

**SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET**

ITEM NO: A-6
DATE: July 10, 2008
SUBJECT: Shoreline Master Program – Proposed Dept. of Ecology Amendment
CONTACT PERSON: Deborah Knight, City Administrator *D. Knight*

ISSUE:

The issue before the City Council is to review and approve changes, proposed by the Department of Ecology, to remove all references to mining in the City's Shoreline Master Program as adopted by Ordinance No. 915-06.

The proposed changes are detailed in Attachment C of the Department of Ecology's May 30, 2008 letter to the City (Exhibit A).

STAFF RECOMMENDATION:

1. Remove all references to mining in the SMP including the applicable sections shown in strike out text in the June 28, 2007 SMP
2. Adopt the changes proposed by the DOE.
3. Direct staff to provide written notice to the Department of Ecology (DOE) of the Council's approval of the proposed changes.

SUMMARY:

The City of Sultan is finalizing the process to receive approval of its Shoreline Master Program from the Department of Ecology.

The Department of Ecology will approve Sultan's Shoreline Master Program (referenced in the May 30, 2007 DOE letter as "the proposed amendment") **subject to the City's agreement to remove all references to mining as detailed in Attachment C and applicable sections of text shown in strike out text in the June 28, 2007 Shoreline Master Program Update.**

Proposed Changes

The May 30, 2008 letter from DOE states:

“The removal of an exemption for non mechanized recreation mining and associated language from the SMP will need to be addressed as a condition of SMP approval. The Sultan City Council has already recommended that the SMP not address mining as an allowed or prohibited use. The proposed SMP would leave mining as an unclassified use subject to a shoreline conditional use permit. Current city development code prohibits commercial mining. If any shoreline mining proposal is approved by the City they will need to have Ecology [DOE] approval through the shoreline conditional use permitting process”

When are the Changes Effective?

Because changes are required, the City’s Shorelines Master Program (“amendment”) will not become effective until DOE receives written notice the City agrees to DOE’s proposed changes.

Ecology approval of the proposed amendments with required changes is effective on the date DOE receives written notice the City has agreed to the required changes.

Alternatives to DOE Proposed Changes

As provided in RCW 90.58.090(2) (e) (ii), the City may choose to submit an alternative to all or part of the changes required by DOE. If Ecology determines the alternative proposal is consistent with the purpose and intent of DOE’s original changes and with RCW 90.58, then the DOE will approve the alternative proposal and that action would be the final action on the Shoreline Master Program.

City staff do not have any proposed alternatives to all or part of the changes required by DOE.

Next Steps

Shoreline procedures rules (WAC 173-26-120(9)) require the City to publish notice that Ecology has taken final action on this “amendment”. The City must publish a public notice once DOE acknowledges receipt of the City’s written agreement to accept the changes. This notice will begin a 60-day appeal period.

To summarize, if the City agrees with the required changes, it must:

1. Notify DOE in writing (notice of agreement)
2. Wait to hear from DOE that they received the notice of agreement.
3. Publish a notice that Ecology has taken final action. This notice will begin the 60-day appeal period.
4. Forward two hard copies and one digital copy of the final SMP update to DOE.

BACKGROUND:

The proposed amendment is needed to create shoreline master program environment designations, policies and regulations unique to the City of Sultan. The City has been regulated under the Snohomish County SMP since 1974. The proposed amendment is needed to address the need for updated shoreline policies and regulations which reflect the current level of environmental protection and land use management provided by city comprehensive plan elements and other applicable city codes. It is also needed to meet the State Shoreline Master Program Guidelines (WAC 17-26).

The document is over 200 pages including appendices. The July 27, 2007 version of the SMP 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 (Exhibit B). 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 Council reviewed the public comment on March 13, 2008 and prepared a written response to comments in accordance with WAC 173-26-120 (6). Council further directed staff to remove gold mining from the SMP. Following are the meeting minutes from March 13, 2008.

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. Discussion was held regarding gold panning in the river and the need to remove the requirement for people to pay \$2,500 for recreational mining. Staff was directed to respond to DOE and remove gold mining.

DISCUSSION:

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. 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."

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.

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 DOE Changes to SMP (06/28/2007) to Remove all References to Mining

See Exhibit A – Attachment C

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 notify the Department of Ecology in writing.

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)

ALTERNATIVES:

The City Council must either notify DOE in writing that it has agreed to the required changes or submit an alternative to all or part of the changes required by DOE as provided in RCW 90.58.090(2) (e) (ii).

