

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicants: TG Dynamics Group, II, LLC
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File No: HE45-08 (07SP001) **S.J.C. COMMUNITY**

Request: Preliminary Plat **OCT 08 2008**

Location: 1226 Blind Bay Road
Shaw Island **DEVELOPMENT & PLANNING**

Parcel Nos: 262734001

Summary of Proposal: The applicant requests preliminary approval for a four lot subdivision of a 24.5 acres parcel.

Land Use Designation: Rural Farm Forest

Public Hearing: After reviewing the report of the Community Development and Planning Department public hearing were held on August 20, 2008 and September 3, 2008.

Applicable Policies and Regulations: San Juan County Comprehensive Plan
SJCC 18.40 Performance and Use-Specific Standards
SJCC 18.60 Development Standards
SJCC 18.70 Land Divisions

Decision: Approval with conditions.

Findings of Fact

1. There are two permit applications at issue. The first is 07SP001 involving a short plat request for Blind Bay Estates to subdivide an existing lot into four lots. Included in the plat proposal are a common area and an open space conservation design area. A second part of the proposal involves 07SJ001, a request to construct a community dock to serve the proposed four lots (HE46-08). Both applications were submitted January 3, 2007.
2. The original hearing was scheduled for July 16, 2008 and was continued to August 20, 2008. That hearing was held and continued to September 3, 2008. Further testimony and documentation was submitted at the September hearing. The record was closed except for a staff report dated September 10, 2008 and a response from the applicant dated September 15, 2008. Those documents were submitted and are incorporated into the record.
3. The notice of hearing was published June 4, 2008 and the site was posted June 4, 2008. Mailing occurred June 3, 2008.
4. A Determination of Non-significance was issued June 4, 2008. No appeal was taken.
5. The 24.5 acre property is located on Shaw Island specifically on the west side of Blind Bay. It has been a farm for a number of years. There is currently a single family residence on the property along with an abandoned cabin, several farm outbuildings and a boathouse. A large shell midden exists on the property. Part of the shoreline is in the FEMA floodplain. The surrounding rural farm forest designation consists of residences, farms and timbered lots.
6. The state Department of Health issued preliminary approval of the Group B water system on January 1, 2008. The county Department of Health and Community Services issued preliminary approval of the proposed Class B water system on January 24, 2008. Community Health also approved the proposed septic system.
7. A stormwater drainage system has not yet been approved as required by county code.
8. An archeology report was prepared and an addendum submitted on November 27, 2007. Comments from the Department of Archeology and Historic Preservation were received and ultimately incorporated within the conditions for approval requiring an on-site archeologist during any ground disturbing activities at any stage of the proceeding.
9. The fire marshal has reviewed the project and has given his approval.

10. On June 2, 2008 Public Works determined that existing facilities had adequate capacity for the proposed project.
11. As set forth in the short plat proposal, part of the existing driveway located in the shoreline area will be abandoned. A private road located away from the shoreline is set forth on the revised preliminary plat submitted September 3, 2008, which now is the official map. Individual lots are not divided by roads.
12. The parcel in question does not overlay a critical aquifer recharge area. The entire lot area for purposes of density includes the property that extends to the Meander Line because the lot was patented prior to statehood.
13. The revised plat map dated September 3, 2008 shows an open space conservation design area of 18.38 acres, although the term "conservation area" is used rather than the correct designation of "open space conservation design".
14. There are 4.8 acres included within the tidelands. There are 8.5 acres of land between the ordinary high water mark (OHWM) and the landward 200 foot line boundary. There are 2.91 acres of "common area" within that 8.5 acres. Approximately 76 % of the property is designated as conservation open space. While the terminology is incorrect on the preliminary plat of September 3, 2008 the entire open space conservation design area will be correctly designated on the final plat map.
15. The setback requirements for Lots 1 and 2 have been revised on the September 3, 2008 plat map and are now correct under the SMP.
16. The building envelopes on Lots 1 and 2 still are not modified to exclude the wellhead protection area. As part of the community water system approval the existing shed must be removed. No other structures can be built within the WHPA.
17. The pasture and farming area along the western portion of the existing lot is preserved by placement of the road along the western property line and placement of the four building envelopes along the shoreline to the east. The non-building portions of the proposed lots are contiguous. The applicant has identified the important preservation aspects of the property as largely agricultural and has completed the Visual Resource Inventory as required by SJCC.
18. The 9-3-08 preliminary plat map indicates that Lot 1 has a total area of 3.52 acres with a building area of 1.11 acre; Lot 2 has a total area of 2.74 acres with a building area of 1.32 acres; Lot 3 has a total area of 7.72 acres with a building area of 1.49 acres; and Lot 4 has a total area of 3.96 acres with a building area of 1.57 acres.

