

**SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET**

ITEM NO: D-2

DATE: March 13, 2008

SUBJECT: Shoreline Master Program - Response to DOE Public Comment Summary.

CONTACT PERSON: Deborah Knight, City Administrator

ISSUE:

The issue before the City Council is to review the City's draft written response (Attachment A) to the comments received on the City's Shoreline Master Program (dated 07-28-07) by the Department of Ecology.

Following the City Council's review, the Council should direct staff to respond to all public comments.

STAFF RECOMMENDATION:

1. Review the City's draft written response to the comments received on the City's Shoreline Master Program (dated 07-28-07) by the Department of Ecology (DOE).
2. Review the Attorney General's Office comments on recreation gold prospecting and discuss whether to continue to include recreational gold prospecting in the City's SMP.
3. Direct staff to respond to all public comments.

SUMMARY:

The City of Sultan is finalizing the process to receive a decision letter from the Department of Ecology on the City's Shoreline Master Program.

The purposes of the Shoreline Master Program are to 1) carry out the responsibility of the City of Sultan by the Washington State Shoreline Management Act; 2) to guide and regulate future development of the shoreline resources of Sultan; 3) protect the shoreline environment through management of uses, rather than maximize development potential.

The document is over 200 pages including appendices and can be viewed on the City's website at

http://www.ci.sultan.wa.us/planningboard/shoreline_master_plan/attachments/

The City's efforts to adopt and receive approval on its Shoreline Master Program (SMP) began in 2002. The approval process is divided between a local process and a state review and approval process. The City completed the local approval process on July 12, 2007 when the Council adopted the SMP by Ordinance 915-07 (Attachment B). The SMP was submitted to the state to review on October 4, 2007.

The City received a Public Comment Summary letter from the Department of Ecology dated February 14, 2008 (Attachment A). The letter summarizes the comments received by the Department of Ecology during its public comment period. Only one individual (Josie Fallgatter) commented on the Shoreline Master Program update.

The City has 45 days – until Monday, March 31, 2008 in accordance with WAC 173-26-120 (6) to prepare a written response to comments. Aubin Phillips with BHC prepared a draft response to the DOE comment letter. Ms. Phillip's response and the comment letter from Ms. Fallgatter are provided in Attachment A.

DISCUSSION:

Written Response on Comments Received

The City must respond to the following comments:

1. Public Participation Process – The City SMP public participation process began in 2002 and has continued into 2007. Ms. Fallgatter noted that it has been difficult to track the SMP changes in particular the issue of commercial mining. The City should have provided an easier way to track document changes. Specific concerns were voiced with changes made to the mining section by the City Council.

Attachment C details changes made to the SMP over the course of its development and the opportunities for public participation.

Changes Made to the Mining Section

Mining was originally included as a permitted use in Chapter 6: Shoreline Policies and Regulations. On June 11, 2007 City staff brought the issue of mining to the City Council following the joint meeting on the SMP with the Planning Board on 5/24. The staff recommendation was as follows:

Request City staff, if City Council concurs with City Staff's conclusions, to finalize the Shoreline Master Program (SMP) and delete mining as a permitted use.

Staff was directed to research language for recreational mining (gold panning) allowed by other agencies. During this research, staff discovered that recreational gold panning has not been addressed by other agencies.

The Draft SMP dated June 20, 2007 for the June 28, 2007 Council meeting shows Chapter 6, Section 7 Mining (page 39) and other deletions from the SMP removed using the "strike-through" legislative mark-up tool (Attachment D). Additions to the SMP (06/20/07) were highlighted using the underline method.

On June 28 the City Council considered the adopting ordinance for first reading. In the Discussion section of the agenda cover, the reports states:

"The SMP...has been amended to delete the 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 AG's office and the DOE."

Attachment 2 to the agenda cover is a memo dated June 13, 2007 from Roger Wagoner and Aubin Phillips to Rick Cisar which states:

"The mining section which refers to the mining of sand and gravel has been removed from the Sultan SMP; however, the city Council would still like to see gold mining included in the SMP. Since the mining section has been removed, it is proposed that gold mining be included under Recreation facilities section of Chapter 6 of the SMP."

There was no public comment at the 6/28 meeting regarding the proposal to remove the mining section.

2. Endangered Species Issues – Western Gray Squirrel should be listed in the SMP. Listed scientific names should be accompanied by their common names.

Both the common and scientific names for the Western Grey Squirrel and other "special status species" that may occur within the vicinity are listed on page 4 of Chapter 2: Shoreline Inventory (Attachment E - Final Adopted SMP 07-27-07).

3. Channel Migration Zones – Additional information on river channel migration zones should be incorporated into the SMP.

Terri Strandberg of Snohomish County reported in an e-mail to David Pater of the DOE dated January 10, 2008 that channel migration zone data for the Sultan area is not available. The County has not completed its channel migration zone mapping and have not updated the checklist. Once the data is available, it can be added to the Sultan SMP at a future date (Attachment A)

4. Mineral Resource – A mineral resource environmental designation should be included if the City anticipates any mining. City development code prohibits commercial mining.

A mineral resource is not a Shoreline Master Program designation, and therefore cannot be added to the SMP. The SMP as adopted by the City Council does not propose commercial mining.

5. Shoreline Master Program Goals and Policies – Some goals and policies use “should” in describing their intent. The use of “should” is non-sensical for a number of policies including not allowing bank armoring with car bodies and construction debris.

*Chapter 6, Section 10: Shoreline Modification General Regulations #10 (page 48) provides, “Use of car bodies, scrap building materials, asphalt from street work, or any discarded piles of equipment or appliances for the stabilization of shorelines **shall** be prohibited. (Attachment F - Final Adopted SMP 07-27-07)*

Permit Requirements for Recreation Gold Mining (Panning)

The original proposal to the City Council was to exempt small scale, non-motorized, recreational prospecting.

However, there is no statutory exemptions for small scale, non-motorized recreational prospecting. The State Shoreline Master Program Guidelines require that any mining activity (including gold panning) within a river channel migration zone be conducted under a shoreline conditional use permit.

Under the State's requirements, anyone wishing to pan for gold within the Sultan river channel migration zone must apply for and receive a shoreline conditional use permit from the City of Sultan. The City's permitting process requires a public hearing for conditional use permits. Under Chapter 7 of the SMP, the City Council shall review conditional use permits at a closed record hearing. After the City Council has approved a conditional use permit, the SMP Administrator shall file the permit with the DOE for its approval.

Under the 2008 fee schedule, the cost for a conditional use application is \$1,000 plus direct costs. A conditional use permit is \$500 plus direct costs. A public hearing requires a \$1,500 deposit plus direct costs to cover the expense of the Hearing Examiner.

Recommended Changes to SMP for Recreational Gold Prospecting

The State Attorney General's office reviewed the gold prospecting additions and made the following recommended changes to Chapter 6: Shoreline Policies and Regulations:

1. Page 41, Policy 3: Add "gold" before prospecting. Remove the second sentence concerning placer mining.

Policy 3. Small scale, non-motorized, recreational gold prospecting should only occur with DNR access and through a Hydraulic Project Approval (HPA) from WDFW. ~~Placer mining and mineral prospecting should also comply with the WDFW's Gold and Fish Pamphlet.~~

2. Page 41 add the following policy: Removal of specific quantities of material through non-motorized mineral prospecting should not adversely affect natural river geomorphologic processes and should result in no net loss of ecological functions.

New Policy 8: Removal of specific quantities of material through non-motorized mineral prospecting should not adversely affect natural river geomorphologic processes and should result in no net loss of ecological functions.

3. Recreational Facilities Regulations. Chapter 6, Page 41, Regulation #2: Add "All gold prospecting shall comply with the WDFW Gold-Fish Pamphlet and applicable State Laws for non-motorized mineral prospecting.

Regulation 2. Small scale, non-motorized, recreational gold mining shall only be allowed in the aquatic zone, and all prospectors must confirm with Snohomish County and other applicable agencies prior to prospecting. All gold prospecting shall comply with the WDFW Gold-Fish Pamphlet and applicable State Laws for non-motorized mineral prospecting.

4. Recreational Facilities Environments, Chapter 6, Page 42, Aquatic Environment. Change "exempt" use to conditional use. The shoreline use table in Chapter 5 will also need to include non-motorized recreational gold mining as a conditional use.

Aquatic: Small scale, non-motorized, recreational prospecting may be permitted as ~~an exempt~~ a conditional use when consistent with the provision of this Master Program.

5. Add WDFW to the list of acronyms in Appendix A

SUMMARY:

The City's SMP has entered the state review and approval process. The SMP has been through multiple reviews at the Department of Ecology and the State Attorney General's Office. Following Council direction, City staff will respond to the comments outlined in this agenda cover. The DOE has 30 days after receiving Sultan's response to public comment to make a final decision on the SMP's consistency with the Shoreline

Management Act. Ecology must send a decision letter to Sultan and all parties of record with findings and conclusions. Ecology may approve the SMP as is, approve the SMP with conditions, or deny the SMP.

