

**SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET**

ITEM NO Consent C 5
Shoreline Master Program (SMP)

DATE: July 12, 2007

SUBJECT: Second Reading of Ordinance Number 915-07
Adoption of Shoreline Master Program

CONTACT PERSON: Rick Cisar, Director of Community Development

ISSUE:

The issue before the City Council is to consider Second Reading of Ordinance Number 915-07 adopting a new Section 16.96.010 City of Sultan Shoreline Master Program (SMP).

ACTION REQUESTED:

City Staff is requesting the City Council to consider the approval on Second Reading of Ordinance Number 915-07 (Attachment 1) adopting a new Shoreline Master Program (SMP) for the City.

SUMMARY:

At the June 11, 2007 City Council Meeting, City Council requested City Staff to amend the final Draft of the Shorelines Master Program to include small-scale gold mining as an allowed use in the SMP.

City Staff contacted Ms. Aubin Philips and Mr. Roger Wagoner of BHC Consultants and requested an amendment to the final Draft of the SMP to include small-scale gold mining as recommended by the City Council. In a letter from Ms. Aubin Philips, she provides their recommendations for revisions to the Recreation Facilities Section of Chapter 6 and the Recreational Facilities Environment Section. The proposed language would allow mining as an allowed use in the Aquatic Zone which covers the Sultan, Snohomish, and Wallace Rivers providing the Applicant has the necessary approvals from the Department of Natural Resources (DNR), Washington Department of Fish and Wildlife (WDFW), and complies with the Gold and Fish Pamphlet regulations. In addition, the Applicant will be responsible for contacting and obtaining additional approvals as necessary from Snohomish County and other applicable Federal and State Agencies with jurisdiction over the location of the gold mining activity.

The City Council at their June 28, 2007 meeting approved Ordinance Number 915-07 on First Reading and passed it on for Second Reading at the July 12, 2007 meeting.

Also, at the June 28, 2007 Council Meeting, David Pater, Department of Ecology Representative, indicated that the State Attorney General's Office will review the "gold-mining" language through their review process and may suggest amendments.

BACKGROUND:

The SMP update was initiated with a grant from the Department of Ecology (DOE) to complete an update of our SMP to be consistent with state guidelines. The City received the first grant in May of 2002. Thereafter, the City received two additional grants from DOE for a total update SMP cost of approximately \$76,000.00.

The City in 2002, contracted with BHC Consultants to complete the update of the SMP and coordinate the program with the Department of Ecology (DOE). At this time, BHC was under contract with the City for several Public Works Projects and had the staff expertise to complete the update.

The first meeting with the Planning Commission for the update was held in August of 2002. Since that first meeting the Consultants, City Staff, and the Planning Commission conducted ten Public Meetings, one Open House, and one Public Hearing held in March of 2006. The Public Hearing conducted by the Planning Commission was on the February 2006 Draft SMP. The Planning Commission, after the Public Hearing, forwarded their recommendation to the City Council for approval of the February 2006 Draft SMP.

The City Council conducted a Public Hearing on the Draft SMP on March 9, 2006 which was continued to the March 23, 2006 City Council Meeting which was again continued to April 13, 2006 City Council Meeting. The City Council continued the Public Hearings for the three mentioned meetings to ensure and allow public participation and public comment on the draft document.

The Public Hearing was closed at the April 13, 2006 City Council Meeting and the Draft SMP was forwarded to the Department of Ecology for their final review and coordination with State Attorney General's Office.

The Department of Ecology and the Attorney General's Office completed their review and revisions to the February Draft SMP in April of 2007. The March 29, 2007 Memo provided by Mr. Roger Wagoner and Ms. Aubin Philips, of BHC Consultants to the Council, summarized the revisions by the Department of Ecology and the State Attorney General's Office.

The April 2007 Draft is the Final Draft of the SMP.

