

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

3 Phil Olbrechts, Hearing Examiner

4 RE: Michael and Lisa Bosmann	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION.</b>
5 Conditional Use Permit (PSJ000-10-0002)	

6 TPN#  
7 251850007000

8 **INTRODUCTION**

9 The applicant has applied for approval of a Shoreline Conditional Use Permit to construct a proposed residential pool and associated pool building. The Examiner approves the permit subject to conditions.

10 **S.J.C. COMMUNITY**

11 **TESTIMONY**

12 APR 20 2010

13 Julie Thompson– Community and Development Planning

14 DEVELOPMENT & PLANNING

15 Ms. Thompson began by giving a brief overview of the application, which is for a shoreline conditional use permit for construction of a residential pool and associated pool building, and the reason for the permit is because a pool building is not a named structure within the shoreline requirements. The property is within a 100-year flood plain, but the building will be outside that buffer. It is also within an archaeological dig area, but the department of archaeology has not voiced any concerns about the project, although the applicants and city are still in contact with them. The property is within the 200 buffer of the shoreline. The structure is located behind and below the house, and there does not appear to be any view obstruction that will result. Additionally, the applicant will need to meet stormwater requirements upon receiving a building permit.

19 Kathy Cope – Bosmann Representative

20 There are homes within about 120 feet of the property line, but no neighbors have commented on the application, and there will not be any view obstruction as a result of the project. Ms. Cope also entered Exhibit 6 into evidence, which is a large view image of the location of homes within the proximity of the home site.

23 **EXHIBITS**

24 See Attachments list with the staff report dated March 11, 2010.

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## FINDINGS OF FACT

### Procedural:

1. Applicant. The applicants are Michael and Lisa Bosmann.
2. Hearing. The Hearing Examiner conducted a hearing on the subject application on April 1, 2010.

### Substantive:

3. Site and Proposal Description. The applicant requests a shoreline substantial development permit for construction of a residential swimming pool on their residential property and also to build a building to enclose the pool. The property is currently developed with a single-family residence, an accessory dwelling unit, and a boat house. The parcel is in the 100-year floodplain and within an archaeological buffer. The parcel slopes gently south from the shoreline, and has a low-bank waterfront. There are numerous trees on the site, of which only three will be removed for the pool construction.
4. Characteristics of the Area. The area surrounding the property is rural and residential in nature. To the north is the San Juan Channel, and to the south, east, and west is further residential development.
5. Adverse Impacts of Proposed Use. The Examiner finds that the proposed project will have no significant adverse impacts. Additionally, the project was issued a Determination of Non-significance (DNS) for SEPA, on February 17, 2010.

## CONCLUSIONS OF LAW

### Procedural:

1. Authority of Hearing Examiner. Shoreline Substantial Development permit applications are reviewed and processed by Development Services Department staff, and The Hearing Examiner, after conducting an open-record public hearing, renders a decision on the shoreline permit. SJCC18.80.110(E).

### Substantive:

2. Shoreline Designation. The subject property is designated as Rural Residential.
3. Comprehensive Plan and Zoning Designations. The subject property is designated as Rural Residential, and the existing land use is Residential.

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1           4.       Compliance with Notice Requirements. City staff advertised the  
2 application in accordance with RCW 90.58.140, WAC 173-27-110 and the San Juan  
3 County Code Sections 18.80 and 18.50. Notice of the Public Hearing and SEPA  
4 Appeal for the project was properly published on February 17, 2010, posted on-site  
5 on February 19, 2010, and noticed to parties of record and adjacent property owners  
6 on February 21, 2010. Comments were received from the Samish Indian Nation,  
7 Department of Archaeology and Historic Preservation, and the San Juan Building  
8 Department.

9           5.       Permit Review Criteria. The San Juan County Code (“SJCC”) governs the  
10 policies and criteria for shoreline permit review including the shoreline conditional  
11 use permit that is the subject of this Decision. SJCC 18.80.110(H) establishes the  
12 criteria for approval.

13           The applicable shoreline policies, use regulations, and criteria are quoted (in italics)  
14 and addressed below.

15           **RCW 90.58.020 Use Preferences**

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

23           6.       The project will not interfere with public access to the shoreline or interfere with  
24 navigation of water areas. The proposal has been thoroughly mitigated to ensure that  
25 it will not have any adverse impacts upon the shoreline environment.

**RCW 90.58.020(1)**

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

          7.       The project has been thoroughly mitigated to address all adverse impacts  
and as such Statewide interest in the preservation of the shoreline and surrounding  
habitats is protected, in addition to the local interest of economic and housing  
interests.

