

**SAN JUAN COUNTY  
HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

Applicant: Rosario Signal LLC  
1400 Rosario Road  
Eastsound, WA 98245

Agent Nells Strandberg  
PO Box 319  
Anacortes, WA 98221

File No.: PSJ000-14-0015

Request: Shoreline Substantial Development Permit

Parcel No: 160621001

Location: 1400 Rosario Road

Summary of Proposal: Replacement of Marina

Shoreline Designation: Rural

Hearing Date: March 19, 2015

Application Policies and Regulations: Shoreline Master Program

Decision: Approved with conditions.

S.J.C. COMMUNITY

APR 03 2015

DEVELOPMENT & PLANNING

1 **BEFORE THE HEARING EXAMINER FOR THE COUNTY**  
2 **OF SAN JUAN**

3 Phil Olbrechts, Hearing Examiner

4 RE: Rosario Resort Marina 5 Redevelopment 6 Shoreline Substantial 7 Development Permit 8 (PSJ000-14-0015)	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION</b>
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9 **INTRODUCTION**

10 The applicant has requested approval of a shoreline substantial development permit to  
11 replace and reconfigure the floating dock marina at Rosario Resort. The application  
is approved with conditions.

12 **TESTIMONY**

13 Julie Thompson, senior San Juan County planner, summarized the staff report. Ex. 1-  
14 6 identified in the exhibit list to the 3/9/15 staff report were admitted into the record  
15 during the hearing. The applicants were present to answer questions and noted that the  
replacement would accommodate about the same number of boats.

S.J.C. COMMUNITY

16 **EXHIBITS**

APR 03 2015

17 The six exhibits identified in the exhibit list to the March 9, 2015 staff report were  
18 admitted during the hearing.

DEVELOPMENT & PLANNING

19 **FINDINGS OF FACT**

20 **Procedural:**

- 21
- 22 1. Applicant. The applicant Rosario Signal LLC.
  - 23 2. Hearing. A hearing was held on March 19, 2014 at 10:00 at Key Bank in  
24 Friday Harbor, San Juan Island.

25 **Substantive:**

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1 3. Site and Proposal/Appeal Description. The applicant has requested approval of a  
2 shoreline substantial development permit to replace and reconfigure the floating dock  
3 marina at Rosario Resort. The new configuration will replace most of the existing  
4 floats with new floats that are designed to improve marina impacts and reduce  
5 environmental impacts. The only floats that will remain from the original  
6 configuration are the loading and fuel floats adjacent to the existing pier. The new  
7 facility will use environmentally friendly materials including grated piers, gangways,  
and floats; steel piles; and fully encapsulated floatation. Ramp access to the main float  
system will be moved from the west side of the marina to the northeast corner,  
adjacent to the existing kayak rental building and fuel dock. The new access pier and  
ramp will be ADA accessible and will have 60 percent openings in the grated walking  
surface. No upland construction is included in the proposal.

8 To provide deeper moorages and to facilitate slip access, the main float will be  
9 reconfigured in a U-shape around the perimeter of the marina basin, with finger piers  
10 extending toward the center of the basin. The project will use a total of thirty 12.75  
11 inch steel piles, driven with a vibratory hammer. Some proofing of piles with an  
12 impact pile driver may be necessary. The main floats will be 8 feet wide and extend  
13 for 790 linear feet (7,464 square feet); these floats will be 100 percent grated with 60  
14 percent openings in the grating. It will be secured with twenty-eight 12.75 inch steel  
15 pipes. Twelve of the 13 finger floats will each be 4 feet wide and range in length 36 to  
60 feet. Each finger float will be secured with a single 12.75 inch steel pipe pile.  
Finger floats will cover 2,596 square feet and will be 100 percent grated with 60  
percent openings in the grating. Total overwater cover of the new marina access pier,  
gangway, and floats will be 11,020 square feet; all surfaces will be grated with 60  
percent openings.

16 The existing seaplane dock at the end of the rock jetty will be replaced with a deeper  
17 draft float that will provide additional wave attenuation for the inner marina. This  
18 structure will be 16 feet wide for the first 198 feet and will be widened to 36 feet at the  
19 end to form a new seaplane landing float. The new facility will be maintained in  
20 position by a system of 11 anchors. A new grated ramp will connect the float to the  
rock jetty. Total overwater cover of the access gangway and float system will be  
4,685 square feet.