Thereafter, to ensure ample opportunities for review of the Final Draft SMP, City Staff prepared a Schedule for Review and Adoption of the SMP, which included:

- | | |
|--------------|--|
| May 1, 2007 | Planning Board Update of Program |
| May 10, 2007 | 6 PM - Joint City Council Planning Board Workshop. |
| May 15, 2007 | 4 to 7 PM - Public Open House in conjunction with Storm Water and Waste Water. |

May 24, 2007 City Council Discussion Item

June 11, 2007 City Council Discussion Item – 1st Reading - SMP Ordinance

June 28, 2007 City Council – 1st Reading - SMP Ordinance.

July 12, 2007 City Council - 2nd Reading - SMP Ordinance

A Department of Ecology Representative and BHC Consultants attended and participated in the Joint Workshop and Discussion Item at the May 24, 2007 City Council Meeting to review the Final SMP Draft.

DISCUSSION:

The SMP as a result of the recent workshops and discussions has been amended to delete gravel extraction as an allowed use and include gold mining as a permitted activity in the Aquatic Zone. In addition, to this change the SMP incorporates the recommendation of the State Attorney's General's Office and the Department of Ecology. Appendix A and Appendix B have also been updated to include the recent code changes relating to Flood Damage Protection and Administration and Enforcement and Penalties.

The next steps necessary to complete the adoption process after Council takes final action on the SMP, is outlined on the State SMP Approval Process”

In summary the Department of Ecology:

1. Receives the City of Sultan's SMP;
2. DOE opens a 30-day comment period for interested parties and may hold a Public Hearing within the 30-day comment period;
3. Within 15-days of the end of the comment period, DOE requests local government to respond to comments received by DOE;
4. Local government has 45-days to provide DOE with written response to comments;
5. DOE has 30-days to act on SMP and Approve as is, Deny, or require changes;
6. Interested parties notified of 60-day appeal period of DOE action.

Therefore, final approval of the SMP based on DOE's approval process, may realistically occur in late November or December 2007, unless their action is appealed. Once DOE approves the SMP, City Staff will return to the Planning Board with Amendments to Chapters 16.08 Zoning Districts of the Development Code to implement the allowed use of gold mining in the Aquatic Zone.

RECOMMENDED MOTION:

City Staff is requesting the City Council by Motion to Approve on Second Reading Ordinance Number 915-07 adopting a new Shoreline Master Program for the City of Sultan.

COUNCIL ACTION:

DATE:

ATTACHMENT:

Attachment 1 - Ordinance 915-07

CITY OF SULTAN
ORDINANCE NO. 915-07
AN ORDINANCE OF THE CITY OF SULTAN, WASHINGTON AMENDING
CHAPTER 16.96 SHORELINE MANAGEMENT, SULTAN MUNICIPAL CODE,
BY DELETING SECTION 16.96.010 ADOPTION BY REFERENCE THE
SNOHOMISH COUNTY'S SHORELINE MANAGEMENT MASTER PROGRAM
AND ADOPTING A NEW SECTION 16.96.010 CITY OF SULTAN'S
SHORELINE MASTER PROGRAM

Introduction

- 1) **WHEREAS**, the state of Washington Shoreline Management Act of 1971 (Chapter 90.58 RCW) requires that cities and counties incur certain duties, obligations and responsibilities with regard to implementation of the Act; and
- 2) **WHEREAS**, the City of Sultan adopted a joint Shoreline Master Program (SMP) with Snohomish County in 1974, and whereas the Snohomish County SMP was subsequently amended in 1989, 1992, and 1993; and
- 3) **WHEREAS**, the state Department of Ecology adopted new SMP guidelines in December 2003 (WAC 173-26); and
- 4) **WHEREAS**, Sultan, recognized by the state as an "Early Adopter," is now required under state rules to review and update its SMP consistent with the state guidelines by March 31, 2006 (SSB 6012); and
- 5) **WHEREAS**, amendments to the existing SMP are necessary to comply with the Act and the state guidelines; and