After receiving an approval letter, the City must publish notice of DOE approval. The window for appeals of the SMP to the Growth Management Hearings Board is 60 days from the date on which the local government publishes the notice.

The SMP has been reviewed by DOE for consistency with the City's Critical Areas Ordinance. The SMP must be consistent with the Comprehensive Plan – Land Use, Shoreline Management and other Elements of the Comprehensive Plan. The goals and policies of a local government's shoreline master program now function as an element of its comprehensive plan adopted under the GMA. (RCW 36.70A.480)

The City has directed Perteet Engineering to review and identify implementing development regulations that may need to be amendment to be consistent with the SMP. For example, adopting Ordinance No. 915-07 deleted the reference to the Snohomish County Shoreline Management Master Program and adopting the City's program.

ALTERNATIVES:

The City Council must respond to public comment within the 45-day comment period. The Council should review the proposed responses and direct staff to areas of concern.

The larger question for the City Council is whether to continue to keep recreational gold prospecting as a conditional use in the Sultan SMP. There is no alternative to exempt this use under the State Shoreline Management Act.

RECOMMENDED ACTION:

1. Review the City's draft written response to the comments received on the City's Shoreline Master Program (dated 07-28-07) by the Department of Ecology (DOE).
2. Review the Attorney General's Office comments on recreation gold prospecting and discuss whether to continue to include recreational gold prospecting in the City's SMP.
3. Direct staff to respond to all public comments.

ATTACHMENTS

- A – Response to Ecology Comments 2/14/08
- B – Ordinance No. 915-07
- C – Changes made to the SMP
- D – Mark-up changes to Chapter 6, Shoreline Policy and Regulations (06/20/2007)

E – Chapter 2: Shoreline Inventory (07/27/07)

F - Chapter 6, Section 10: Shoreline Modification General Regulations #10 (07/27/07)



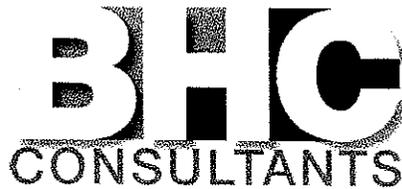
MEMORANDUM

Date: February 22, 2008
To: David Pater, Department of Ecology
From: Aubin Phillips and Roger Wagoner, BHC Consultants
CC: Deborah Knight, City of Sultan
Subject: Response to Ecology Comments 2/14/08

We have received the comments from the Department of Ecology SMP Update comment period and transcribed testimony from the public hearing. A few of these comments have already been addressed and one will be taken to Council for final approval before the formal review process is complete.

The following comments have already been addressed in the SMP:

- The Western Grey Squirrel is already listed as an endangered species, in Chapter 2, page 4. Common names for the Myotis (Bat) are also already listed in Chapter 2.
- Goals and Objectives are listed in Chapter 4 of the SMP document. Goals are broad projections of the City's desired future. Chapter 6 contains the Policies and Regulations for the shorelines. The policies state what the city would like to accomplish, and the regulations provide guidance as to how these policies are to be carried out. Typically policies state what the city should do and the regulations state what shall be done specifically under a set of policies. In the example quoted in the comments, the regulation is worded on page 48, Chapter 6 is "Use of car bodies, scrap building materials, asphalt from street work, or any discarded piles of equipment or appliances for the stabilization of shorelines **shall** be prohibited".
- Channel Migration Zone data for the Sultan area is currently not available. The Department of Ecology has contacted Snohomish County and they stated in an email dated January 10, 2008 from Terri Strandberg to David Pater that they have not completed their CMZ mapping and have not updated their checklist yet. Once this data is available, it can be added to the Sultan SMP at a future date.



- Mineral resource is a not an SMP designation, and therefore cannot be added to the SMP. The SMP does not propose commercial mining.

The following comments will be followed up with the City Council:

- On June 11, 2007 the city staff brought the issue of mining to the City Council after a meeting the Planning Board May 24 – at this meeting the staff asked that if the City Council agreed they could remove mining as a permitted commercial use and research language for recreational mining only to be added to the recreation section.
- On June 28, 2007 the SMP was taken to Council with a cover memo stating that mining was struck from the document with gold mining added as a recreational use in the Aquatic Zone – using the language recommended by the State Attorney General’s Office and DOE. The June 28 version of the document shows mining struck from the list of uses and recreational mining added in underline format to the recreation section. Council record shows that mining was removed and approved in an open City Council meeting, with the recommendation that wording for recreational mining be finalized in the formal DOE process. The June 28 meeting does not include any public comment regarding mining.
- At the July 12 City Council meeting, adoption of the SMP was done by consent agenda and the SMP was not discussed or commented on that night.
- Recreational mining will be further clarified by the City Council prior to the end of the 45 day comment period so that the Department of Ecology may complete their formal review process.

Deborah Knight

Sent: Friday, February 22, 2008 1:38 PM

Subject: FW: Sultan SMP gold mining additions (Ecology comments).

-----Original Message-----

From: Pater, David (ECY)

Sent: Thursday, July 05, 2007 3:27 PM

To: 'Rick Cisar'; 'Aubin Phillips'

Subject: FW: Sultan SMP gold mining additions (Ecology comments).

Rick and Aubin,

Below are some comments from the State Attorney general's office on the gold mining additions. I agree with them that we need to tighten up the language before it can be considered consistent with the SMP guidelines.

I recommend the following changes to chapter 6 to address consistency and the AG comments.

Policies

Page 42 Policy 3: first sentence: Add "gold" before prospecting. Remove second sentence concerning placer mining.

Page 42 Add the following policy: Removal of specific quantities of material through non-motorized mineral prospecting should not adversely affect natural river geomorphologic processes and should not result in no net loss of ecological functions.

Regulations

#2: Add: All gold prospecting shall comply with the WDFW Gold-Fish Pamphlet and applicable State Laws for non-motorized mineral prospecting.

Environments:

page 43 (Aquatic): Change exempt use to conditional use. The shoreline use table in Chapter 5 will also need to include non-motorized recreational gold mining as a conditional use.

Appendix A, Acronyms: Add WDFW

Since Rick is on vacation until later July and the Council is planning to adopt the SMP on the 12th; I assume the plan is to still deal with any changes within the formal review process?

Let me know if you have follow-up questions about these comments

Thanks

David

David Pater
Shorelands and Environmental Assistance
Department of Ecology

A-3

2/27/2008

3190 160th Avenue SE
Bellevue, WA 98008
(425) 649-4253

-----Original Message-----

From: Young, Tom (ATG)
Sent: Friday, June 29, 2007 2:36 PM
To: Pater, David (ECY); Harmony, Jim (ATG); Skowlund, Peter (ECY)
Subject: RE: Sultan SMP gold mining additions

Right off the bat I see two problems:

1. They have prospecting as an "exempt use" which is not appropriate as there is no statutory exemption for such a use. An SDP is required for the "removal of any sand, gravel, or minerals" worth more than 5,000.
2. The guidelines also require a CUP if the activity is in the CMZ. 173-26 241(3)(h)(ii)(E). They also need to incorporate the limitations on mining in the active channel per 173-26 241(3)(h)(ii)(D).

The SMP guidelines do address recreational gold mining per 173-26 241(3)(h). The mining section applies to the removal of "sand, gravel, soil, minerals, and other earth materials for commercial and other uses." They must meet the requirements of this section.

-----Original Message-----

From: Pater, David (ECY)
Sent: Tuesday, June 26, 2007 9:53 AM
To: Harmony, Jim (ATG); Young, Tom (ATG); Skowlund, Peter (ECY)
Subject: Sultan SMP gold mining additions

Enclosed is some additional language that Sultan proposes to add to their SMP concerning gold mining. The additions are underlined. I don't think this gold mining issue will be resolved on the Council Meeting on Thursday; but it would help me to receive some input by then.

Thanks

David

A-4

2/27/2008



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

February 14, 2008

RECEIVED
FEB 19 2008
BY:.....

Deborah Knight, City Administrator
City of Sultan
319 Main Street #200
Sultan, WA 98294

Subject: Public Comment Summary for the 2007 Sultan Shoreline Master Program Update

Dear Ms. Knight,

Enclosed is the public comment summary for the 2007 Sultan Shoreline Master Program (SMP) Update. This summary was generated from the Department of Ecology public comment period for the City SMP update. Only one individual commented on the SMP update. I have also enclosed the transcribed testimony and a copy of an email from Snohomish County that discusses a couple of the issues raised during the comment period.

Per WAC 173-26-120 (6) the City of Sultan has 45 days from the date of this letter to prepare a written response to the issues discussed in the enclosed comments.

Once we receive the comment responses, Ecology has 30 days to complete the formal SMP review process. This would include resolving any remaining SMP issues.

If you have any questions please give me a call at (425) 649-4253.

Sincerely,

David Pater
Shoreline Planner

DP:cja

cc: Aubin Phillips, BHC Consultants

A-S



2007 Sultan Shoreline Master Program Update Department of Ecology Public Comments.

The Department of Ecology public comment period opened December 28, 2007 and closed February 8, 2008.