The larger question for the City Council is whether to continue to keep recreational gold prospecting as a conditional use in the Sultan SMP or leave mining as an unclassified use subject to a shoreline conditional use permit. If any shoreline mining proposal is approved by the City, the applicant will need to have DOE approval through the shoreline conditional use permitting process. There is no alternative to exempt this use under the State Shoreline Management Act.

RECOMMENDED ACTION:

1. Remove all references to mining in the SMP including the applicable sections shown in strike out text in the June 28, 2007 SMP
2. Adopt the changes proposed by the DOE.
3. Direct staff to provide written notice to the Department of Ecology (DOE) of the Council's approval of the proposed changes.

EXHIBITS:

- A – May 30, 2008 letter from DOE
- B – Ordinance No. 915-07
- C – Mark-up changes to Chapter 5, Shoreline Environments
- D – Mark-up changes to Chapter 6, Shoreline Policy and Regulations
- E - Mark-up changes to Chapter 7, Shoreline Administrative Procedures

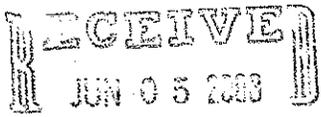


Exhibit A

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000

711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

May 30, 2008

CERTIFIED MAIL

The Honorable Carolyn Eslick
Mayor of Sultan
319 Main Street, No. 200
P.O. Box 1199
Sultan, WA 98294

Re: City of Sultan's Shoreline Master Program Comprehensive Update
(Local Ordinance # 915-06)

Dear Mayor Eslick:

I would like to take this opportunity to commend the City of Sultan for its efforts in developing the proposed 2007 Comprehensive Shoreline Master Program Update. It is consistent not only with the needs of Sultan, but also with the policy and procedural requirements of the Shoreline Management Act and the Shoreline Master Program Guidelines.

As we have already discussed with your staff, the Department of Ecology (Ecology) approves the proposed amendment, **subject to the City's agreement to the required change/changes detailed in Attachment C.** The findings and conclusions that support Ecology's decision are also enclosed as Attachment B.

Because a change is required, the amendment will not become effective until Ecology receives written notice that the City agrees to the change¹. The effective date of the amendment will be the date on which Ecology receives written notice of your agreement.

As a reminder, shoreline procedural rules² require the City to publish a notice that Ecology has taken final action on this amendment. Therefore, once Ecology acknowledges receipt of your written agreement, you must publish a public notice. This will initiate an appeal period that lasts 60 days.

¹ WAC 173-26-120(7)(b)(i)

² WAC 173-26-120(9)

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The Honorable Carolyn Eslick
May 30, 2008
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Finally, the City must forward two hard copies and one digital copy of the final Shoreline Master Program Update to Ecology.

To summarize, if the City of Sultan agrees with the required change, it must:

1. Notify Ecology in writing.
2. Wait to hear from Ecology that we received your notice of agreement.
3. Publish a notice that Ecology has taken final action. This notice will begin a 60-day appeal period.
4. Forward two hard copies and one digital copy of the final SMP update to Ecology.

Thank you again for your efforts. If you have any questions, please contact our regional planner David Pater at (425) 649-4253 or dapa461@ecy.wa.gov.

Sincerely,



Jay J. Manning
Director

Enclosures

cc: Deborah Knight, City Administrator, City of Sultan
Geoff Tallent, SEA Section Manager, Ecology NWRO
David Pater, Ecology NWRO
Peter Skowlund, Ecology HQ
Interested Parties

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 Phillips 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*

**ATTACHMENT B: FINDINGS AND CONCLUSIONS
FOR PROPOSED AMENDMENTS TO THE CITY OF SULTAN
SHORELINE MASTER PROGRAM**

SMP Submittal Accepted: November 13, 2007, Ordinance No. 915-06
Prepared by David Pater, on April 29, 2008

Brief Description of Proposed Amendments:

The City of Sultan is proposing a comprehensive update of its entire shoreline master program (SMP).

As part of the comprehensive SMP update, the City of Sultan is adopting by reference as part of the updated SMP, the following ordinance provisions. City of Sultan Municipal Code: Critical Areas Regulations 16.80 (Ordinance No. 918-06, November 4, 2006), City Flood Damage Prevention Code 17.04 & 17.08 (Ordinance No. 808-03 (March 9, 2003), used to satisfy SMA requirements. Specific provisions of the CAO not adopted by reference as part of the SMP include the following: SMC 16.80.040 Appeals, SMC 16.80.050 Exemptions, SMC 16.80.090 Building Setbacks, SMC 16.80.150 Buffers, SMC 16.80.160 Development in Buffers, SMC 16.80.200 E2 and G Landslide Hazard Areas, and 16.80.220 Reasonable Use Allowances.

