall not vacate a street or alley if any portion of the street or alley abuts a body of fresh or salt water unless: (a) The vacation is sought to enable the city or town to acquire the property for port purposes, beach or water access purposes, boat moorage or launching sites, park, public view, recreation, or educational purposes, or other public uses; (b) The city or town, by resolution of its legislative authority, declares that the street or alley is not presently being used as a street or alley and that the street or alley is not suitable for any of the following purposes: Port, beach or water access, boat moorage, launching sites, park public view, recreation, or education; or (c) The vacation is sought to enable a city or town to implement a plan, adopted by resolution or ordinance, that provides comparable or improved public access to the same shoreline to which the street or alleys sought to be vacated abut, had the properties included in the plan not been vacated. ..."*

A portion of the proposed right of way to be vacated does abut a saltwater body

(Chuckanut Bay). This right of way extends down the steep slopes from the center of the Property dead-ending into the Bay. Slopes within this right of way are extremely steep, rocky and are not safely navigable for public access purposes (vehicular or pedestrian), and do not provide public access to the shoreline. The majority of the right of way is located within critical areas (geohazards and the shoreline buffer), areas that the project habitat biologist has recommended are not improved with public access in order to preserve their ecological function. As such, the project includes a proposal to set aside the entire 200' shoreline buffer area, through which this right of way crosses, in two Open Space Tracts, subject to a Conservation Easement, in order to best protect the area. The Project does propose to provide public access through the site in a separate location, to connect to existing public access to the same beach, in the immediate vicinity. In this way, the requested vacation does provide public access, recreational and other public uses that would not otherwise exist. For these reasons the proposed right of way vacation is consistent with RCW 35.79.035(1)(b), and the City Council can conclude that the right of way is not being utilized now, and that it is not suitable for Port, beach or water access, boat moorage, launching sites, park, public view, recreation, or education purposes, but that the alternative plan is suitable for and enables public access, recreational and other public uses that would not otherwise exist.

5. *Right of way adjacent or leading to any park, open space, view, natural area, or any other natural or man-made attraction should not be vacated.*

The proposed right of way does lead to open space and natural areas (Chuckanut Bay), however, for the reasons discussed in response to Policy 4 above, it is not feasible to construct improvements within the right of way that could safely and reasonably access these areas. Existing, improved alternative means of access to the adjacent open space and natural areas at Chuckanut Bay are located on Sea Pines Road, in Chuckanut Village and at Woodstock Farm. The project includes through connectivity to these existing access facilities on Sea Pines Road. It is noted that this policy does not prohibit the vacation of a right of way leading to a natural area.

6. *Notification of street vacation requests will be sent to the Planning Commission. The Commission may choose to schedule review of street vacations that have significant issues related to land use and the implementation of the Comprehensive Plan. The Commission will hold a public meeting and make a recommendation to the City Council on these vacations.*

The petitioner is aware of this requirement and will address Planning Commission review if it is determined to be necessary.

7. *The petition should contain the approval of all the abutting property owners and proof of ownership must accompany the petition.*

The portion of right-of-way proposed for vacation is abutting the subject property only. Proof of ownership is provided with this petition.

8. *Vacation is not mandatory even though 100% of the abutting owners request the vacation.*

This criterion is noted by the petitioner, who is aware that the vacation is not mandatory and is subject to the discretion of the City Council. The property owner respectfully requests the support of City Planning, Public Works and Parks Staff, the Hearing Examiner and City Council for this vacation, for the reasons identified in this petition.

9. *Proposed or possible use of the vacated right of way is not relevant to City action (court opinion).*

This criterion is noted by the petitioner. The proposed right of way vacation is not based on the current or future use of the right of way areas, it is based on the infeasibility of constructing public vehicular or pedestrian access within the rights of way, and the provision of better alternatives for public access and recreational use that would not otherwise be available.

10. *Easements for utilities will be retained as a matter of procedure unless vacation of such easement is specifically requested by the petitioners and approved by the City Engineer.*

In this instance the petitioner specifically requests that any proposed and/or retained utility easements be relinquished or not reserved. There is no current or future value to retain utility easements within the rights of way proposed for vacation.

11. *The following may be accepted by the City Council as appropriate trade for a Street Vacation: Payment, land, or major improvements to public facilities. In all cases, fair market value of the right of way and of the item to be traded shall be established. Proposed public improvements shall be reviewed and recommended by the affected City Department(s), and shall exceed the established value of the right of way proposed for vacation. Provision of such compensation or departmental approval of proposed improvements does not mandate street vacation approval by the City Council or Mayor.*

The project includes the dedication of new public rights of way for both vehicular and pedestrian access purposes, and the improvement of new public infrastructure (road and utility), in exchange for the dedication. The petitioner is aware that a fair market value of the right of way and trade will be required and that the proposed public improvements offered in trade will require relevant City Departmental approval.

VIII. Public Comment

The neighborhood meeting conducted for the project was well attended and was predominantly devoted to public question and comment. Many individuals spoke at the meeting, and others provided helpful comments to both the applicant and the City in subsequent follow up written correspondence. These public comments can be distilled into broader areas of comment. After the neighborhood meeting, during the design development process, the applicant, property owners, and design team re-engaged their review study of the site based upon the public comments. Considering the comments raised by the public, the applicant directed revisions to the project design to address these areas of comment. The resulting project design appropriately responds to key areas of