Legal notice was published December 21, 2007 and January 2, 2008 in the Everett Herald and 70 public notices were mailed and emailed to an interested parties list.

One citizen submitted public comments on the Sultan SMP update. The citizen provided oral comments at the Department of Ecology public hearing held at Sultan City Hall January 8, 2008.

A Ms. Josie Fallgatter of Sultan provided testimony. Below is an issue summary of her comments:

Public Participation Process: The City SMP public participation process began in 2002 and has continued into 2007. It has been difficult to track the SMP changes in particular the issue of commercial mining. The city should have provided the public with an easier way to track document changes. Specific concerns were voiced with changes made to the mining section by the City Council.

Endangered Species Issues: Western Gray Squirrel should be listed in the SMP. Listed scientific names should be accompanied by their common names.

Channel Migration Zones: Additional information on river channel migration zones should be incorporated into the SMP.

A Mineral Resource shoreline environment designation should be included if the city anticipates any mining. City development code prohibits commercial mining.

SMP Goals & Policies: Some goals and policies use "should" in describing their intent. The use of should is non-sensical for a number of policies including not allowing bank armoring with car bodies and construction debris.

The actual text of the public comments is also enclosed.

Public Testimony from the Department of Ecology Public Hearing on the 2007 Sultan Shoreline Master Program held at Sultan City Hall January 8 2008.

Josie Fallgatter
13231 Trout Farm Road
Sultan, WA 98294

A private citizen.

The first comment has to do with the public participating in the process. It's been a long and frustrating process starting in 2002 or 2003 and has been nearly impossible to track the changes and SMP drafts, most notably the issue of commercial mining. The Planning Commission voted to leave commercial mining in the SMP as did the City Council and now it has been deleted and the only issue remaining is recreational mining.

At what point was that change made, how was it made and how is the public suppose to follow the different versions of drafts as they come along. I have followed line by line and compared at least 3 drafts of the plan. At some point the public needs an easier way to follow the plan. It needs to be laid out side by side and then line by line.

One of the changes that I don't believe was made was the endangered species. The western gray squirrel was included in some of the city plans, not in the SMP. It was also required that scientific names that are listed be accompanied by the common name and one of the names listed was that of the bat species that should be identified by their common names.

If the Council has any documentation on the channel migration zones, those should also be included in the SMP. Those were not included in the City of Sultan plan. Mineral Resource designation should be included if they are anticipating any kind of mining.

In the plan, some of the Goals and Policies referred to by the City as should do this or should do that. One of the shoulds in the plan was that bank armoring should not be allowed by means of car bodies, construction debris and appliances. There's no way that should should be a should, it allows the possibility that banks can be armored. The language pertaining to should, should be tightened up so that things that are completely non-sensical are not allowed within the city.

Pater, David (ECY)

Subject: FW: Channel Migration zone mapping & designated mineral resource areas.

From: Strandberg, Terri [mailto:terri.strandberg@co.snohomish.wa.us]
Sent: Thursday, January 10, 2008 5:18 PM
To: Pater, David (ECY)
Subject: FW: Channel Migration zone mapping & designated mineral resource areas.

David –

The county has not completed our CMZ mapping – see email from Randy Sleight below. The Uof W was under contract to rectify and digitize the historical photos but the student working on the project graduated and left so the UW bailed on the contract. We are pulling it together slowly with the remaining available budget.

Here's the link to the county's maps. Scroll down to resource / natural environment maps to find the mineral resource overlay.

http://www1.co.snohomish.wa.us/Departments/PDS/Divisions/LR_Planning/Information/Maps/mapsgisdata.htm#re

I have not been able to start on updating the checklist yet.

Terri

-----Original Message-----

From: Sleight, Randy
Sent: Thursday, January 10, 2008 4:41 PM
To: Strandberg, Terri
Subject: RE: Channel Migration zone mapping & designated mineral resource areas.

We do not have the CMZ done for either of these in any final map product, still looking at CMZ's on a case by case basis after site review and assessment using the code formulas. I did take the time to volunteer for the Eagles in the Sky Valley Aerie which I am a member of to shoot elevations from their City benchmark on a snowy Saturday before Christmas and before the December flooding to get a much better picture of what will happen in Sultan from City Hall/the Police Station east on Main Street out to US 2 during a major flood event. Most of Sultan is protected from a channel migration event on the Skykomish due to both Highway 2 and mainly the railroad tracks, but it is apparent that a backwater occurs under the railroad culverts to flood portion of town and also a backwater up the Sultan River compounds their flooding problems during high water.

-----Original Message-----

From: Strandberg, Terri
Sent: Thursday, January 10, 2008 9:29 AM
To: Sleight, Randy
Subject: FW: Channel Migration zone mapping & designated mineral resource areas.

Is there any CMZ data we can provide to assist DOE and Sultan?

-----Original Message-----

From: Pater, David (ECY) [mailto:DAPA461@ECY.WA.GOV]
Sent: Wednesday, January 09, 2008 3:15 PM
To: Strandberg, Terri
Subject: Channel Migration zone mapping & designated mineral resource areas.

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 REFERNCE THE
SNOHOMISH COUNTY'S SHORELINE MANAGEMENT MASTER PROGRAM
AND ADOPTING A NEW SECTION 16.96.010 CITY OF SULTAN'S
SHORLELINE 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

EXHIBIT A

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
SHORLELINE MASTER PROGRAM

Timeline for Sultan Shoreline Master Program

The Shoreline Master Program 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 2002. The City received 2 additional Grants from DOE for a total update SMP cost of approximately \$76,000.00. The City contracted with BHC Consultants to complete the update of the SMP and coordinate the program with the DOE.

August 6, 2002 Public Hearing; First meeting with the Planning Commission for the SMP update. Handouts of summary of proposed SMP for the City and reviewed work program that includes inventory, analysis, and goals that could be included in CPU.

February 18, 2003 Planning Commission Meeting SMP Introduction to Process, Goals and Policies, Visioning and Inventory.

March 18, 2003 Planning Commission Meeting SMP Inventory Goals Discussion.

May 18, 2004 Public Hearing Planning Commission SMP update by Berryman & Henigar, Paul Inghram

July 20, 2004 Planning Commission Meeting SMP update by Berryman & Henigar, Paul Inghram, \$38,000.00 Grant received to work on SMP phase III, Phase I & II submitted to Ecology.

October 19, 2004 Planning Commission Meeting Berryman & Henigar, Paul Inghram; SMP Phase 3 update.

January 4, 2005 Planning Commission Meeting, Berryman & Henigar, Aubin Philips update on Phase III of SMP, she stated Phase II was complete.

March 1, 2005 Planning Commission Meeting Berryman & Henigar, Paul Inghram, SMP update.

April 5, 2005 Planning Commission Meeting, Berryman & Henigar, Aubin Phillips SMP update.

May 3, 2005 Planning Commission Meeting Berryman & Henigar, Paul Inghram SMP update.

June 28, 2006 Planning Commission Meeting Berryman & Henigar, Paul Inghram SMP update and public notification process for the Open House that took place earlier at 6:30 PM.

September 20, 2005 Planning Commission Meeting SMP update Berryman & Henigar, Paul Inghram updates from Ecology comments from previous draft.

November 1, 2005 Planning Commission Meeting Update on SMP

February 21, 2006 – Public Hearing & Workshop conducted by Planning Commission on SMP

March 9, 2006 – Public Hearing conducted by City Council, 3 additional public meetings followed to ensure public participation.

March 23, 2006 Public Hearing on SMP Continuation of March 9, 2006

April 13, 2006 Public Hearing on SMP continuation of March 23, 2006 Public Meeting, process closed by City Council and Draft was forwarded to DOE for final review.

September 2006 Follow up letter from State Attorney Generals Office

April 2007 DOE and Attorney Generals Office forwards draft and revisions to City of Sultan.

April 17, 2007 – Planning Commission Meeting SMP progress discussed

May 1, 2007 Planning Commission Meeting SMP update meeting.

May 10, 2007 Public Hearing: Joint City Council and Planning Board Workshop on SMP

May 15, 2007 Public Open House for SMP

May 24, 2007 City Council Discussion Item

May 25, 2007 Comprehensive Plan/SEPA issued for 40-day comment period. Comment period ends July 6, 2007.

June 5, 2007 Planning Board Meeting Updates on SMP

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

June 14, 2007 Public Hearing City Council SMP

June 28, 2007 City Council First Reading SMP

July 12, 2007 City Council Second Reading SMP (Adopted ?)

August 7, 2007 Planning Commission Meeting SMP updates.

August 23, 2007 City Council Meeting SMP Discussion Item

March 7, 2008 *Updated*

Rick Cisar

From: Aubin Phillips [Aubin.Phillips@bhccconsultants.com]
Sent: Wednesday, August 01, 2007 1:27 PM
To: Rick Cisar
Subject: SMP changes made

Rick,

Attached are memos showing the changes we have made to the SMP. I'll also send you PDFs of the comments we have received. Some I only have hard copies of, so I can scan them to send to you.