21 Floats that have been installed seasonally east of the fuel dock and stored in the off  
22 season within the marina will be eliminated (2,375 square feet) along with the  
anchoring systems used to hold them in place.

23 In total, the new facilities will cover 15,340 square feet of water surface. Although this  
24 is 1,340 square feet greater than what currently exist, almost 2/3 of the new facilities  
25 (11,020 square feet) will be 100 percent grated with 60 percent openings in all walking  
surfaces. Floatation cells will be placed under up to 50 percent of the marina main  
floats and finger piers walking surfaces. In addition, approximately 1,900 square feet  
of the new ungrated breakwater/seaplane float will be located over waters in excess of

1 -40 feet mean lower low water (MLLW). As detailed in the staff report, the pilings  
will provide 3.5 feet of vertical clearance above extreme high water.

2 The project area is characterized by good flushing activity. Sediments at the project  
3 site are relatively fine, which is typically associated with good flushing action.

4 4. Characteristics of the Area. Rosario has been in existence since 1909. It  
5 was originally built as a single-family mansion and subsequently converted to a resort  
6 in 1960. The resort contains the mansion, numerous guest suites and rooms, open  
7 space, recreational facilities, maintenance and laundry facilities, water and sewer  
8 treatment plants, and employee housing. Land to the north consists of single family  
9 homes and home sites on property subdivided from the original residential lot in the  
late 1950s. Land to the east abutting the resort include privately owned platted  
parcels to the southeast and large acreage tracts to the east abutting Cascade Lake.  
The large acreage tracts were once part of Rosario but are now part of Moran State  
Park.

10 5. Adverse Impacts of Proposed Use. As proposed and conditioned, there  
11 are no significant adverse impacts associated with the proposed reconfiguration. In  
12 point of fact, as recognized in a comment letter from Friday Harbor Laboratories, Ex.  
13 5, the proposal will have a beneficial impact on the environment over the current  
aging marina due to use of steel pilings instead of the current treated wooden pilings,  
the removal of disintegrating Styrofoam from the floats and the use of grated floats.

14 A comprehensive biological evaluation was prepared for the proposal, Ex 4, which  
15 addressed impacts to all potentially affected ESA protected species and their habitat.  
16 The report concluded that the proposal would either maintain current environmental  
17 conditions or improve upon them for all ESA species and their habitat and there is no  
18 evidence to the contrary. The recommendations of the report are made conditions of  
19 approval of this decision. The findings of the report are consistent with what one  
20 would expect given the design of the proposal. Although the proposal involves a  
21 modest increase in the overall size of the marina, that increase is more than off-set by  
22 the substantial amount of grating proposed for the new floats. Further, the  
Department of Ecology (“DOE”) noted in a comment letter, Ex. 5, that they had no  
concern over shading impacts because a macrovegetation survey conducted by the  
applicant revealed sparse occurrences of macroalgae and no eelgrass within the  
marine footprint. The grating will also off-set any shading impacts. DOE also noted  
that the replacement of wooden piles with steel piles should improve water quality.

23 Since the proposal is largely confined to the footprint of the existing marina and will  
24 not involve any noticeable increase in height, no significant adverse aesthetic impacts  
25 are anticipated, including impacts to scenic views. The proposal will improve upon  
shoreline navigation by making boat access to internal slips more direct and by not  
extending facilities beyond the existing marina footprint except for relocation of the  
seaplane float.

1 No significant impacts to water quality are anticipated. The proposal will  
2 accommodate about the same number of boats, so there will be no increase in adverse  
3 impacts generated from an increase in boat traffic, including water quality impacts  
4 such as discharges of petroleum impacts from the boats. The conditions of approval  
5 also require preparation and implementation of a spill removal plan to prevent  
6 discharge of boating pollutants. The conditions further require compliance with  
7 WAC 220-110-270, which contains numerous measures and restrictions designed to  
8 prevent any introduction of pollutants into shoreline waters. As noted in the SEPA  
9 checklist, no erosion is anticipated from the proposal, as no upland filling, clearing or  
10 grading is proposed.

