

**Karen and Randy Wilburn
1823 Fisherman Bay Road
Lopez Island, WA 98261**

September 21, 2018

San Juan County Council & San Juan County Planning Commission
c/o Linda Kuller
San Juan Co. Community Development
PO Box 947
Friday Harbor, WA 98250

Re: Draft Lopez Village Plan

To the Honorable Council and Commission Members:

We thank you for this opportunity to provide our written comments on the proposed Lopez Village Plan (the "Plan"). We live at 1823 Fisherman Bay Road, which is on the east side of the Village. The Plan lists our home as one of the historic buildings of the Village (p. 22, line 29). In general, we oppose the adoption of the plan as proposed currently. Specifically, we have the following concerns, comments, and requests:

Proposed Viewsheds – Page 20, Map 1

The Plan references the need to preserve significant viewsheds from the east side of Fisherman Bay Road over the rest of the Village (p. 19, lines 15-18). "Views from the Village to the surrounding water and landforms are an integral and significant part of the character of the place." However, the above-referenced map does not provide any protection of the view for the property owners located east of Fisherman Bay Road.

Please see the attached *Exhibit A*. This exhibit shows the existing view from the east side of the Village to the surrounding water and landforms that future development could block if protected view corridors remain limited to a small portion of the Village as proposed.

We ask that you modify Map 1 to extend the viewshed designation over the entire urban growth area to ensure protection of the viewsheds from the east side of Fisherman Bay Road.

Proposed Tree Planting Plan – Page 26, Map 2

The Plan proposes planting of trees along the Fisherman Bay Road right-of-way in front of our home. The plan proposes planting Paper Birch trees in front of our house along the east side of Fisherman Bay Road and planting Sugar Maple trees in front of our house along the west side of Fisherman Bay Road. According to the Arbor Day Foundation, the Paper Birch grows to a height of 50-70 feet and a width of 35 feet, while the Sugar Maple grows to a height of 60-75 feet and a width of 40 to 50 feet. Please see the attached *Exhibit B*. This exhibit shows how these trees, at

maturity, would block the viewsheds for those property owners on the east side of Fisherman Bay Road. Exhibit C shows the Fisherman Bay Road right-of-way as well as the lack of any space to plant trees on the east side of the road. Besides the lack of space, OPALCO, Rock Island, and the Fisherman Bay Sewer District have utilities located on the east side of the road. Planting trees with invasive roots would be detrimental to the utilities located along Fisherman Bay Road.

We ask that you modify Map 2 to eliminate the proposed trees along Fisherman Bay Road.

Proposed Connectivity Plan – Page 46, Map 7

While we general encourage the addition of paths on the island along Center Road, which object to the Connectivity Plan as proposed. First, the plan shows the construction of a proposed Secondary Path across our private property... that links to nothing. Instead of the Bridge to Nowhere, the Plan proposed the Path to Nowhere. Only one property, our neighbor Bette Shuh, lives to the east of our property. No other property would benefit from a path across our private property.

We also object to the proposed Primary Path on the east side of Fisherman Bay Road. A new, parallel path to the existing primary path on the west-side of Fisherman Bay Road is incredibly duplicative and wasteful of limited County resources. Furthermore, as show on *Exhibit C*, the right-of-way for Fisherman Bay Road lacks sufficient area to construct another primary path. A better use of these funds would be for the County to redirect the funds toward extending the path on the west side of Fisherman Bay Road to south to the Island Marine Center or by building a path along Center Road.

We ask that you modify Map 7 to eliminate the proposed Secondary Path across our property and to eliminate the duplicative Primary Path proposed for the east side of Fisherman Bay Road.

Proposed Land Use Designations

The Plan proposes changing the Land Use designation for our property to Village Residential (see page 31, Map 5). This proposed change is counter to the existing deed and plat restrictions that run with the land. When Joyce Fralic subdivided her property via the Short Place for Fralic recorded in Volume 6, Page 1 of the San Juan County Records, she restricted the use of each property to one single-family residence via a plat restriction. Please see the attached *Exhibit D*. Furthermore, Ms. Fralic added a deed restriction that authorized use of the western 230 feet of our property as commercial, as shown on *Exhibit E*. We purchased the property specifically due to this existing authorization outlined in the deed restriction along with the existing Village Commercial designation for our property.