Aubin Phillips, AICP

Associate Planner



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C-3

8/3/2007

MEMO

Date: June 20, 2005
To: David Pater, Ecology Project Officer
From: Paul Inghram, AICP
CC:
Subject: Sultan Characterization Report Comments

Thank you for sending the compilation of Ecology staff comments on the draft Sultan Characterization Report. We appreciate the recognition included and the critical comments provided will help finalize the report.

Meeting with you and Stephen Stanley, we agreed that there needs to be clarification regarding the comments – which are essential for meeting SMA requirements and achieving SMP adoption v. which are intended to be helpful, but may not be tied to explicit requirements. We also discussed the possibility of receiving a revised Ecology comment letter that is more suitable for public release prior to Council consideration.

After rereading the draft report and the Ecology comments I found the draft report to be fully consistent with the SMP guidelines. That's not to say that the report is perfect or that the comments are irrelevant. We appreciate receiving a comprehensive set of comments and found that them to be in the category of "suggestions" that may lend to further improvement of a report that already meets the requirements specified in the guidelines. In response to some of the Ecology comments:

- Some map features will be adjusted as suggested.
- Existing public access sites will be added to one or more of the inventory maps.
- New information about the Sultan stormwater plan will be added if available (our understanding is that the stormwater plan remains a draft and that no new information is available).
- A PHS habitat map may be added if time permits, although this information is readily available and can be referenced outside of the report.
- Sections 3.6 and 3.7 will be clarified to indicate where this information is provided and to indicate where the report recognizes degraded areas.
- The draft SMP designations will be added to Table 4.
- Incorrect references will be fixed.
- Stephen Stanley's suggestions will be added as discussed.
- There is no mapping information regarding channel migration zones available that is at a level of detail appropriate for Sultan (floodplain mapping is provided).

All other comments appear to be helpful, but not required, and may be addressed or included as time permits. Specifically, I would like to make two observations:

Paper maps are not entirely representative of GIS systems. The paper characterization report is a set of findings of which includes paper maps to make information more accessible. However, the analysis and the complete data set include the City's GIS system (as well as other

GIS data sources). It would be impossible to create paper maps that are fully representative of all available GIS data and it would be misleading to suggest to the reader that the paper maps are all inclusive. To address some of the comments that suggest additional mapping, we may include references to the City's GIS system in the report.

The SMP guidelines require cities and counties to follow one of three options for preparing a characterization report: (1) to operate within the framework of a regional environmental management plan, (2) "use available scientific and technical information," or (3) something of greater scope. [Section (B), page 33] While the guidelines reference a wide variety of ecological functions and possible data, many of the comments that reference sections of the guidelines appear to be made out of the context of Section (B). With the exception of including some of Stanley's landscape guidance, we were not attempting to operate under the "greater scope" provision. Additional or more specific information may not be available. Additionally, Section (E) clearly states that the purpose of the information is to support "no net loss." Expensive research to provide additional information, such as regarding pools and riffles for example, would be unlikely to further that objective.

Accordingly, we plan to complete the characterization report as noted above. Ecology previously provided comments on the Sultan draft SMP. We will proceed with revising the draft SMP per those comments and public comments. If you, as a newer project officer and based on the revised characterization report, have any additional comments on the draft SMP, please let us know right away.

Thank you for your help!



BEREAVEMENT
VERITAS

Berryman & Henigar

MEMORANDUM

Date: February 7, 2006
To: Sultan City Council
From: Aubin Phillips, Berryman & Henigar
Re: Final Changes to Sultan SMP

This memo reviews the most recent changes proposed to the Sultan Shoreline Master Program (SMP). The Shoreline Master Program has previously been updated to be consistent with new state rules affecting Shoreline Planning. The SMP includes goals, policies, and regulations for development within shoreline areas. In Sultan, shorelines include lands near the Skykomish, Wallace, and Sultan Rivers and associated wetlands. The SMP also includes recommendations for restoration of the shoreline environment.

The SMP has been through Planning Commission review, and we have worked to address additional comments from Ecology. Since Planning Commission review completed in November, several small changes are proposed to be made to the document to address comments received. Some comments to be addressed are editorial, and others add additional information and clarification.

Changes proposed to the Sultan SMP:

- Chapter 5
 - ✓ Add a statement that any undesignated areas is to automatically be considered Conservancy.
 - ✓ Change the purpose of the aquatic shoreline designation to include the floodway as an area "to protect, restore, and manage the unique characteristics and resources of the areas waterward of the ordinary high water mark and floodway."
 - ✓ Under the Urban Conservancy designation, change management policy 2 to include the statement that "The subdivision of property that would support additional shoreline modification or significant vegetation removal in the foreseeable future is to be prohibited."
- Chapter 6
 - ✓ Add a statement that setbacks apply to both permanent and temporary structures (such as wheeled vehicles), this is not currently specified.
 - Section on mining allowed in the aquatic designation – should this section be removed?
 - ✓ Edit environmental protection section to reference the specific protections in the CAO (by section), but not the entire chapter.
 - ✓ Change the wording "existing development" was to "primary structure"

- Restoration Plan
 - ✓ Add a section for timing of implementation based on funding and need.

Ecology Comments Addressed:

- Alice Schisel
 - ✓ Comments were addressed in previous drafts.
- Tim Gates
 - ✓ Several comments are being addressed in the CAO
 - ✓ Page 5, Mitigation sequence WAC reference to be updated
 - ✓ General Policies and Regulations – add definition of CMZ
 - ✓ General Policies and Regulations – separate policy 1 into two policies



MEMO

Date: April 11, 2006
To: David Pater
From: Aubin Phillips and Roger Wagoner
Subject: Restoration Plan and Cumulative Impacts Analysis Changes

This memo reviews the most recent changes made to the Restoration Plan and Cumulative Impacts Analysis in response to the Department of Ecology letter dated March 21, 2006.

Restoration Plan

- The Restoration Opportunity Areas by segment maps are referenced on page 4 as Figures 12-15
- Existing and ongoing restoration projects are identified on page 8
- A table with timelines and benchmarks tied to restoration goals has been added on page 13
- All tables have been labeled and referenced where appropriate
- Unclear statements in the vision statement and restoration vision have been clarified
- Restoration opportunities for segments A-D have been replaced with the more specific information from the Characterization Report
- The opportunities table has been changed to reflect associated wetland protection under the CAO and SMP.

Cumulative Impacts Analysis

- Changes have been made to the table at the end to clarify the statement in the first row for each segment – specifying which setbacks apply to which designations under the SMP and which apply under current zoning.
- The column titled “shoreline alterations from development” has been added to

Sultan SMP changes June 2006

Comments received from Alice Schisel and Tim Gates, Department of Ecology, September 2005
 Other comments received prior to this date have been addressed in previous drafts.

Current Policy or Regulation	Comment Received	New Policy or Regulation
<p>CH 5, page 8, policy 2 - Standards should be established or adopted for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications within the Urban Conservancy designation. These standards shall ensure that new development does not result in a net loss of ecological functions or further degrades other shoreline values.</p>	<p>Include a statement that new development requiring shoreline modification or vegetation removal should be <i>prohibited</i>.</p>	<p>CH 5, page 8, policy 2 - Standards should be established or adopted for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications within the Urban Conservancy designation. These standards shall ensure that new development does not result in a net loss of ecological functions or further degrades other shoreline values.</p>
<p>The purpose of the "aquatic" environment is to protect, restore, and manage the unique characteristics and resources of the areas waterward of the ordinary high-water mark.</p>	<p>Purpose of aquatic should include the <i>floodway</i>.</p>	<p>CH 5, page 11 - The purpose of the "aquatic" environment is to protect, restore, and manage the unique characteristics and resources of the areas waterward of the ordinary high-water mark and floodway.</p>
<p>No current policy</p>	<p>Need statement for any undesignated area to automatically be assigned conservancy.</p>	<p>CH 5, page 3-4, [redacted]</p>
<p>CH 6, page 10 & 44 - Mitigating measures may include, but are not limited to, increased buffers, setbacks for structures, enhanced buffers, reduced project scope, limitations on construction hours, and relocation of access. Projects may be denied if the proposal will</p>	<p>Setbacks apply to both <i>permanent and temporary</i> structures.</p>	<p>CH 6, page 10 & 44 - Mitigating measures may include, but are not limited to, increased buffers, setbacks for structures, enhanced buffers, reduced project scope, limitations on construction hours, limitations on hours of operation, and relocation of access. Projects may be denied if the</p>