Public Involvement, communication and coordination

- 6) **WHEREAS**, the City provided for meaningful public participation and coordinated with affected agencies and tribal interests consistent with the Shoreline Management Act (Chapter 90.58.130), Ecology Guidelines (WAC 173-26-100), the provisions of the GMA (RCW 36.70A.035, 36.70A.130, and 36.70A.140), and the plan adoption and amendment procedures set forth in City code; and
- 7) **WHEREAS**, the City of Sultan engaged in an open public discussion of the SMP, its designations, goals, policies, regulations, administration provisions and other components, including review at an open house, ten Planning Commission meetings, and one hearing held between July 2005 and October 2005, and all

written records of the Planning Commission's deliberations during the meetings and hearing described above are incorporated herein by this reference; and

- 8) **WHEREAS**, a public open house was held on June 28, 2004 at the Sultan City Hall. This open house provided an overview of shoreline planning and the objectives of the SMP update. Participants were asked to provide input on public access and recreational opportunities; and
- 9) **WHEREAS**, timely and effective notice was provided for each Planning Commission Meeting. Notice was published in the paper, on the city website, and shoreline property owners were notified by mail of events; and
- 10) **WHEREAS**, the City worked with state Department of Ecology (DOE) agency staff throughout the update process. Staff attended meetings with DOE regarding shoreline planning in Olympia and Seattle and Ecology staff attended Planning Commission and other meetings with staff. DOE staff reviewed and provided comments on the Sultan shoreline inventory, characterization report, and draft SMP; and
- 11) **WHEREAS**, the City of Sultan engaged the public, tribes and other agencies through a variety of means throughout the update process including mail distribution lists; and

Environmental Review

- 12) **WHEREAS**, an environmental checklist was prepared for the action of adopting the proposed amendments according to the State Environmental Policy Act; and
- 13) **WHEREAS**, the SEPA Responsible Official for Sultan issued a Declaration of Non-Significance pursuant to the State Environmental Policy Act (Chapter 43.21C RCW) on October 7, 2005. The Determination of Non-Significance was determined to be final on November 1, 2005;and

Compliance with Substantive Requirements of the Act and Ecology Guidelines

- 14) **WHEREAS**, the state Shoreline Management Act requires and authorizes the protection of the state's shorelines through shoreline master programs that are adopted locally and by Ecology. Washington's Shoreline Management Act (SMA) was adopted by the public in a 1972 referendum "to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines." The SMA has three broad policies:

- A. Encourage water-dependent uses: "uses shall be preferred which are consistent with control of pollution and prevention of damage to the

natural environment, or are unique to or dependent upon use of the states' shorelines..."

- B. Protect shoreline natural resources, including "...the land and its vegetation and wildlife, and the water of the state and their aquatic life..."
- C. Promote public access: "the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally."; and

15) WHEREAS, the Ecology guidelines (Chapter 173-26 WAC) include an updated required process to prepare shoreline master programs. The preparation of a shoreline master program must include:

- Public participation consistent with RCW 90.58.130,
- Communication with state agencies,
- Communication with affected Indian tribes,
- An inventory of shoreline conditions,
- Analysis of shoreline issues of concern that includes, as necessary: a characterization of shoreline functions and processes; shoreline use analysis; cumulative impact analysis; and the City conducted an inventory and analysis of shoreline conditions in 2001 through 2004. Information gathered was field verified. A comprehensive inventory of shoreline conditions and an atlas of shoreline maps were prepared in 2003. The atlas includes maps of known habitat areas, topography, aerial photos and other information. Further analysis was conducted of the environmental conditions of the shoreline. A Characterization of Functions and Ecosystem-wide Processes was published on April 2005: and

16) WHEREAS, in accordance with the SMA, Uses shall be preferred which are...unique to or dependent upon uses of the state's shoreline." The Sultan SMP regulates the shoreline through application of five shoreline environment designations: Aquatic, Natural, Shoreline Residential, Urban Conservancy, and Urban Center. These designations are shown on an official map of shoreline designations. The primary intent of the Aquatic designation is to protect and enhance the unique characteristics of marine waters. Natural provides for protection of areas relatively free of human influence that are minimally degraded. Shoreline Residential is intended to accommodate residential development, and appropriate public access and recreational uses consistent with other elements of shoreline management. Urban Conservancy is a designation designed to protect and restore the ecological functions of open space, floodplain and other sensitive lands where they exist in urban and developed areas; and