The Plan notes that the Village's current use designation is Village Commercial (p. 28, Map 3). The Plan further notes that the Village's quality of life "is enhanced by its character, natural environment, walkability, and mix of uses" (p. 27, lines 17-18) and that the existing uses within the Village "encompass a mix of commercial, residential, institutional, park, open space, and vacant land" (p. 27, lines 33-35). So, the existing use designation of Village Commercial has not

precluded the Village from developing in a manner that enhances the quality of life. Why change it? The Plan never explains in any detail why the change in land use is necessary or even beneficial. The Plan lacks any cost-benefit analysis of any proposed changes.

From my discussions with other property owners within the Village, we would support designation of the entire urban growth area as Village Mixed Use. First, such a designation would recognize the existing uses within the Village, which according to the Plan enhances our quality of life through its mix of uses (p. 27, lines 17-18). Second, numerous economic benefits are from adopting planning strategies, land use, practices, and regulations that foster mixed-use development. Mixed-use development promotes a walkable, built environment, increases private investment, leads to higher property values, promotes our main industry – tourism, and supports the development of a good business climate. Planning studies show a clear connection between walkable environments in a mixed-use zoning area and the economic viability of a community. Traditional zoning practices of residential or commercial as proposed in the Plan require costly and redundant municipal infrastructure to function, further dependence on use of cars, and hamper the walkability of a community.

We ask that you modify Map 8 to designate the entire Village as a new land use designation of Village Mixed Use.

Mobile Food Vending Units

Staff's proposed revisions to "18.30.XXX Mobile food vending units" remains confusing. Section A now states:

Mobile food vending units are permitted at temporary events pursuant to SJCC 18.80.060.

Section B continues by saying that these units are allowed to be located on private or public property.

No legitimate basis exists for limiting the ability to park a food truck on private property. The prospect of starting a local business has become more daunting in recent years. Restaurants present a particular dilemma due to the requirement of an immense investment of money and time. Leasing a location, making renovations, buying equipment, and staffing are all prerequisites to starting a restaurant. To counter the high cost involved in opening a restaurant, many local business owners are rolling with the times and starting with food trucks. The major benefits of this type of business include affordability, as less equipment is necessary, and mobility, which allows the restaurant to go directly to its customers. As long as a food truck has the necessary food service permits and permission of the property owner for parking the truck, why would San Juan County officials want to limit these entrepreneurs and their business opportunities? It simply doesn't make sense.

We ask that you remove the temporary status outlined in Section A **OR** modify Section B to state that mobile food vending units may be located on private property at **ANY TIME**.

Neighborhood Enterprise

A goal of the Plan rightfully states the County should "... allow home occupations and cottage enterprises with low impact to promote affordability and economic development." However, pages 35 and 38 of the draft Development Regulations propose discriminating against most of the Village and limiting the Neighborhood Enterprise designation to only a few, select properties. The Council's adoption of such discriminatory designations would be arbitrary and capricious, and such a decision would not pass a rational basis test before a court.

We ask that you remove Footnote 15 from page 38 of the draft Development Regulations. We also ask that you change the category of use for Village Residential on page 35 from C - Conditional Use to Y - Allowed Use for Neighborhood Enterprise.

Lack of Public Input

The planning process that the Lopez Village Planning and Review Committee ("LVPRC") utilized did not include any significant public input. Yes, there is a long list of "public meetings" that the LVPRC conducted. However, these meetings were all held at times inconvenient for anyone employed during the day. Meetings held only at 10:30 am is simply not providing an opportunity for any significant public input. The LVPRC held these meetings so that the LVPRC and County Staff could check a box, nothing more. To be a true public meeting, the LVPRC must hold meetings at a time and place that is most convenient for everyone in the community, not for the County Staff.

Plan Lacks Rigor

The LVPRC consists of members who do not own property within the Village, and it included only one member who resided within the Village. That fact alone calls into question the validity of any recommendation from the LVPRC. This committee is making decisions that impact the property rights of the landowners within the Urban Growth Area. Due to the lack of representatives from the commercial, institutional, and residential owners within the UGA, neither the Planning Commission nor the County Council may infer that the draft Plan represents the wishes and desires of the property owners.