<p>result in extirpation or isolation of a critical fish, wildlife, or plant species or its habitat.</p> <p>Nonstructural methods include setbacks of structures, relocation of the structure to be protected, ground water management, planning, bioengineering or "soft" engineered solutions, and regulatory measures to avoid the need for structural stabilization</p>		<p>proposal will result in extirpation or isolation of a critical fish, wildlife, or plant species or its habitat.</p> <p>Nonstructural methods include setbacks of structures, relocation of the structure to be protected, ground water management, planning, bioengineering or "soft" engineered solutions, and regulatory measures to avoid the need for structural stabilization</p>
<p>CH 6, page 11, regulation 2 - Ambient noise levels shall be a factor in evaluating a shoreline permit application. Shoreline developments that would increase noise levels to the extent that the natural character of the shoreline would be disrupted shall be prohibited.</p>	<p>The city should consider establishing <i>maximum noise levels</i> in each environment designation.</p>	<p>CH 6, page 11, regulation 2 - Ambient noise levels shall be a factor in evaluating a shoreline permit application. Shoreline developments that would increase noise levels to the extent that the natural character of the shoreline would be disrupted shall be prohibited.</p>
<p>No existing policy</p>	<p>For shoreline modifications, pursuant to WAC 173-26-231, geotechnical analysis are required for shoreline stabilization proposals</p> <p>To be consistent with the guidelines, these should be defined as "primary" and "accessory" instead of "major" and "minor" utilities.</p>	<p>Intro paragraph under Utilities section page 58 - Utilities include substations, pump stations, treatment plants, sanitary sewer outfalls, electrical transmission lines greater than 55,000 volts, water, sewer or storm drainage mains greater than eight (8) inches in diameter, gas and petroleum transmission lines, and submarine telecommunications cables. Minor utilities include local public water, electric, natural gas distribution, public sewer collection, cable and telephone service and appurtenances.</p>
<p>Reader's Key defines ecological functions Chapter 6, page 1</p>	<p>This is not consistent with what is found throughout the SMP</p>	<p>This section was removed from the SMP</p>

<p>CH 6, page 45 regulation 5 - New nonwater-dependent development, including single-family residences, that include structural shoreline stabilization shall not be allowed unless all of the conditions below apply:</p> <ul style="list-style-type: none"> • The need to protect the development from destruction due to erosion caused by natural processes, such as tidal action, currents, and waves, is demonstrated through a geotechnical report. • The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage. • Nonstructural measures, such as placing the development further from the shoreline, planting vegetation, or installing on-site drainage improvements and soft structural solutions such as bioengineering, are not feasible or not sufficient. • The structure will not cause significant impacts to functions and values of critical areas or properly functioning conditions for proposed, threatened, and endangered species. 	<p>This should comply with the requirement that new stabilization must be limited to protecting existing development.</p>	<p>CH 6, page 45 regulation 5 - New nonwater-dependent development, including single-family residences, that includes structural shoreline stabilization shall not be allowed unless all of the conditions below apply, [REDACTED]</p> <p>This language still allows shoreline stabilization for new development in certain instances. This is still inconsistent with WAC 173-26-221 (3) c (ii).</p> <p>Achieving no net loss would be more difficult if shoreline stabilization is allowed for new development.</p> <p>[REDACTED]</p> <ul style="list-style-type: none"> • The need to protect the development from destruction due to erosion caused by natural processes, such as tidal action, currents, and waves, is demonstrated through a geotechnical report. • The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage.
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		<ul style="list-style-type: none"> • Nonstructural measures, such as placing the development further from the shoreline, planting vegetation, or installing on-site drainage improvements and soft structural solutions such as bioengineering, are not feasible or not sufficient. • The structure will not cause significant impacts to functions and values of critical areas or properly functioning conditions for proposed, threatened, and endangered species.
<p>CH 6, page 32, regulation 5, fourth bullet Dredging w/in the floodway shall be permitted only to improve flood control</p> <p>CH 6, page 43, regulation 2 - Residential development shall not be approved if flood control or shoreline protection measures are necessary to create a residential lot or site area. Residential development shall be located and designed to avoid the need for structural shore defense and flood protection works in the foreseeable future.</p>	<p>This must demonstrate no net impact</p> <p>This regulation should direct that subdivision of land will be regulated to assure that new parcels will not need future shoreline stabilization based upon <i>geotechnical analysis</i>.</p>	<p>Not changed because this would be under the county jurisdiction.</p> <p>CH 6, page 43, regulation 2 - Residential development shall not be approved if geotechnical flood control or shoreline protection measures are necessary to create a residential lot or site area. Residential development shall be located and designed to avoid the need for structural shore defense and flood protection works in the foreseeable future.</p>
<p>No existing policies</p>	<p>Should something similar dike and levee policies 1 and 2 be included under the general shoreline modification policies as applies to shoreline modification?</p>	<p>CH 6, page 49, regulation 1 - Bulkheads may be</p> <p>CH 6, page 49, regulation 1 - Bulkheads may be</p>

<p>allowed only when evidence is presented which conclusively demonstrates that one of the following conditions exist:</p> <ul style="list-style-type: none"> • Serious river erosion threatens an established use or existing building(s) on upland property. • Bulkheads are necessary to the operation and location of water-dependent, water-related, or water-enjoyment activities consistent with this Master Program; provided that all other alternative methods of shore protection have proven infeasible. • A bulkhead is necessary to retain a landfill that has been approved consistent with the provisions of this Master Program. • Proposals for bulkheads must first demonstrate that use of natural materials and processes and non-structural or soft structural solutions to bank stabilization are unworkable. 	<p><i>existing primary structure rather than existing building?</i></p> <p>Under regulation one, should bullet four specify the need for a <i>geotechnical analysis</i>?</p>	<p>allowed only when evidence is presented which conclusively demonstrates that one of the following conditions exist:</p> <ul style="list-style-type: none"> • Serious river erosion threatens an established use or existing building(s) on upland property. • Bulkheads are necessary to the operation and location of water-dependent, water-related, or water-enjoyment activities consistent with this Master Program; provided that all other alternative methods of shore protection have proven infeasible. • A bulkhead is necessary to retain a landfill that has been approved consistent with the provisions of this Master Program. • Proposals for bulkheads must first demonstrate that use of natural materials and processes and non-structural or soft structural solutions to bank stabilization are unworkable.
<p>allowed only when evidence is presented which conclusively demonstrates that one of the following conditions exist:</p> <ul style="list-style-type: none"> • Bulkheads are necessary to the operation and location of water-dependent, water-related, or water-enjoyment activities consistent with this Master Program; provided that all other alternative methods of shore protection have proven infeasible. • A bulkhead is necessary to retain a landfill that has been approved consistent with the provisions of this Master Program. • Proposals for bulkheads must first demonstrate that use of natural materials and processes and non-structural or soft structural solutions to bank stabilization are unworkable. 	<p>Need to add reference to Jan. 1, 1992</p>	<p>CH 6, page 50, regulation 6 - Replacement bulkheads may be located immediately in front of the bulkhead to be replaced such that the two (2) bulkheads will share a common surface, except where the existing bulkhead has not been backfilled or has been abandoned and is in serious disrepair.</p>
<p>CH 6, page 50, regulation 6 - Replacement bulkheads may be located immediately in front of the bulkhead to be replaced such that the two (2) bulkheads will share a common surface, except where the existing bulkhead has not been backfilled or has been abandoned and is in serious disrepair.</p>		

<p>CH 6, page 4-5, policy 5 - All shoreline development shall be located and designed to avoid or minimize the need for shoreline stabilization measures and flood protection works, such as bulkheads, revetments, dikes, levees, or substantial site regrades. Where measures and works are demonstrated to be necessary, biostabilization techniques shall be the preferred design option unless demonstrated to be infeasible, or where other alternatives will provide less impact to the shoreline environment.</p>	<p>New developments should not allow <i>dredging</i>.</p>	<p>CH 6, page 4-5, policy 5 - All shoreline development shall be located and designed to avoid or minimize the need for shoreline stabilization measures and flood protection works, such as bulkheads, revetments, dikes, levees, or substantial site regrades. Where measures and works are demonstrated to be necessary, biostabilization techniques shall be the preferred design option unless demonstrated to be infeasible, or where other alternatives will provide less impact to the shoreline environment.</p>
<p>CH 6, page 31, policies 1 and 3 - Dredging of bottom materials for the primary purpose of obtaining fill material is prohibited.</p> <p>The Ecology preferred language is "Dredging waterward of the ordinary high water mark for the primary purpose of obtaining fill material is prohibited."</p> <p>This would be consistent with WAC 173-26-231 (3) (f).</p> <p>✓</p> <p>Dredge spoil disposal in water bodies should be discouraged except for habitat improvement.</p>	<p>This should be <i>prohibited</i> rather than discouraged.</p>	<p>CH 6, page 31, policies 1 and 3 - Dredging of bottom materials for the primary purpose of obtaining fill material is discouraged.</p> <p>Dredge spoil disposal in water bodies should be discouraged except for habitat improvement.</p>
<p>No existing policies</p>	<p>Agriculture and forestry practices not included in the SMP.</p> <p>Does the SMP include provisions for navigation rights?</p>	<p>No existing policies</p> <p>CH 6, page 31, policy 2 - Dredging operations should only be allowed for the purpose of maintaining the navigation channel. Dredging operations should not be used for the purpose of obtaining fill material. Dredging operations should be discouraged except for habitat improvement.</p>

<p>Mineral Resources</p> <p>Chinook or Bull trout</p> <p>Public Safety, Security, Utility</p> <p>Public Safety - purposes</p>	<p>Should the SMP demonstrate the need for gravel bar scalping?</p> <p>Will this not adversely impact the natural gravel transport?</p>	<p>Mining policies</p>
<p>Mining section left as is for now. All mining would occur outside of the city jurisdiction, section is being left in, in the event that the area is included in the city jurisdiction in the future.</p> <p>I can accept this section "as is" if mining is prohibited in all designations, except for aquatic on page 39 under Mining Environment Specific Regulations.</p> <p>This would be consistent with the language in this section.</p> <p>✓</p> <p>From the County: p. 60 LU – mineral lands are to be protected by ensuring that adjacent land uses do not interfere P. 62 LU – land cannot be designated as mineral resource is they are in city or UGAs Lands designated natural or conservancy cannot be mined, if they are in the 100 yr floodplain, w/in 300 feet of Chinook or Bull trout corridor, isolated islands less than 10 acres,</p>		



MEMO

Date: 10/31/06
To: David Pater, Department of Ecology
From: Aubin Phillips, BHC Consultants
Subject: SMP Attorney General Comments

1. Chapter 5, page 6: Standards for density or minimum frontage width, setbacks, lot coverage, and buffers.

A table has been added to the end of Chapter 5 specifying standards for each of the shoreline environments.