Other references containing valuable information to applicants, but not considered necessary to fulfill SMA requirements and not considered a part of the SMP, include the following SMP appendices: City Administrative Code 16.120, Ordinance 630 & 2 (July 18, 1996); City Unified Development Code, 16.48, 16.56, 16.60, 16.92 (Ordinance 630 & 2 July 18, 1995) Signs 22.06 Ordinance 806-03 & 1).

FINDINGS OF FACT

Need for Amendment: The proposed amendment is needed to create shoreline master program environment designations, policies and regulations unique to the City of Sultan. The City has been regulated under the Snohomish County Shoreline Master Program since 1974. This SMP update is needed to address the need for updated shoreline policies and regulations which reflect the current level of environmental protection and land use management provided by city comprehensive plan elements and other applicable city code. It is also need to meet the State Shoreline Master Program Guidelines (WAC 17-26) and comply with the statutory deadline for comprehensive update of the SMP.

Amendment History, Review Process: The city indicates the proposed SMP update originated from a local planning process that began in May 2002 with a State shoreline planning grant. (See attachment A) The record shows that workshops open to the public were held on June 28, 2004, February 21, 2006, April 13, 2007, May 10 & 15, 2007 and a public hearing before the Planning Commission was held on August 6, 2002, May 18, 2004, February 21, 2006, March 9 & 23, 2006, April 13, 2006, May 10, 2007, June 14, 2007. Affidavits of publication provided by the City indicate notices of the hearings were published.

With passage of Resolution #915-06, on July 12, 2007, the City of Sultan authorized staff to forward the proposed SMP update to Ecology for approval.

The proposed SMP amendments were received by Ecology for state review and verified as complete on November 13, 2007. Notice of the state comment period was distributed to state task force members and interested parties identified by the City of Sultan on December 18, 2007, in compliance with the requirements of WAC 173-26-120..., and as follows: The state comment period began on December 28th and continued through February 8th 2008. On January 8, 2008 Ecology held a public hearing in Sultan to seek input on the proposed amendments. Notice of the hearing, including a description of the proposed amendment and the authority under which the action is proposed, the times and locations of the hearing/s and the manner in which interested persons may obtain copies and present their views was provided in the December 21, 2007 and January 2, 2008 edition/s of the Everett Daily Herald, Sultan's official newspaper of record. A total number of one individuals or organizations submitted comments on the proposed amendments. Ecology sent all oral and written comments it received to the City on February 14, 2008. On April 2, 2008 the City of Sultan submitted to Ecology its responses to issues raised during the state comment period. Ecology's own responses to issues raised during the comment period are available as part of the SMP amendment process record.

Consistency with Chapter 90.58 RCW: The proposed amendments have been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3), (4) and (5). The City has also provided evidence (see above) of its compliance with SMA procedural requirements for amending an SMP contained in RCW 90.58.090.

Consistency with "applicable guidelines" (Chapter 173-26 WAC, Part III): The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program guidelines (WAC 173-26-171 through 251 and -020 definitions). This included review of a SMP Submittal Checklist, which was completed by the City of Sultan.

Consistency with SEPA Requirements: The City submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance for the proposed SMP amendments on October 7, 2005; notice of the SEPA determination was published in the Everett Herald on October 7th 2005. Ecology did not comment on the DNS.

Other Studies or Analyses supporting the SMP update: Ecology reviewed the following reports, studies, map portfolios and data prepared for the City in support of the comprehensive SMP amendment:

These supporting documents include:

- *A September 2002 public participation plan,*
- *an October 2005 shoreline inventory and characterization,*
- *a July 2006 cumulative impacts analysis,*

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- *an October 2005 shoreline use analysis, and*
- *a July 2006 shoreline restoration plan*

Summary of Issues Raised During The Public Review Process: The City/County's SMP amendment drafting/public review process was for the most part not contentious. However a few issues arose out of the public review process:

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.

Considerable debate centered on the following topic. Commercial and Recreation Gold Mining

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 some of the language recommended by Ecology. The June 28th 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 Ecology process. The June 28 meeting does not include any public comment regarding mining.

On July 7th (2008) Ecology communicated to the City the following concerning recreation gold mining.

1. Prospecting as an "exempt use" 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 \$5,718.
2. The SMP guidelines 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.