17) WHEREAS, the SMA requires cities and counties to adopt goals, or "elements," to guide and support major shoreline management issues. The elements required

by RCW 90.58.100(2) are: shoreline use, economic development, circulation, public access, recreation, conservation, and historic and cultural. The Sultan SMP includes goals and policies to support these required elements as well as for shoreline restoration; and

- 18) WHEREAS**, the SMA states that master programs shall include provisions for public access to the shoreline and preservation and enlargement of recreation opportunities. The Sultan SMP includes a chapter with information on public access policies and regulations that direct the provision of public access to the shoreline that is commensurate with the degree of development with shoreline development that occurs; and
- 19) WHEREAS**, the Shoreline Management Act requires all shoreline master programs to meet the fundamental goals of the Act to protect ecological functions and natural shoreline resources. To protect natural shoreline resources, the guidelines require master programs to include provisions that require mitigation of environmental impacts from individual developments to maintain no net loss of shoreline resources. The guidelines also require restoration planning to achieve overall improvements in shoreline ecological functions over time; and
- 20) WHEREAS**, the Growth Management Act requires the protection of critical areas, including but not limited to habitat, wetlands and geologically hazardous areas; and
- 21) WHEREAS**, the state Legislature passed ESHB 1933, which ESHB took effect on July 27, 2003. The provisions of ESHB 1933 include that: GMA goals are not in priority order; shorelines of statewide significance may include critical areas, but are not critical areas; jurisdiction for critical areas protection is under SMA; the SMP must provide a level of protection to critical areas within shorelines that is "at least equal" to the level of protection provided to critical areas by the local government's critical areas ordinances (CAOs) adopted under the GMA; and the GMA's best available science (BAS) requirement does not apply when a shoreline master program is being updated or amended pursuant to the shoreline guidelines; and
- 22) WHEREAS**, the Sultan SMP provides environmental protection by:
- Establishing shoreline designations that direct more intense uses to existing developed areas and that limits activities allowed in areas with existing natural features (Chapter 5);
 - Establishing environmental protection policies and regulations that require no net loss of shoreline environment resources when development occurs through avoidance, minimization, and mitigation, including regulations for general environmental impacts, critical areas, habitat, frequently flooded areas, geologically hazardous areas, and wetlands (Chapter 6);

- Establishing policies and regulations for vegetation preservation, impervious surface limits and on clearing and grading that restrict the removal of natural vegetation in the shoreline area (Chapter 6); and
- Establishing policies and regulations that control the development of specific uses and modifications (Chapter 6);and

23) WHEREAS, the standards for protection of critical areas provided in the SMP are based on the scientific review conducted as part of the shoreline inventory and characterization, state resource literature, and the advice of expert professionals. The standards requiring critical areas protection in the SMP are at least equal to those included in the City's GMA critical areas regulations; and.

24) WHEREAS, the City prepared a restoration chapter for the SMP to seek overall improvement of the shoreline environment over time. The restoration chapter is based on restoration opportunities identified in the shoreline inventory and lists potential restoration projects and implementation strategies. The restoration chapter (Chapter 8 of the SMP) includes a restoration vision, goals, and opportunities. It also provides information about existing and ongoing restoration programs and opportunities for monitoring shoreline conditions. Strategies for implementing restoration are provided to give guidance on successful restoration. The SMP notes that the nature of restoration may evolve as conditions change and as new information becomes available; and

25) WHEREAS, development may result in cumulative impacts to those functions and values of shoreline areas that contribute to and are necessary for a healthy natural environment and perceived quality of life. To address potential cumulative impacts, an analysis of cumulative impacts consistent with the state guidelines has been prepared (July 27, 2005). The cumulative impacts analysis considers the condition of the shoreline environment as documented in the characterization report, foreseeable development based on existing and planned land uses and development trends, and documents how development that may result in cumulative impacts over time will be offset through SMP regulations and policies; and

26) WHEREAS, the SMA recognizes the need to protect private property rights. The Sultan SMP is intended to be consistent with other property regulations and those rights afforded to property owners. The SMP allows for shoreline uses that are consistent with the goals of the Shoreline Management Act and for reasonable use of private property as defined by the courts; and.