11 The only major concern expressed in comments received on the proposal was that the  
12 seaplane float will encroach significantly further into Cascade Bay and that this could  
13 adversely affect sedimentation into the bay or flushing action. The applicant  
14 responded by a comment letter, Ex. 6, that there is no significant amount of  
15 sedimentation occurring at the project area because the shoreline in the vicinity is  
16 heavily armored and that the sediment sizes in the vicinity establish that there are no  
17 feeder bluffs or similar activities feeding sediment to the bay. As to flushing action,  
18 the applicant noted that the seaplane float will be located over relatively deep waters  
19 and as a result flushing action will not be adversely affected. The applicant's  
20 responses adequately address the concerns raised regarding the seaplane float. It is  
21 concluded that the seaplane float will not adversely affect flushing action or  
22 sedimentation.

## 23 CONCLUSIONS OF LAW

### 24 **Procedural:**

25 1. Authority of Hearing Examiner. SJCC18.80.110(E) authorizes the hearing  
26 examiner to review and make a final decision on shoreline substantial development  
27 permit applications after conducting a public hearing.

### 28 **Substantive:**

29 2. Shoreline Designation. Rural.

30 3. Review Criteria. A shoreline substantial development permit is required because  
31 the proposal is within shoreline jurisdiction (200 feet of the ordinary high water mark)  
32 and is not subject to any exemption. Consequently, the applicant must acquire a  
33 shoreline substantial development permit. SJCC 18.80.110(H) establishes the criteria  
34 for approval of shoreline substantial development permits. The criteria include the  
35 policies of the Shoreline Management Act (Chapter 90.58 RCW), the policies and use  
36 regulations of the San Juan County Shoreline Master Program, and the requirements of  
37 the San Juan County Municipal Code and Comprehensive Plan. As noted in SJCC  
38 18.50.010(A), Element 3 of the San Juan County Comprehensive Plan comprises the  
39 policies of the San Juan County Shoreline Master Program.

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1 **Shoreline Management Act Policies**

2 **RCW 90.58.020 Use Preferences**

3 *This policy (Shoreline Management Act policy) is designed to insure the development*  
4 *of these shorelines (of the state) in a manner which, while allowing for limited*  
5 *reduction of rights of the public in the navigable waters, will promote and enhance*  
6 *the public interest. This policy contemplates protecting against adverse effects to the*  
7 *public health, the land and its vegetation and wildlife, and the waters of the state and*  
8 *their aquatic life, while protecting generally public rights of navigation and corollary*  
9 *rights incidental thereto.*

4. The policy is met. As determined in Finding of Fact No. 5, the proposal does not create any significant adverse impacts, including impacts to shoreline resources and public navigation.

10 **RCW 90.58.020(1)<sup>1</sup>**

11 *Recognize and protect the statewide interest over local interest;*

12 5. The statewide interest is protected due to the absence of any significant adverse impacts as determined in Finding of Fact No. 5.

13 **RCW 90.58.020(2)**

14 *Preserve the natural character of the shoreline;*

15 6. Since the improvements are largely confined within the footprint of the existing marina and will not involve any noticeable increases in height over the current marina, the natural character of the shoreline will remain unaffected.

17 **RCW 90.58.020(3)**

18 *Result in long term over short term benefit;*

19 7. The proposal will improve facilities for shoreline access and enjoyment while also improving upon environmental conditions. The policy is clearly met.

20 **RCW 90.58.020(4)**

21 *Protect the resources and ecology of the shoreline;*

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<sup>1</sup> RCW 90.58.020(1)-(6) applies to shorelines of statewide significance. Section 3.4.F of the San Juan County Comprehensive Plan identifies all saltwater surrounding the islands of San Juan County as shorelines of statewide significance. The policies of 90.58.020(1)-(6) are mirrored in the policies of Section 3.4.F of the Comprehensive Plan and for the reasons provided in assessment of RCW 90.58.020, the Examiner also finds consistency with the policies of Section 3.4.F.

1 8. As determined in Finding of Fact No. 5, the proposal will not create any  
2 significant adverse impacts, which includes impacts to the resources and ecology of  
the shoreline.

3 **RCW 90.58.020(5)**

4 *Increase public access to publicly owned areas of the shorelines;*

5 9. The facility will improve upon existing shoreline access by providing for  
more direct access to marina slips.