**RCW 90.58.020(2)**

*Preserve the natural character of the shoreline;*

          8.       The project will not disturb the shoreline, and the natural character of the  
shoreline will be preserved .

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1 **RCW 90.58.020(3)**

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

3 9. The project allows for long-term enjoyment of the residence, without  
4 being detrimental to the public'

5 **RCW 90.58.020(4)**

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

7 10. All adverse environmental impacts have been thoroughly addressed and  
8 mitigated and, therefore, the resources and ecology of the shoreline are adequately  
9 protected. The SEPA responsible official issued a Determination of Non-  
10 Significance on February 17, 2010.

11 **RCW 90.58.020(5)**

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

13 11. The project does not pertain to a publicly owned area of the shoreline.

14 **RCW 90.58.020(6)**

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

16 12. The construction of the pool will provide increased private recreational  
17 opportunities on the shoreline, but as the shoreline area in question is not public, no  
18 further public use of the shoreline will result.

19 **San Juan County Code Regulations**

20 **SJCC 18.50.330(A): Exemptions.** *The SMA specifically exempts from the substantial  
21 development permit requirements the construction of a single-family residence by an  
22 owner, contract purchaser or lessee for his or her own use, or the use of his or her  
23 family. Such construction and normal appurtenant structures must otherwise conform  
24 to this master program including any shoreline variance or conditional use permit  
25 requirements of this section. Exempt residential appurtenances are specified in SJCC  
18.50.020(G).*

13. Normal appurtenances to a single-family residence are identified in SJCC  
18.50.020(G) and include on garage, one accessory dwelling unit, attached decks,  
driveways, utilities, fences, antennas, satellite dishes, and solar arrays. However, a  
swimming pool building is not a named normal appurtenant structure, so a substantial  
development permit is required.

**SJCC 18.50.330(E):**

*2. The following accessory uses and developments, when associated with an  
exempt single-family residence, are defined as "normal appurtenances" and are  
therefore exempt as provided in SJCC 18.50.020(F)(2)(g):*

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1 a. One garage building and/or one accessory dwelling unit each of  
2 which covers no more than 1,000 square feet of land area and is no taller than 16 feet  
3 above existing grade as measured along a plumb line at any point; or a combination  
4 of these uses in a single structure no larger than 2,000 square feet which is no taller  
5 than 16 feet above existing grade as measured along a plumb line at any point; or a  
6 combination of these uses in a single structure no larger than 1,000 square feet on  
7 each floor and no taller than 28 feet above existing grade. In no case shall an  
8 accessory dwelling unit exceed 1,000 square feet;

9 b. No more than two separate outbuildings no larger than 200  
10 square feet each, no taller than 16 feet above average grade level, and not used for  
11 human habitation; provided, that in addition, one outbuilding for any other  
12 residential purpose may be substituted for an accessory dwelling unit or garage if the  
13 structures do not exceed size limits specified in subsection (E)(2)(a) of this section;  
14 and

15 c. Grading (excavation and fill) of up to the maximum cubic yardage  
16 allowed by state law (see WAC 173-27-040(g)) for foundations and a driveway, plus  
17 any additional grading necessary for an individual on-site sewage disposal system.

18 3. A shoreline substantial development permit shall be required for  
19 construction of any nonexempt accessory development on a single parcel within 200  
20 feet of the ordinary high water mark. Construction of an accessory dwelling unit that  
21 will be used for vacation rental (short-term) or long-term rental is not exempt. Any  
22 grading in excess of the amount exempt under SJCC 18.50.020(F)(2)(g) shall be  
23 subject to substantial development permit requirements.

24 4. Accessory structures which are not specified in this section as normal  
25 appurtenances to a residential use shall be permitted only as conditional uses.

14. The proposed pool building is not a specified normal appurtenance, so this  
shoreline conditional use application is required.

### **SJCC 18.80.110(J) Criteria for Approval of Shoreline Conditional Use Permit**

Uses which are classified or set forth in the Shoreline Master Program as conditional  
uses may be authorized by the County provided the applicant can demonstrate all of  
the following:

a. The proposed use is consistent with the policies of RCW 90.58.020 and the  
policies of the Shoreline Master Program;

b. The proposed use will not interfere with the normal public use of public  
shorelines;

c. The proposed use of the site and design of the project is compatible with other  
permitted uses within the area;

d. The proposed use will cause no unreasonably adverse effects to the shoreline  
environment in which it is to be located;