19. The proposed subdivision is consistent with RCW 58.17 because appropriate provisions have been made for water supplies, roads and stormwater drainage once a stormwater drainage plan has been approved. The design and development requirements of SJCC 18.70 have been met because the water supplies and septic systems are adequate, the design conforms to the natural features of the land, each lot provides a useable area for construction of a dwelling unit and density, dimension and open space standards are met.
20. The staff reports are incorporated herein by reference as though fully set forth. The analysis and factual statements contained in the staff reports are adopted as a finding herein.
21. Any conclusion herein which may be deemed a finding is hereby adopted as such.

Conclusions of Law

1. The Hearing Examiner has jurisdiction over the persons and subject matter of this proceeding.
2. Proper notice was given in compliance with local and state requirements.
3. The proposal has complied with the requirements of the State Environmental Policy Act.
4. As conditioned the revised September 3, 2008 preliminary plat map complies with state and SJCC requirements.
5. Any finding herein which may be deemed a conclusion is hereby adopted as such.

Conditions

1. Prior to approval of the preliminary plat the Department of Public Works and CDPD must approve a stormwater drainage plan.

The following conditions are required before final plat approval is made:

2. This preliminary short subdivision approval allows the division of one 24.50-acre lot into four lots, in addition to a common area and Conservation Open Space Design area. Lot 1 will be approximately 3.61 acres; Lot 2 will be approximately 2.86 acres; Lot 3 will be approximately 7.72 acres; and Lot 4 will be approximately 3.96 acres. This preliminary short subdivision shall expire if the subdivision is not recorded within 18 months of the approval date. The final short subdivision application shall

be submitted to the Community Development and Planning Department at least 60 days in advance of the expiration date.

3. The building envelopes on Lot 1 and Lot 2 must be modified to exclude any area that is in the Wellhead Protection Area.
4. The term "Waterfront Common Area" shall be changed to "Common Area" on the final plat map. The term "Conservation" shall be changed to "Open Space Conservation Design" on the final plat map. All Open Space Conservation Design areas shall be delineated on the final plat.
5. The actual acreage between the Meander Line and the OHWM must be determined and in compliance with the requirements of SJCC.
6. A restriction shall be added to the plat stating that "All construction related to residential use (houses, residential outbuildings, parking, and residential landscaping) shall be excluded from the Open space Conservation Design area."
7. A plat restriction shall specify the required setbacks and all building setbacks must be shown on the face of the plat. Once a building setback line is determined, removal of trees seaward of the setback line shall be expressly limited in plat restrictions. Tree removal restrictions in SJCC will apply.
8. At least 20 percent of the area within the shoreline jurisdiction shall be designated as common area. A minimum of two acres within the shoreline jurisdiction shall be provided for each unit.
9. A minimum of 60% (or 14.70 acres) of Conservation Open Space Design area shall be provided inland of the Line of High Tide.
10. All roads serving three or more lots shall comply with the road design and construction standards specified in SJCC 18.60.100.
11. The proposed private road serving Lots 1, 2 and 3 must receive approval and a driveway access permit from Public Works prior to construction. If the proposed road is moved from its current location, then an archaeological assessment shall be conducted for the new site.
12. The proposed private road must receive an approved road name from Public Works prior to final plat approval.
13. Approval of the stormwater drainage plan is required before any clearing, grading or earth disturbing activities occur. A stormwater drainage plan that accounts for residences and driveways is required.

14. Drainage and surface runoff from residential areas shall be controlled so that pollutants will not be carried into water bodies.
15. Drainage from roads shall be controlled using best management practices provided in SJCC 18.60.080 and 100, and in the Western Washington Stormwater Management Manual.
16. Land clearing, grading, filling, or alteration of wetlands, natural drainage, and topography for residential construction shall be limited to the area necessary for driveways, buildings, and view and solar access corridors. Cleared surfaces not to be covered with gravel or impervious surfaces shall be replanted promptly with native or compatible plants (*i.e.*, groundcovers or other plant material adapted to site conditions which will protect against soil erosion).
17. The applicant shall contact the Stormwater Inspection Hotline (370-0540) to set up a Temporary Sediment and Erosion Control Inspection. The contractor shall also be aware of the stormwater and construction pollution prevention plan and its implementation.
18. An easement shall be provided for the common water supply.
19. The final plat shall identify the 100-foot Wellhead Protection Area around the drinking water well.
20. The shed in the Wellhead Protection Area shall be removed.
21. A restriction shall be on the face of the plat that no more than 30 percent of the area of a parcel shall be covered by impervious surfaces, exclusive of roads and driveways.
22. Maintenance of the road, roadside ditches and any common areas, utilities and any easements serving the lots in this subdivision shall be provided by all property owners within the plat.
23. An easement shall be recorded that provides access to the lot owners who use the private road.
24. An easement shall be recorded that allows the septic system from the house on Lot 2 to extend to Lot 4.
25. All easements for access and utilities shall be shown on the final plat map.
26. Access shall be provided from all lots to the common area. If this involves easements, then the easements shall be recorded.