The Plan lacks rigor. The LVPRC and the Plan provide minimal information regarding decisions or opposing views in an effort to make the Plan appear plausible when none of the property owners validated these decisions. The recommendation in the Plan lack breadth and depth. Lacking breadth in that the Plan fails to include multiple alternatives to any concern or issue. Lacking depth because the LVPRC provides recommendations with superficial and conclusory reasoning for any of the Plan's recommendations. The LVPRC simply failed to provide any legitimate basis for many of the proposals in the Plan. Moreover, in the public meeting I did attend, the LVPRC members summarily dismissed any recommendations or requests from the public that did not meet the LVPRC preconceived bias on the matter at hand.

Exhibit A

Existing View



EXHIBIT B
View with Trees



Exhibit C

Fisherman Bay Right-of-Way

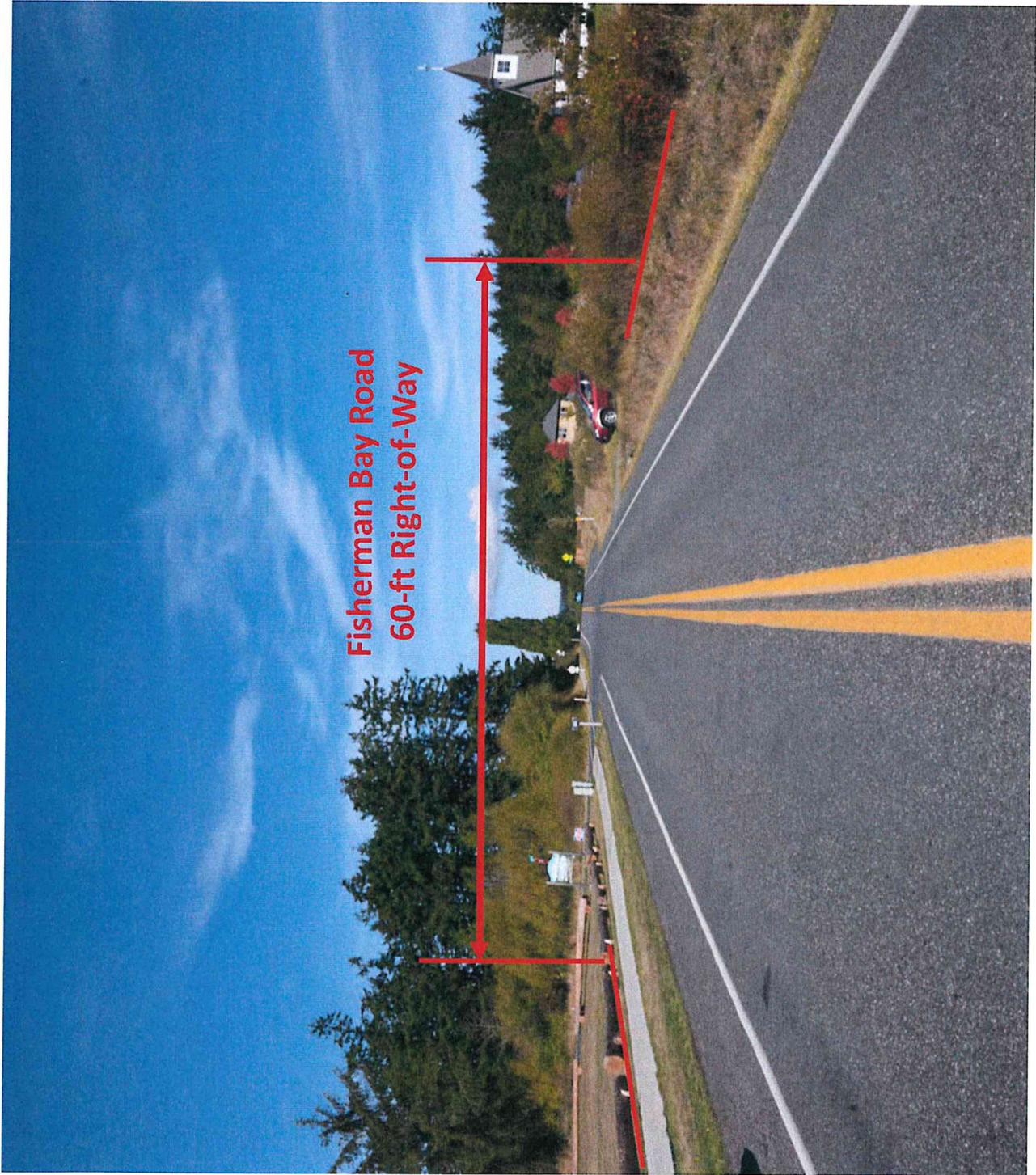


Exhibit D Plat Restriction

Volume 6 Page 1-A
Page 2 of 2 pages

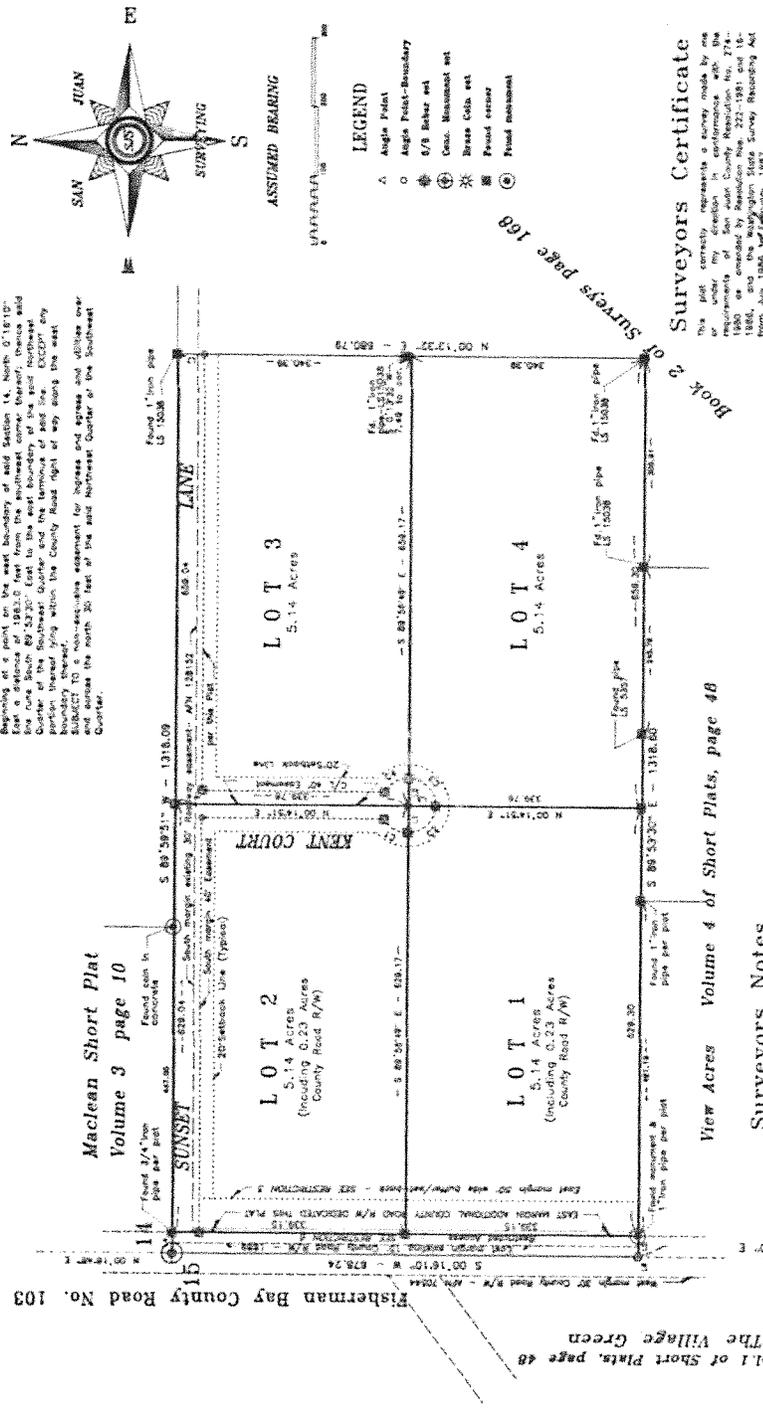
Legal Description

That portion of the northeast quarter of the Southwest Quarter, Section 14, Township 35 North, Range 2 West, W.M. Lopez Island, County of San Juan, State of Washington, lying north of a line described as follows:

Beginning at a point on the west boundary of said Section 14, North 0°16'10" East a distance of 1983.0 feet from the southwest corner thereof; thence said East curve South 89°52'30" East to the east boundary of the said Northwest Quarter; thence South 89°52'30" East to the east boundary of the said Northwest Quarter; thence East along the County Road right of way along the east boundary thereof;

thence North 89°52'30" East to the north 20 feet of the said Northwest Quarter; thence East along the north 20 feet of the said Northwest Quarter of the Southwest Quarter.

| CURVE | RADIUS | BETA | CHORD | CHORD/BETA | LINE | BEARING | DISTANCE |
|-------|--------|-----------|-------|------------|------|---------------|----------|
| 1 | 40.00 | 60°11'11" | 23.18 | 0.5799011 | N | S 89°52'30" E | 40.00 |
| 2 | 40.00 | 89°48'19" | 38.85 | 0.9474487 | E | S 89°52'30" E | 40.00 |
| 3 | 40.00 | 89°11'11" | 40.14 | 0.9913511 | E | S 89°52'30" E | 40.00 |
| 4 | 40.00 | 89°48'19" | 38.85 | 0.9474487 | E | S 89°52'30" E | 40.00 |
| 5 | 40.00 | 60°11'11" | 23.18 | 0.5799011 | E | S 89°52'30" E | 40.00 |



Maclean Short Plat
Volume 3 page 10

View Acres
Volume 4 of Short Plats, page 48

View Acres
Volume 4 of Short Plats, page 48

View Acres
Volume 4 of Short Plats, page 48

View Acres
Volume 4 of Short Plats, page 48

View Acres
Volume 4 of Short Plats, page 48

View Acres
Volume 4 of Short Plats, page 48

View Acres
Volume 4 of Short Plats, page 48

View Acres
Volume 4 of Short Plats, page 48

View Acres
Volume 4 of Short Plats, page 48

Surveyors Notes

1. For additional information regarding the General Land Office Centers shown on the survey refer to the referenced Land Corner Records (LACR) recorded in the office of the San Juan County Auditor. For this survey the western boundary of Section 14 between the monuments marking the Southwest Section Corner and the western quarter corner bears North 0°16'10" East. As these monuments are older than the survey, they provide a satisfactory year-referenced base line.

2. The corner monuments shown hereon were set and/or found at the time of the survey of the Maclean Short Plat, Volume 3, page 10, and the View Acres, Volume 4 of Short Plats, page 48. The corner monuments shown hereon were set and/or found at the time of the survey of the Maclean Short Plat, Volume 3, page 10, and the View Acres, Volume 4 of Short Plats, page 48.

3. The corner monuments shown hereon were set and/or found at the time of the survey of the Maclean Short Plat, Volume 3, page 10, and the View Acres, Volume 4 of Short Plats, page 48. The corner monuments shown hereon were set and/or found at the time of the survey of the Maclean Short Plat, Volume 3, page 10, and the View Acres, Volume 4 of Short Plats, page 48.

4. The corner monuments shown hereon were set and/or found at the time of the survey of the Maclean Short Plat, Volume 3, page 10, and the View Acres, Volume 4 of Short Plats, page 48. The corner monuments shown hereon were set and/or found at the time of the survey of the Maclean Short Plat, Volume 3, page 10, and the View Acres, Volume 4 of Short Plats, page 48.

5. The corner monuments shown hereon were set and/or found at the time of the survey of the Maclean Short Plat, Volume 3, page 10, and the View Acres, Volume 4 of Short Plats, page 48. The corner monuments shown hereon were set and/or found at the time of the survey of the Maclean Short Plat, Volume 3, page 10, and the View Acres, Volume 4 of Short Plats, page 48.

6. The corner monuments shown hereon were set and/or found at the time of the survey of the Maclean Short Plat, Volume 3, page 10, and the View Acres, Volume 4 of Short Plats, page 48. The corner monuments shown hereon were set and/or found at the time of the survey of the Maclean Short Plat, Volume 3, page 10, and the View Acres, Volume 4 of Short Plats, page 48.