The riparian buffers have been changed to match those found in the Critical Area Regulations.

2. Chapter 6, page 14-15: Addressing the Channel Migration Zone

A bullet was added to flood regulation #2 to state that CZM information must be considered during review of shoreline flood management projects and programs.

Regulation #5 was changed to say that projects proposed in the floodplain must assure no potential impacts to the potential CZM as mapped by Snohomish County and found in the Appendix.

3. Chapter 6, page 18 – 19: Maximum height for development and public access plan

Public Access policy #12 was split into another policy to state that the underlying height limit that applies to the shorelines is 30 feet.

Chapter 8, The Restoration Plan is referenced to address public access.

4. Chapter 6, page 30: Check reference of Title 16 SMC for commercial development

Commercial development is regulated under Title 16.56 SMC; the full title section number has been added to this page.



5. Chapter 6, page 38-39: Identification of specific code provisions referenced for mining

The code section reference for critical areas relating to mining was removed since mining is not covered in the critical areas regulations.

6. Chapter 6, page 46: When shoreline modifications are allowed

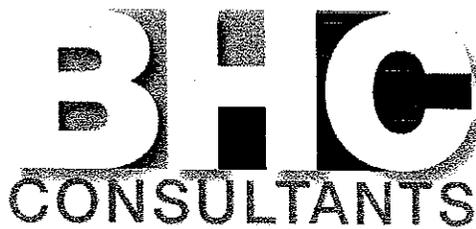
Shoreline modification policy #3 has been changed to say that modifications are only allowed when they wouldn't have a significant impact on adjacent or down current properties.

7. Chapter 6, page 56-58: Reference to Transportation Plan

A regulation was added saying that the City shall maintain its current transportation plans.

8. Chapter 7: Administrative Procedures

Administrative procedures have been added for issuing a cease and desist order, addressing civil and criminal penalties, and the appeal of a penalty.



MEMO

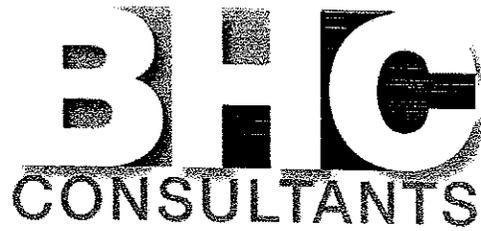
Date: December 2006
To: David Pater, Department of Ecology
From: Roger Wagoner and Aubin Phillips, BHC Consultants
Subject: SMP Attorney General Comments from December

Changes are listed by chapter below. Changes to the content of the chapter are highlighted in yellow, and changes that refer to appendices are highlighted in red.

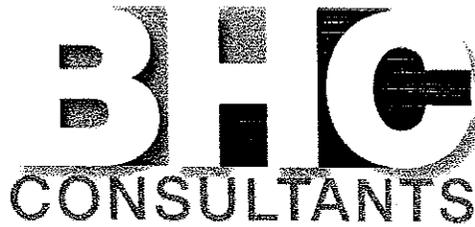
- Chapter 5 – Shoreline Development Standard Table p. 14
 - ✓ Riparian Setback and Building Setback were defined in notes under the table.
 - ✓ Setback, height, density, width and lot coverage amounts were added to the table under the Natural Environment designation that are similar to those found under Urban Conservancy since both allow single family residential development as a conditional use.
 - ✓ Changes were made to the Frontage Width and Building Setback under Urban Center
 - ✓ Along with the definition of riparian setback, added a note about critical area buffers applying outside of the shoreline jurisdiction.

- Chapter 6 – Stormwater p. 30
 - ✓ A regulation was added under Commercial Development about stormwater runoff similar to the regulation about stormwater runoff found in the parking section.

- Chapter 7 – Enforcement
 - ✓ On pages 18-20 the section on penalties was removed and replaced with two separate sections on civil penalties and criminal penalties were added following the requirement of WAC and RCW sections.
 - ✓ On p. 2 Planning Director was changed to say Community Development Director.



- Ordinances – Ch. 6 p. 12, Ch. 6 p. 14, Ch. 7 p. 1, Ch. 7 p. 18
 - ✓ Statements were added stating that the Critical Area Regulations, Flood Ordinances, Administration Ordinances, and Enforcement Ordinances are being incorporated into the SMP and that if there are conflicts, those that are the most protective of the ecological functions apply, and specific sections were then referenced below the statement.
 - ✓ Non-applicable sections of the Critical Area Regulations, Flood Ordinances, Administration Ordinances, and Enforcement Ordinances were removed from the appendices.



MEMO

Date: March 29, 2007
To: City of Sultan Planning Board
From: Roger Wagoner and Aubin Phillips, BHC Consultants
Subject: Sultan SMP Changes since April 2006

Many changes have occurred in the SMP within the last year. The majority of these changes are small and occur throughout the document, but there have also been some more substantial changes such as additions to policies and regulation in Chapter 5 and the incorporation of referenced ordinances throughout the document.

In April 2006, changes were made to the Restoration Plan and the Cumulative Impacts Analysis. Most of the changes made to these two sections were to add clarification statements and further detail to the existing information. The tables included in these sections were also added to and referenced where appropriate.

In June 2006 changes were made to chapters 5 and 6 based on comments from the Department of Ecology. Most of the changes were for clarification and to strengthen existing policies and regulations. Other changes were made to ensure that the policies and regulations are consistent with WAC guidelines.

In September 2006 we received additional comments from the State Attorney General's Office. This letter reviewed the requirements of ordinances that are incorporated into the SMP to satisfy guideline requirements, and the need to clearly cite these references throughout the document. This letter also requested that the SMP include specific density and setback requirements for the shoreline environments rather than using the underlying zoning. Last, this letter asked that the city include the enforcement procedures required by the WAC and RCW for civil and criminal penalties.

Sultan SMP changes March 2006

Comments received from Alice Schisel and Tim Gates, Department of Ecology, September 2005
 Other comments received prior to this date have been addressed in previous drafts.

Current Policy or Regulation	Comment Received	New Policy or Regulation
<p>CH 5, page 8, policy 2 - Standards should be established or adopted for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications within the Urban Conservancy designation. These standards shall ensure that new development does not result in a net loss of ecological functions or further degrades other shoreline values.</p>	<p>Include a statement that new development requiring shoreline modification or vegetation removal should be <i>prohibited</i>.</p>	<p>CH 5, page 8, policy 2 - Standards should be established or adopted for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications within the Urban Conservancy designation. These standards shall ensure that new development does not result in a net loss of ecological functions or further degrades other shoreline values.</p>
<p>The purpose of the "aquatic" environment is to protect, restore, and manage the unique characteristics and resources of the areas waterward of the ordinary high-water mark.</p>	<p>Purpose of aquatic should include the <i>floodway</i>.</p>	<p>CH 5, page 11 - The purpose of the "aquatic" environment is to protect, restore, and manage the unique characteristics and resources of the areas waterward of the ordinary high-water mark and floodway.</p>
<p>No current policy</p>	<p>Need statement for any undesignated area to automatically be assigned conservancy.</p>	<p>CH 5, page 3-4, [REDACTED]</p>
<p>CH 6, page 10 & 44 - Mitigating measures may include, but are not limited to, increased buffers, setbacks for structures, enhanced buffers, reduced project scope, limitations on construction hours, limitations on hours of operation, and relocation of access. Projects may be denied if the proposal will</p>	<p>Setbacks apply to both <i>permanent and temporary</i> structures.</p>	<p>CH 6, page 10 & 44 - Mitigating measures may include, but are not limited to, increased buffers, setbacks for [REDACTED], enhanced buffers, reduced project scope, limitations on construction hours, limitations on hours of operation, and relocation of access. Projects may be denied if the</p>