27. There shall be recorded agreements on how the common area and any separate Open Space Conservation Design areas are owned and maintained.
28. Compliance with the survey standards of SJCC 18.70.070(F)(2) is required.
29. A professional archaeologist is required on-site during ground disturbing construction activities, including but not limited to road and trails construction, septic system installation, and utility line installation. The archaeologist shall prepare a report of the survey and update the archaeological site form. A copy of the cultural resources monitoring plan for this project shall be provided to the Samish Indian Nation.
30. If during excavation or development of the site an area of potential archaeological significance is uncovered, all activity in the immediate vicinity of the find must be halted immediately, and the Administrator must be notified at once. Activities authorized by the permit will not be delayed more than five working days for a finding of significance by the administrator, following the administrator's receipt of notification, unless the permit holder agrees to an extension of that time period.

The following dedications shall be shown on the face of the final plat map:

31. A statement granting to the lot owners a nonexclusive easement for purposes of ingress and egress over and across the areas designated on the plat as private road rights-of-way, providing a right of entry for the installation and maintenance of utilities within the easement and providing for the right to cut and fill on and drain surface runoff over lots within the subdivision.
32. A statement declaring the existence of an easement for utilities to all lots in the subdivision; the statement shall provide for the relocation of any easement at the request of the lot owner and with the concurrence of the affected utilities.
33. All utilities shall be placed underground.
34. All disturbed areas that are not covered with impervious surface shall be restored to predevelopment configurations, replanted with local vegetation and the vegetation shall be maintained until it is firmly established.
35. A statement declaring that all road rights-of-way (except those dedicated to the public) and all easements are privately owned; that the County is not responsible for the construction or maintenance of any roads or easements within the subdivision; and that all persons acquiring property in the short subdivision agree to hold the County harmless for all costs of construction or maintenance of all roads or easements within the subdivision.
36. Where additional public right-of-way is required, a statement dedicating the additional right-of-way to the public, including the right to cut and fill on and drain surface runoff, along natural drainage ways, over lots adjacent to the County road.

Where no additional public right-of-way is required, the right to cut and fill on and drain surface runoff along natural drainage ways onto lots adjacent to the County road shall be dedicated to the County.

37. According to RCW 58.17.170 "Any lots in a final plat filed for record shall be a valid land use notwithstanding any change in zoning laws for a period of five years from the date of filing. A subdivision shall be governed by the terms of approval of the final plat, and the statutes, ordinances, and regulations in effect at the time of approval under RCW 58.17.150(1) and (3) for a period of five years after final plat approval unless the legislative body finds that a change in conditions creates a serious threat to the public health or safety in the subdivision."

38. This subdivision has been approved by the responsible County officials on the premise that each lot will be occupied by no more than one single-family dwelling and lawfully related outbuildings. No lot shall be otherwise occupied unless the owner can first demonstrate to the County's satisfaction that the provisions for water supply, sewage disposal, circulation, lot size and related planning consideration are adequate to serve the proposed use. Compliance with this provision shall be effected by written application to the subdivision administrator who shall be responsible for coordinating the review of such requests and for making the required determination.

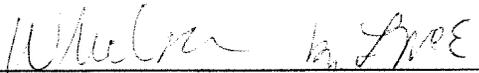
39. For subdivisions containing a private road, maintenance of the road serving the lots in this subdivision is shared equally by the lot owners.

40. There may be additional private conditions, covenants or restrictions in addition to those shown on the face of this plat. Such private conditions may not be shown on plats. Any private deed restrictions are supplemental to the requirements of this code. The County shall not be party to any private restrictions.

Decision

The short plat is approved subject to the conditions set forth above.

DONE this 8th day of October, 2008.



Wm. H. NIELSEN, Hearing Examiner

Appeal

Any appeal of this decision shall be to Superior Court pursuant to the Land Use Petition Act, Chapter 36.70 RCW, within 21 days of the issuance of the decision. See Home Rule Charter, Section 3.70.