7. The corner monuments shown hereon were set and/or found at the time of the survey of the Maclean Short Plat, Volume 3, page 10, and the View Acres, Volume 4 of Short Plats, page 48. The corner monuments shown hereon were set and/or found at the time of the survey of the Maclean Short Plat, Volume 3, page 10, and the View Acres, Volume 4 of Short Plats, page 48.

Surveyors Certificate

This plat correctly represents a survey made by me or under my direction in accordance with the laws of the State of Washington, Chapter 65A, RCW, as amended by Resolution No. 222-1981 and 1982, and the Washington State Survey Recording Act from July 1980 to January, 1987.

[Signature]
Surveyor

LEGEND

- △ Angle Point
- Angle Point-Boundary
- ⊕ 5/8" Iicker set
- ⊕ Circ. Measurement set
- ⊕ Brass Coll. set
- ⊕ Found corner
- ⊕ Found monument

ASSUMED BEARING

1" = 200'

Compass

1095
Down by 1.095
Dip (check) 5.25
Reference: Date 14-5-12
Checked: [Signature]
Reviewed: [Signature]

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

San Juan Surveying, Inc.
P.O. Box 611
Friday, May 29, 1988
Order # 79-1388

SHORT PLAT FOR FRALIC

BEING PORTIONS OF THE NORTHWEST-SOUTHWEST - SECTION 14 - T.35 N. - R.2 W., W.M.

Exhibit E

Deed Restriction Authorizing Commercial Use

FILED AT REQUEST OF: M. Fred Weedon, Rt 2, Box 2683, Lopez, WA 98261

88151805

LAND USE RESTRICTIONS AND DEDICATIONS

WHEREAS, JOYCE A. FRALIC is the owner of all of the property within the confines of the SHORT PLAT FOR FRALIC, according to Plat recorded in Volume 6 of Short Plats, pages 1 and 1A, records of San Juan County, Washington; and

WHEREAS, GARY and KIMBERLY BERG, husband and wife,¹ are purchasing Lot 1 of said SHORT PLAT FOR FRALIC, as above described; and

WHEREAS, as a part of said purchase and sale the parties hereto have agreed to certain land use restrictions, dedications and releases;

NOW, THEREFORE, in consideration of the mutual promises, benefits, and covenants, the parties agree as follows:

1. Lot 1, SHORT PLAT FOR FRALIC, according to Plat recorded in Volume 6 of Short Plats, pages 1 and 1A, records of San Juan County, Washington, shall be subjected to the following appurtenant land use restrictions:

- a. Only the west 230' (as measured from the center of the roadway) may be used for commercial purposes and all lands lying east of said 230' shall be limited to residential use.
- b. The east 50' is hereby dedicated to be a green belt with no buildings to be located thereon whatsoever.
- c. No structures of any kind shall be built upon said premises with a height greater than 18' as measured from the natural grade of the land to the top of the building, except the existing house presently located on the premises. Said height limitation to include all trees and other growing objects, except the south 50' of Lot 1 to accommodate trees.
- d. No mobile homes may be placed upon Lot 1.

2. Lot 4, SHORT PLAT FOR FRALIC, according to Plat recorded in Volume 6 of Short Plats, pages 1 and 1A, records of San Juan County, Washington, shall be subject to the following appurtenant land use restriction and dedication:

The west 50' is hereby dedicated to be a green

Filed for Record at the Request
of **ISLAND TITLE COMPANY**

JUN 15 1988

at 22 min past 4 P.M.
and recorded in vol 211

Official Records, page 298-299

Jane Redfern
REGISTRY

OFFICIAL RECORD VOL 211 PAGE 298

ORIGINAL

Exhibit E

Deed Restriction Authorizing Commercial Use

88151805

belt with no buildings to be located thereon
whatsoever.

3. Seller agrees, at buyer's sole expense, to execute and file a deed release for the west 230' (that area designated above for commercial use) upon the reduction of the underlying obligation to an amount of FORTY THOUSAND AND NO/100 (\$40,000) DOLLARS.

DATED this 14th day of June, 1988.

Joyce A. Fralic
JOYCE A. FRALIC

Gary Berg
GARY BERG

Kimberly Berg
KIMBERLY BERG

Unofficial Copy

OFFICIAL RECORD VOL. 211 PAGE 299