6 **RCW 90.58.020(6)**

7 *Increase recreational opportunities for the public in the shoreline;*

8 10. The proposal will enhance recreational opportunities for resort guests, but  
9 beyond this the proposal cannot be conditioned to provide recreational opportunities  
for the greater public.

10 **Shoreline Master Program Policies**

11 11. Pages 3-9 of the staff report quote the applicable shoreline master program  
12 policies applicable to the proposal. The proposal is consistent with all of these  
13 policies because the proposal is clearly shoreline dependent and does not alter rural  
14 character and as determined in the findings of fact, the proposal improves upon  
15 environmental impacts, creates no significant adverse environmental impacts, does not  
adversely affect navigation, is situated at an area containing good flushing action and  
improves upon public access to the shoreline.

16 **Shoreline Master Program Use Regulations**

17 12. SJCC 18.50.070 Environmental Impacts. SJCC 18.50.070 contains numerous  
18 standards prohibiting the discharge of pollutants, interference with natural shoreline  
19 processes and adverse impacts to shoreline resources. All the standards are met. As  
20 determined in the findings of fact, the proposal will result in an improvement over  
21 existing environmental conditions and will not create any significant adverse impacts.  
As outlined in Finding of Fact No. 5, the proposal will not result in any erosion,  
22 pollutant discharges into shoreline waters or adverse impacts to protected fish or  
wildlife. No natural shoreline processes will be adversely affected by the proposal no  
solid waste disposal or liquid waste treatment facilities are proposed for the facility.

23 13. SJCC 18.50.080 Environmentally Sensitive Areas. SJCC 18.50.080 requires  
24 shoreline uses to be consistent with the County's critical area regulations, SJCC  
18.30.110 through SJCC 18.30.160. The proposal is in an area designated as a fish  
25 and wildlife habitat conservation area under the County's critical area regulations.  
However, SJCC 18.30.110(B)(1) authorizes the modification of nonconforming uses if  
the applicant demonstrates that the proposal will result in no net loss of biological  
functions. As determined in Finding of Fact No. 5, the proposal will not create any  
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1 significant adverse environmental impacts and will improve upon existing  
2 environmental impacts. For these reasons, the proposal is considered to result in no  
3 net loss of biological impacts. This information was based upon information provided  
4 in the application materials, most notably the biological evaluation and the SEPA  
5 checklist. Since the proposed modification/redevelopment results in no loss of  
6 biological functions as demonstrated in the application materials, consistency with  
7 current critical area regulations is not required.

8 14. SJCC 18.50.150 Water quality. SJCC 18.50.150 contains measures protecting  
9 against impacts to water quality. As most of these restrictions apply to surface water  
10 runoff generated by land development, the measures are largely inapplicable to the  
11 overwater development that comprises the proposal. The conditions of approval, most  
12 notably compliance with WAC 220-110-270, ensure that the proposal will not result in  
13 the discharge of polluted surface waters into shoreline waters as required by SJCC  
14 18.50.150. The proposal will be further conditioned to comply with County  
15 stormwater regulations. As conditioned and proposed, the proposal is consistent with  
16 SJCC 18.50.150.

17 15. SJCC 18.50.190 Boating facilities<sup>2</sup>. SJCC 18.50.190 imposes standards for  
18 boating facilities. The proposal is consistent with these standards. Compliance with  
19 WDFW design standards shall be assured through the applicant's hydraulic permit  
20 application and review identified in the SEPA checklist. As determined in the  
21 findings of fact, the area has good flushing action so it is an appropriate location for a  
22 long term moorage facility. The proposal will not adversely affect marine life or shore  
23 processes. The marina is the only form of moorage proposed for the subject lot. The  
24 proposal will not adversely affect navigation or scenic views. The proposal will use  
25 steel pilings and for any other facility structures that are chemically treated that come  
into contact with the water, the proposal is conditioned to require that the materials are  
approved by the Environmental Protection Agency. Floats with potential to ground  
will be designed with stops to avoid grounding. Floatation drums will fully contained  
the polyethylene foam that provides the buoyancy to the floats. No boathouses or  
covered moorages are proposed. The pier will not reach the extreme low tide contour.  
The proposal is conditioned to require lighting to shine downward, be of low wattage,  
and to not exceed a height of three feet above the dock. The conditions of approval  
require that all construction related debris be removed. The seaplane float is anchored  
with cables instead of pilings. Construction materials will remain unpainted and in  
natural condition. No bulk storage for petroleum products is proposed. No dredging  
or filling of wetland is proposed. No primary sewage treatment facility is located  
within a half mile of the facility. No covered moorage is proposed. There are no  
commercial or recreational shellfish beds in the vicinity of the proposal. No public  
access requirements may be constitutionally imposed since this is a private facility.  
As determined in Finding of Fact No. 5 the proposal will not create any adverse