27) WHEREAS, in accordance with RCW 90.58.020, preference shall be given to recognize and protect statewide interests over local interest of shorelines of statewide significance. In Sultan, shorelines of statewide significance include

those waters of the Skykomish River and are addressed in Chapter 3 of the SMP;
and.

Key Policy Direction

WHEREAS, the t SMP contains goals, policies, and regulations, and a shorelines designation map intended to establish the character, quality, and pattern of the future physical development along the City's shoreline. The Master Program specifies the type and location of development, and establishes height and setback requirements. Important direction provided by the Master Program includes:

Shoreline goals – The Shoreline Management Act requires cities to adopt goals, or “elements,” to guide and support major shoreline management issues. RCW 90.58.100(2). In addition to the required elements, the Master Program includes a Restoration element. This section addresses the requirement to achieve “no net loss of ecological functions necessary to sustain shoreline natural resources” and to provide for the restoration of impaired ecological functions.

Shoreline environment designations – The Planning Commission concurred with the Advisory Group recommendation to employ a classification system consisting of five shoreline environments. These environment designations have been assigned as shown on the map consistent with the corresponding designation criteria provided for each environment. In delineating environment designations the City of Sultan aims to provide for priority uses while assuring that existing shoreline ecological functions are protected with the proposed pattern and intensity of development. To that end, staff was specifically directed to assign to:

- The Aquatic designation to areas along the Wallace, Sultan, and Skykomish Rivers that are waterward of the OHWM.
- The Natural designation to the area along most of the Sultan River where much of the land is in public ownership and contains large areas of natural vegetation and wetlands.
- The Urban Conservancy designation to these areas along the shorelines that have urban uses and have the potential for restoration of ecological functions and enhance public access.
- The Shoreline Residential designation to these areas along the Sultan and Skykomish Rivers that are predominantly residential and designated for future residential use.
- The Urban Center designation to portions of the Sultan and Skykomish River shorelines which are predominantly commercial and designated for future commercial use.

Critical Areas including wetlands, critical habitats, flooding, and geologically hazardous areas – The Master Program incorporates the City’s Critical Areas Ordinance Number 918-06.

Vegetation protection and terrestrial habitat – Alteration of the natural landscape can cause changes in the structure and functioning of shoreline habitats and alter use of the habitats by fish, birds, mammals and other organisms. It can increase erosion, siltation, runoff/flooding, change drainage patterns, reduce flood storage capacity and damage habitat. To minimize impacts to shoreline resources, the Master Program regulates alteration of the landscape (including but not limited to clearing, grading, and vegetation removal). Under the Master program all clearing must be followed by development or revegetation - no speculative clearing is permitted. Clearing within required setback areas must be revegetated according to an approved landscape plan that addresses various standards. In other words, if you are outside the setback, clearing is allowed but cannot be speculative and must have revegetation. If within the setback, a landscape plan is required that addresses performance standards. Vegetation retention should be of “native vegetation” and vegetation planted should be suited to the environment and contribute to habitat enhancement.

Public access – In general, the Master Program seeks to maintain and enhance public access, both physical and visual, throughout the City's shoreline. The Master Program also establishes provisions for public access to be provided by new development.

Residential development – The Master Program requires a minimum fifty (50) foot setback from the ordinary high water mark. Provided that the setback may be further increased to retain a 15 foot setback from a required critical areas buffer associated with the presence of a wetland, geologically hazardous area, or critical fish and wildlife habitat area. Exceptions may be granted for infill of existing platted lots.

