

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicants: TG Dynamics Group, II, LLC
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San Jose, Ca 95161

Agent: Francine Shaw
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File No: HE46-08 (07SJ001)

Request: Shoreline Substantial Development Permit (SSDP)

Location: 1226 Blind Bay Road
Shaw Island

Parcel Nos: 262734001

Summary of Proposal: A request for a SSDP for a community dock to serve a four-lot preliminary plat.

Land Use Designation: Rural Farm Forest

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

Applicable Policies and Regulations: RCW 90.58 Shoreline Management Act (SMA)
SJCC 18.50 Shoreline Master Program (SMP)
SJCC 18.600.110(H) SSDP Criteria

Decision: Denial.

S.J.C. COMMUNITY

OCT 08 2008

DEVELOPMENT & PLANNING

Findings of Fact

1. This is a contemporaneous decision with HE45-08. The basic description of the property, the plat, SEPA compliance and notice compliance are found in that decision and are incorporated herein.
2. The proposed dock involves a pier 76 feet by 4 feet 10.5 inches, a raft 43 feet by 3 feet 8 inches, a main float 56 feet by 8 feet, and 4 finger floats, each 32 feet by 8 feet. The total square foot area is slightly less than the allowable 2,000 square feet.
3. The dock is to be a joint-use community dock under SJCC 18.50.190(G)(2)(c). The proposed dock falls within the size and dimension requirements of the SMP.
4. In HE45-08 the 9-3-08 preliminary plat map shows the location of the proposed community dock. This designation is in compliance with the SMP (SJCC 18.50.190(E)(4)).
5. On the northeastern tip of Blind Bay is the Shaw Ferry landing. Adjacent to it is a small marina. There is no reasonable expectation of expansion of the marina.
6. There is no eelgrass within 230 feet of the proposed dock. There are five other docks along with a partial pier and dock within Blind Bay. The dock closest to the property line is on adjacent property to the southeast, approximately 45 feet from the property line. That dock location is located in a mapped forage fish area.
7. The common area adjacent to Lot 1 does have a beach where dinghies could be stored and launched. An exiting mooring buoy is being used to mark the site of the proposed dock. A moorage float could be accessed by dinghy from the beach area in the common area adjacent to Lot 1.
8. During the summer as many as 50 mooring buoys exist in Blind Bay. During the winter many of the mooring buoys are still in use.
9. The only evidence presented by the applicant for the inadequacy or infeasibility of use of mooring buoys is that there are areas of Blind Bay in which eelgrass does exist and therefore no other buoys should be located. Additionally, the applicant contended that at extreme low tide moving a dinghy from buoy to shore would be difficult.
10. The single family residence located on the property is rented on a month to month basis. There are no other residences located on the property and no individual owners of the proposed lots.

11. A draft joint-use agreement has been provided. There are no joint-use owners available for signature to the proposed agreement.
12. There is no existing single family residence that will be associated with the proposed dock.
13. 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. The SMP (SJCC 18.50.190 (G)(1)) requires that community docks rather than individual docks be provided "if any docks are proposed, as set forth in subsection (E) of this section" for all new subdivisions with shoreline frontage. Subsection (E) prohibits individual docks for new subdivision ownership as long as docks are proposed. Under (4) a plat must identify the "single joint-use moorage facility," but that section goes on to specify that:

Identification of a moorage site shall not be construed to indicate that a shoreline permit will be granted for that site.

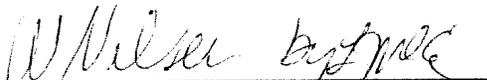
5. The SMP does not require new subdivisions with waterfront property to have a dock but merely to specify where one would be located if found appropriate at a later time. Nor is there any provision in SMP subsection (E) or (G)(1) that modifies or changes in any way the other dock requirements found in the SMP especially under subsection (C) and (G)(5). In this particular case the applicant failed to sustain his burden of showing that mooring buoys were not a feasible alternative.
6. There are no current single family residences associated with this dock proposal. There are no current owners of the proposed plat lots, who are available to execute a community joint-use agreement or satisfy any of the other requirements of the SMP.
7. The applicant has not demonstrated, because the proposed dock is entirely speculative, that the dock will be the minimum necessary for the boating purposes needed.

8. If in the future lot owners desire moorage it will necessarily be a community dock and the size, needs, ownership and other requirements of the SMP can be presented in a concrete manner rather than in the speculative nature of this proposal.
9. Any finding herein which may be deemed a conclusion is hereby adopted as such.

Decision

The shoreline substantial development application is denied.

DONE this 8th day of October, 2008.



Wm. H. NIELSEN, Hearing Examiner

Shoreline Appeal

Any appeal of the shoreline substantial development permit shall be made to the Washington State Shoreline Hearings Board pursuant to RCW 90.58.180 and the rules adopted by said hearings board.