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<sup>2</sup> For purposes of brevity, this conclusion of law includes findings of fact.

1 aesthetic impacts, including impacts to scenic views. No parking changes are  
2 proposed.

### 3 DECISION

4 The shoreline substantial development permit is approved as conditioned below  
5 because they are consistent with all applicable permit review criteria for the reasons  
6 identified in the conclusions of law above.

- 7 1. All surfaces and floats that are being replaced shall be 100 percent grated with 60  
8 percent openings except for the seaplane dock.
- 9 2. Existing floats that are being replaced shall be removed and disposed of at an  
10 approved facility. Care shall be taken to minimize release of debris to the marine  
11 environment during removal.
- 12 3. Seaplane float shall be reoriented over deeper water, so the net effective shading  
13 of productive bottom habitat shallower than -40 feet mean lower low water will  
14 be reduced by 4,974 square feet.
- 15 4. The marina shall supply equipment to contain and clean up oil, gasoline, and  
16 other polluting spills, and a spill prevention plan shall be on site.
- 17 5. Approximately 45 creosote treated piles shall be removed and replaced with  
18 approximately 30 steel piles.
- 19 6. The removed treated wood floats shall be replaced with new floats that shall have  
20 100 percent grated materials with 60 percent openings and encapsulated  
21 floatation.
- 22 7. New gangways shall be 100 percent grated.
- 23 8. All lighting shall be shielded, of low wattage, directed downward and away from  
24 the water and all lighting fixtures shall not extend more than three feet above the  
25 dock.
9. Floats shall be moved to deeper water to prevent grounding that could cause  
scour.
10. Potential adverse effects on listed salmonids shall be avoided or minimized  
through the adherence of agency-approved work windows when few juvenile  
salmonids are present in the action area (July 16 to February 15).
11. Common saltwater technical provisions (WAC 220-110-270) shall be strictly  
adhered to.
12. Monitor presence of marbled murrelets and impact pile driving noise to ensure  
that ambient sound levels for communication disruption is not exceeded.
13. All BMPs contained in the Biological Evaluation prepared for this project shall be  
implemented.
14. The project shall comply with all applicable provisions of the Unified  
Development Code, Title 18 San Juan County code, including the County's  
stormwater regulations to the extent they apply (if at all) to the proposal.
15. Chemically treated or coated decking materials or other structural members in  
direct contact with the water shall be as approved by the Environmental  
Protection Agency.

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16. All construction-related debris shall be disposed of properly and legally. Any debris that enters the water shall be removed promptly.

Dated this 2nd day of April, 2015.

  
Phil A. Olbrechts

County of San Juan Hearing Examiner

**Effective Date, Appeal Right, and Valuation Notices**

Hearing examiner decisions become effective when mailed or such later date in accordance with the laws and ordinance requirements governing the matter under consideration. SJCC 2.22.170. Before becoming effective, shoreline permits may be subject to review and approval by the Washington Department of Ecology pursuant to RCW 90.58.140, WAC 173-27-130, and SJCC 18.80.110.

This land use decision is final and in accordance with Section 3.70 of the San Juan County Charter. Such decisions are not subject to administrative appeal to the San Juan County Council. See also, SJCC 2.22.100.

Depending on the subject matter, this decision may be appealable to the San Juan County Superior Court or to the Washington State Shorelines Hearings Board. State law provides short deadlines and strict procedures for appeals, and failure to timely comply with filing and service requirement may result in dismissal of the appeal. See RCW 36.70C and RCW 90.58. Persons seeking to file an appeal are encouraged to promptly review appeal deadlines and procedural requirements and consult with a private attorney.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.