Restoration – The Restoration Plan is included as Chapter 8 of the. The Urban designation was identified as a candidate for offering restoration incentives – allowing for multi-family residential or transient accommodations in exchange for restoration of shoreline ecological functions or enhanced public access.

28) **WHEREAS**, in accordance with the SMA, the shoreline jurisdiction for Sultan applies to those shoreline areas that include: streams with a mean annual flow of 20 cubic feet per second or greater, upland areas called “shorelands” which are 200 feet landward from the edge of these waters, wetland associated with these areas, and the 100 year floodplain; and

29) **WHEREAS**, the Sultan Shoreline Master Program has been updated consistent with the requirements of the state Shoreline Management Act (SMA) and the shoreline SMP guidelines, Chapter 173-26 WAC; and

GMA Consistency

30) **WHEREAS**, the Sultan SMP is consistent with the land use designations and goals of the Sultan Comprehensive Plan. The City of Sultan plans to review and update the policies of the Comprehensive Plan and related development regulation to acknowledge adoption of the SMP and ensure continued consistency; and

31) **WHEREAS**, the City finds that the amendments to the City of Sultan Shoreline Master Program, set forth in Exhibit "A" and attached hereto and incorporated herein by this reference, are necessary to implement the Shoreline Management Act (Chapter 90.58 RCW) and Ecology Guidelines (WAC 173-26), and to ensure consistency between the Critical Areas policies contained within the Land Use Element of the Sultan Comprehensive Plan and the City's Implementing Regulations;

Final SMP review

32) **WHEREAS**, The City Council in April of 2006 referred the draft SMP to the Department of Ecology and State Attorney Generals Office for their review and comment prior to final consideration by the council; and

33) **WHEREAS** the department of Ecology and State Attorney Generals Office conducted their review of the draft SMP between April of 2006 and January of 2007 and advised the City of recommended changes throughout that time period; and

34) **WHEREAS** the Department of Ecology and State Attorney Generals Office completed their review of the Draft SMP in January 2007 and provided final revisions and comments to the City and their consultant; and

35) **WHEREAS**, City , prepared the final draft of the SMP and incorporated the revisions from the Department of Ecology and State Attorney's General office; and

36) **WHEREAS**, the City to ensure public review and participation of the Final Draft SMP, provide copies of the Final Draft SMP at City Hall, the Sno Isle Regional Public Library and posted the Final Draft on the City's Web Page; and

37) **WHEREAS**, the City developed a review schedule for the adoption of the final SMP, to provide additional opportunities for public comment, which included a Planning Board SMP Update meeting on May 1 2007, a Joint City Council and Planning Board SMP Workshop on May 10, 2007 which included representation from the Department of Ecology, conducted a Community Wide Open House on May 15, 2007 which included the SMP, transportation and utility plan updates, conducted a Town Meeting on the Comprehensive Plan Update including the SMP on May 31, 2007 ; and discussed the Final SMP during a regular City Council meeting on June 11, 2007;

NOW, THEREFORE, IT IS ORDAINED BY THE CITY COUNCIL OF THE CITY OF

NOW, THEREFORE, IT IS ORDAINED BY THE CITY COUNCIL OF THE CITY OF SULTAN AS FOLLOWS::

Section 1. Subject to acceptance by the Department of Ecology the proposed amendments to the Shoreline Master Program set forth in Exhibit A are hereby adopted.:

Section 2. The Department of Community Development is directed to forward the SMP to the Department of Ecology for a public hearing and final review, and acceptance.

Section 3. The Department of Community Development, upon acceptance of the Shoreline Master Program by the Department of Ecology is directed to review, conduct necessary public participation and proposed necessary revisions to the City's land use planning documents, maps, and development regulations including but not limited to: , Land Use Map, Zoning Map, zoning code to improve consistency with the Shoreline Master Program.

Passed by the City council and approved by the Mayor this _____ day of _____, 2007

City of Sultan

By: _____

Mayor

Benjamin Tolson,

Attest:

By: _____
Laura Koenig, City Clerk

Approved as to form:

By: _____
Thom H. Graafstra, City Attorney