<p>proposal will result in extirpation or isolation of a critical fish, wildlife, or plant species or its habitat.</p> <p>Nonstructural methods include setbacks of [REDACTED], relocation of the structure to be protected, ground water management, planning, bioengineering or "soft" engineered solutions, and regulatory measures to avoid the need for structural stabilization</p>		<p>result in extirpation or isolation of a critical fish, wildlife, or plant species or its habitat.</p> <p>Nonstructural methods include setbacks of structures, relocation of the structure to be protected, ground water management, planning, bioengineering or "soft" engineered solutions, and regulatory measures to avoid the need for structural stabilization</p>
<p>CH 6, page 11, regulation 2 - Ambient noise levels shall be a factor in evaluating a shoreline permit application. Shoreline developments that would increase noise levels to the extent that the natural character of the shoreline would be disrupted shall be prohibited. [REDACTED]</p>	<p>The city should consider establishing <i>maximum noise levels</i> in each environment designation.</p>	<p>CH 6, page 11, regulation 2 - Ambient noise levels shall be a factor in evaluating a shoreline permit application. Shoreline developments that would increase noise levels to the extent that the natural character of the shoreline would be disrupted shall be prohibited.</p>
<p>[REDACTED]</p>	<p>For shoreline modifications, pursuant to WAC 173-26-231, geotechnical analysis are required for shoreline stabilization proposals</p>	<p>No existing policy</p>
<p>Intro paragraph under Utilities section page 58 - [REDACTED] utilities include substations, pump stations, treatment plants, sanitary sewer outfalls, electrical transmission lines greater than 55,000 volts, water, sewer or storm drainage mains greater than eight (8) inches in diameter, gas and petroleum transmission lines, and submarine telecommunications cables. [REDACTED] utilities include local public water, electric, natural gas distribution, public sewer collection, cable and telephone service and appurtenances.</p>	<p>To be consistent with the guidelines, these should be defined as "primary" and "accessory" instead of "major" and "minor" utilities.</p>	<p>Intro paragraph under Utilities section page 58 - Major utilities include substations, pump stations, treatment plants, sanitary sewer outfalls, electrical transmission lines greater than 55,000 volts, water, sewer or storm drainage mains greater than eight (8) inches in diameter, gas and petroleum transmission lines, and submarine telecommunications cables. Minor utilities include local public water, electric, natural gas distribution, public sewer collection, cable and telephone service and appurtenances.</p>
<p>This section was removed from the SMP</p>	<p>This is not consistent with what is found throughout the SMP</p>	<p>Reader's Key defines ecological functions Chapter 6, page 1</p>

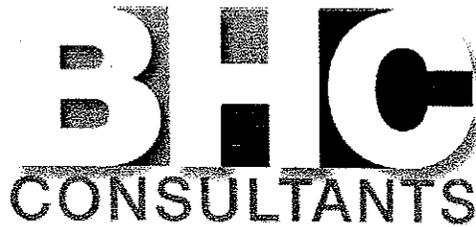
<p>CH 6, page 45 regulation 5 - New nonwater-dependent development, including single-family residences, that include structural shoreline stabilization shall not be allowed unless <i>all</i> of the conditions below apply:</p> <ul style="list-style-type: none"> • The need to protect the development from destruction due to erosion caused by natural processes, such as tidal action, currents, and waves, is demonstrated through a geotechnical report. • The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage. • Nonstructural measures, such as placing the development further from the shoreline, planting vegetation, or installing on-site drainage improvements and soft structural solutions such as bioengineering, are not feasible or not sufficient. • The structure will not cause significant impacts to functions and values of critical areas or properly functioning conditions for proposed, threatened, and endangered species. 	<p>This should comply with the requirement that new stabilization must be limited to protecting existing development.</p>	<p>CH 6, page 45 regulation 5 - New nonwater-dependent development, including single-family residences, that include structural shoreline stabilization shall not be allowed unless <i>all</i> of the conditions below apply:</p> <ul style="list-style-type: none"> • The need to protect the development from destruction due to erosion caused by natural processes, such as tidal action, currents, and waves, is demonstrated through a geotechnical report. • The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage. • Nonstructural measures, such as placing the development further from the shoreline, planting vegetation, or installing on-site drainage improvements and soft structural solutions such as bioengineering, are not feasible or not sufficient. • The structure will not cause significant impacts to functions and values of critical areas or properly functioning conditions for proposed, threatened, and endangered species.
<p>CH 6, page 45 regulation 5 - New nonwater-dependent development, including single-family residences, that include structural shoreline stabilization shall not be allowed unless <i>all</i> of the conditions below apply, [REDACTED]</p> <ul style="list-style-type: none"> • The need to protect the development from destruction due to erosion caused by natural processes, such as tidal action, currents, and waves, is demonstrated through a geotechnical report. • The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage. • Nonstructural measures, such as placing the development further from the shoreline, planting vegetation, or installing on-site drainage improvements and soft structural solutions such as bioengineering, are not feasible or not sufficient. • The structure will not cause significant impacts to functions and values of critical areas or properly functioning conditions for proposed, threatened, and endangered species. 	<p>This must demonstrate no net impact</p>	<p>CH 6, page 32, regulation 5, fourth bullet Dredging w/in the floodway shall be permitted only to improve flood control</p> <p>CH 6, page 43, regulation 2 - Residential development shall not be approved if flood control or shoreline protection measures are necessary to</p>
<p>Not changed because this would be under the county jurisdiction.</p>	<p>This regulation should direct that subdivision of land will be regulated to assure that new parcels will not need future shoreline stabilization based</p>	<p>CH 6, page 43, regulation 2 - Residential development shall not be approved if [REDACTED] flood control or</p>

<p>create a residential lot or site area. Residential development shall be located and designed to avoid the need for structural shore defense and flood protection works in the foreseeable future.</p>	<p>upon <i>geotechnical analysis</i>.</p>	<p>shoreline protection measures are necessary to create a residential lot or site area. Residential development shall be located and designed to avoid the need for structural shore defense and flood protection works in the foreseeable future.</p>
<p>No existing policies</p>	<p>Should something similar dike and levee policies 1 and 2 be included under the general shoreline modification policies as applies to shoreline modification?</p>	<p>CH 6, page 49, regulation 1 - Bulkheads may be allowed only when evidence is presented which conclusively demonstrates that one of the following conditions exist:</p> <ul style="list-style-type: none"> • Serious river erosion threatens an established use or existing building(s) on upland property. • Bulkheads are necessary to the operation and location of water-dependent, water-related, or water-enjoyment activities consistent with this Master Program; provided that all other alternative methods of shore protection have proven infeasible. • A bulkhead is necessary to retain a landfill that has been approved consistent with the provisions of this Master Program. • Proposals for bulkheads must first
<p>CH 6, page 49, regulation 1 - Bulkheads may be allowed only when evidence is presented which conclusively demonstrates that one of the following conditions exist:</p> <ul style="list-style-type: none"> • Serious river erosion threatens an established use or existing building(s) on upland property. • Bulkheads are necessary to the operation and location of water-dependent, water-related, or water-enjoyment activities consistent with this Master Program; provided that all other alternative methods of shore protection have proven infeasible. • A bulkhead is necessary to retain a landfill that has been approved consistent with the provisions of this Master Program. • Proposals for bulkheads must first 	<p>Under bulkhead regulation 1, should bullet one say existing <i>primary structure</i> rather than existing building?</p> <p>Under regulation one, should bullet four specify the need for a <i>geotechnical analysis</i>?</p>	<p>CH 6, page 49, regulation 1 - Bulkheads may be allowed only when evidence is presented which conclusively demonstrates that one of the following conditions exist:</p> <ul style="list-style-type: none"> • Serious river erosion threatens an established use or existing building(s) on upland property. • Bulkheads are necessary to the operation and location of water-dependent, water-related, or water-enjoyment activities consistent with this Master Program; provided that all other alternative methods of shore protection have proven infeasible. • A bulkhead is necessary to retain a landfill that has been approved consistent with the provisions of this Master Program.

<p>demonstrate that use of natural materials and processes and non-structural or soft structural solutions to bank stabilization are unworkable.</p>	<p>Need to add reference to Jan. 1, 1992</p>	<p>CH 6, page 50, regulation 6 - Replacement bulkheads may be located immediately in front of the bulkhead to be replaced such that the two (2) bulkheads will share a common surface, except where the existing bulkhead has not been backfilled or has been abandoned and is in serious disrepair.</p>
<p>that use of natural materials and processes and non-structural or soft structural solutions to bank stabilization are unworkable.</p>	<p>Change the word "upland" to "shoreland"</p>	<p>CH 6, page 50, regulation 6 - Replacement bulkheads may be located immediately in front of the bulkhead to be replaced such that the two (2) bulkheads will share a common surface, except where the existing bulkhead has not been backfilled or has been abandoned and is in serious disrepair.</p>
<p>CH 6, page 37, new policies 5, 6, 7</p>	<p>Landfill regulations should address disposal of dredge material in accordance with DNR</p>	<p>No existing policies</p>
<p>Shoreline Environment Specific Regulations - Landfill may be permitted as a Conditional Use. Landfill only applies to areas waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land.</p>	<p>Landfill regulations should address disposal of dredge material in accordance with DNR</p>	<p>Shoreline Environment Specific Regulations - Landfill may be permitted as a Conditional Use. Landfill only applies to areas waterward of the OHWM, in wetlands, or on uplands in a manner that raises the elevation or creates dry land.</p>

<p>[REDACTED]</p>	<p>New developments should not allow dredging.</p>	<p>CH 6, page 4-5, policy 5 - All shoreline development shall be located and designed to avoid or minimize the need for shoreline stabilization measures and flood protection works, such as bulkheads, revetments, dikes, levees, or substantial site regrades. Where measures and works are demonstrated to be necessary, biostabilization techniques shall be the preferred design option unless demonstrated to be infeasible, or where other alternatives will provide less impact to the shoreline environment.</p>
<p>CH 6, page 4-5, policy 5 - All shoreline development shall be located and designed to avoid or minimize the need for shoreline stabilization measures and flood protection works, such as bulkheads, revetments, dikes, levees, or substantial site regrades and [REDACTED]. Where measures and works are demonstrated to be necessary, biostabilization techniques shall be the preferred design option unless demonstrated to be infeasible, or where other alternatives will provide less impact to the shoreline environment.</p>	<p>This should be prohibited rather than discouraged.</p>	<p>CH 6, page 31, policies 1 and 3 - Dredging of bottom materials for the primary purpose of obtaining fill material is discouraged.</p>
<p>Dredge spoil disposal in water bodies should be discouraged except for habitat improvement.</p>	<p>Agriculture and forestry practices not included in the SMP.</p>	<p>No existing policies</p>
<p>CH 6, page 31, policies 1 and 3 - Dredging of bottom materials for the primary purpose of obtaining fill material is prohibited.</p> <p>Dredge spoil disposal in water bodies should be discouraged except for habitat improvement.</p> <p>The city doesn't anticipate these types of land uses within the city shorelines. They would be considered under the unclassified uses section.</p> <p>Already included</p>	<p>Does the SMP include provisions for navigation rights?</p>	<p>[REDACTED]</p>

<p>City of Astoria Department of Planning and Development 1000 Commercial Street, Suite 200 Astoria, Oregon 97103 Phone: 503.325.2200 Fax: 503.325.2201 www.ci.astoria.or.us</p>	<p>Should the SMP demonstrate the need for gravel bar scalping? Will this not adversely impact the natural gravel transport?</p>	<p>From the County: P. 60 LU – mineral lands are to be protected by ensuring that adjacent land uses do not interfere P. 62 LU – land cannot be designated as mineral resource is they are in city or UGAs Lands designated natural or conservancy cannot be mined, if they are in the 100 yr floodplain, w/in 300 feet of Chinook or Bull trout corridor, isolated islands less than 10 acres,</p>
<p>Mining policies</p>		



MEMO

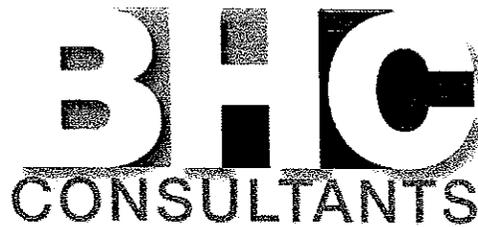
Date: January 8, 2007
To: David Pater, Department of Ecology
From: Roger Wagoner and Aubin Phillips, BHC Consultants
Subject: SMP Attorney General Comments

- Chapter 5 – Shoreline Development Standard Table
 - ✓ Riparian Setback and Building Setback were defined in notes under the table.
 - ✓ Setback, height, density, width and lot coverage amounts were added to the table under the Natural Environment designation that are similar to those found under Urban Conservancy since both allow single family residential development as a conditional use.
 - ✓ Along with the definition of riparian setback, added a note about critical area buffers applying outside of the shoreline jurisdiction.

- Chapter 6 – Stormwater
 - ✓ A regulation was added under Commercial Development about stormwater runoff similar to the regulation about stormwater runoff found in the parking section.

- Chapter 7 – Enforcement
 - ✓ The section on penalties was removed and replaced with two separate sections on civil penalties and criminal penalties were added following the requirement of WAC and RCW sections.

- Ordinances
 - ✓ A statement was added stating that the Critical Area Regulations are being incorporated into the SMP and exceptions were noted.
 - ✓ Non-applicable sections of the Critical Area Regulations, Flood Ordinances, Administration Ordinances, and Enforcement Ordinances were removed.



In December 2006 we received a follow up letter from the State Attorney General's Office. Comments in this letter addressed further refining the Shoreline Development Standards Table in Chapter 5 by defining a few terms and clarifying buffer requirements. We also received more specific language regarding incorporation of the referenced ordinances throughout the SMP and those found in the appendices, and we made sure to exclude specific sections which were in conflict or not applicable under SMA. We also went through the SMP and added statements that where there is a conflict between city regulations, those which are the most protective of the ecological functions will apply.

In January 2007 we received another letter from the State Attorney General's Office following up on a few remaining issues. These final changes required full citations for the incorporated ordinances including the full ordinance number and date. The incorporation language was clarified and appendices where the incorporated ordinances are located were referenced.

**SULTAN PLANNING BOARD
AGENDA ITEM COVER SHEET**

ITEM NO Staff Update Shoreline Master Program (SMP)
DATE: May 1, 2007
SUBJECT: Adoption schedule Shoreline Master Program
CONTACT PERSON: Rick Cisar, Director of Community Development

ISSUE: The issue before the Planning Board is a review of the changes recommended by the Department of Ecology (DOE) and the Attorney's General's (AG's) Office to the City's Draft Shoreline Master Program (SMP).

ACTION REQUESTED:

This is an informational item for the Planning Board and no action is required.

SUMMARY:

The majority of changes by DOE and the AG's Office are to Chapter's 5 and 6 . The changes in each of the Chapters are highlighted in green and are on the following pages and within identified section:

Chapter 5:

Pages 4 and 5 Urban Center Environment Areas Designated

Page 14 Shoreline Development Standards

Chapter 6

Page 5 General Environmental Impact Regulations, Sections 7 and 8.

Page 7 Water

Page 8 Plants and Animals

Page 12 Environmentally Sensitive Areas-General.

Page 14 Environmentally Sensitive Areas- Floodplain Management

Page 15 Floodplain Management Regulations.

Page 16, 17, and 18 Wetland Policies.

Page 18 Wetland Regulations

Page 19 Public Access

Page 22 Introduction, Specific Shoreline Use, and Shoreline Modification Policies and Regulations.

Page 30 and 31 Commercial Regulations

Page 31 Commercial Environmental Specific Regulations

Page 38 Landfill Regulations

Page 40 and 41 Parking Regulations

Page 43 Residential Development

Page 44 Residential Regulations

Page 48 Shoreline Modification Regulations – General
Page 52 Dikes and Levees Regulations
Page 54 Sign Regulation
Page 60 Utility Policies

Therefore, the April 2007 Draft provided to the Planning Board is the Final Draft of the SMP.

Staff has prepared a Schedule for Review and Adoption of the SMP which is included in the binder to Finalize the update of the SMP. Please note the Joint City Council and Planning Board Workshop scheduled for May 10, 2007.

A Department of Ecology representative and BHC Consultants will be attending the workshop to review the Final SMP Draft.

I have previously provided the Planning Board with a copy the Final April 2007 Draft of the updated Shoreline Master Program (SMP) for the City of Sultan. I have also prepared a brief summary for the Board of the development of the updated SMP and the role of the Planning Board, City Council, Consultants, Staff, Department of Ecology, and the State Attorney General's Office.

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 Board for the update was held in August of 2002. Since that first meeting, the consultants, Staff and the Planning Board conducted 10 Public Meetings, one Open House, and one Public Hearing in March of 2006. The Public Hearing conducted by the Planning Board was on the February 2006 Draft SMP. The Planning Board, 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 meetings to ensure and allow public participation and public comment on the draft document.



MEMO

Date: June 13, 2007
To: Rick Cisar, City of Sultan
From: Roger Wagoner and Aubin Phillips, BHC Consultants
Subject: Addition of Small Scale Mining and Recreational Prospecting to Sultan SMP

The mining section which refers to the mining of sand and gravel has been removed from the Sultan SMP; however the City Council would still like to see gold mining included in the SMP. Since the mining section has been removed, it is proposed that gold mining be included under Recreation Facilities section of Chapter 6 of the SMP. The Recreation Facilities section currently includes policies and regulations for parks, public access, buffers, trespass,

A policy could be added which states that Small Scale, Non-motorized, and Recreational Prospecting would be allowed given DNR access and approval by WDFW through a Hydraulic Project Approval (HPA). Compliance with the *Gold and Fish* pamphlet would also be required for placer mining and mineral prospecting. A regulation could be added that recreational mining shall only be allowed in the aquatic zone, and prospectors must also confirm with Snohomish County and other applicable agencies prior to recreational gold mining. The recreational Facilities Environments section would also need to be updated to reflect this change which is only allowed in the aquatic zone.

Once adopted into the SMP, the City would need to update the development code to reflect these changes during the next update.