- 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.
- On the March 13, 2008 City Council meeting, the Council directed staff to remove recreational gold mining from the SMP.

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Summary of Issues Identified by Ecology as Relevant To its Decision:

The removal of an exemption for non mechanized recreation mining and associated language from the SMP will need to be addressed as a condition of SMP approval. The Sultan City Council has already recommended that the SMP not address mining as an allowed or prohibited use. The proposed SMP would leave mining as an unclassified use subject to a shoreline conditional use permit. Current city development code prohibits commercial mining. If any shoreline mining proposal is approved by the City they will need to have Ecology approval through the shoreline conditional use permitting process.

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the City of Sultan's SMP proposal, subject to and including Ecology's required changes (itemized in Attachment C) is consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions). This includes a conclusion that the proposed SMP, subject to required changes, contains sufficient policies and regulations to assure that no net loss of shoreline ecological functions will result from implementation of the new master program amendments (WAC 173-26-201(2)(c)).

Consistent with RCW 90.58.090(4), Ecology concludes that those SMP segments relating to critical areas within Shoreline Management Act jurisdiction provide a level of protection at least equal to that provided by the City of Sultan's existing critical areas ordinance.

Ecology concludes that those SMP segments relating to shorelines of statewide significance provide for the optimum implementation of Shoreline Management Act policy (RCW 90.58.090(5)).

Ecology concludes that the City of Sultan has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that the City of Sultan has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 regarding public and agency involvement in the SMP amendment process.

Ecology concludes that the City of Sultan has complied with the purpose and intent of the local amendment process requirements contained in WAC 173-26-100, including conducting open houses and public hearings, notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.

Ecology concludes that the City of Sultan has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the City of Sultan's SMP amendment submittal to Ecology was complete pursuant to the requirements of WAC 173-26-110 and WAC 173-26-201(3) (a) and (h) requiring a SMP Submittal Checklist.

Ecology concludes that it has complied with the procedural requirements for state review and approval of shoreline master program amendments as set forth in WAC 173-26-120.

Ecology concludes that the City of Sultan has chosen not to exercise its option pursuant to RCW 90.58.030(2) (f) (ii) to increase shoreline jurisdiction to include buffer areas of all critical areas within shorelines of the state. Therefore, as required by RCW 36.70A.480(6), for those designated critical areas with buffers that extend beyond SMA jurisdiction, the critical area and its associated buffer shall continue to be regulated by the City's critical areas ordinance. In such cases, the updated SMP shall also continue to apply to the designated critical area, but not the portion of the buffer area that lies outside of SMA jurisdiction. All remaining designated critical areas (with buffers NOT extending beyond SMA jurisdiction) and their buffer areas shall be regulated solely by the SMP.

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendment with the required changes is consistent with the policy of the Shoreline Management Act, the applicable guidelines and implementing rules, once required changes set forth in Attachment C are approved by the City of Sultan. Ecology approval of the proposed amendments with required changes is effective on the date at which Ecology receives written notice that the City/County has agreed to the required changes.

As provided in RCW 90.58.090(2) (e) (ii) the City of Sultan may choose to submit an alternative to all or part of the changes required by Ecology. If Ecology determines that the alternative proposal is consistent with the purpose and intent of Ecology's original changes and with RCW 90.58, then the department shall approve the alternative proposal and that action shall be the final action on the amendment.

[Note: The findings and conclusions are NOT a staff report, they are required of Ecology to document the thought process in reaching a decision. They should be presented to the Director as a recommended set of findings and conclusions that become final upon approval by the Director. The place for articulating a recommended action by the Director should be contained in the SMP Amendment router (as a staff recommendation), prepared for the Directors approval briefing, not in these findings and conclusions.

If in the process, the director chooses not to take part of the recommended action, chooses to address an issue differently than recommended or chooses to take an action on something not covered by the findings and conclusions, then the findings and conclusions must be revised to reflect such change.]

Attachment C: Required changes to the Sultan Shoreline Master Program Update

Strike out text indicates existing sections that need to be removed from the SMP.

In addition all references to mining shall be removed. This would also include applicable sections shown in strike out text in the June 28, 2007 Shoreline Master Program Update.

Underlined text indicates sections that need to be inserted into the SMP.

Chapter 5 Shoreline Environments:

Shoreline Environment Requirements: Development Standards and Specific Shoreline Development Regulations table (page 13): Remove reference to mining activity shown in strike out text and foot note 3 (~~scalping of river bars may be permitted as a conditional use~~).

Chapter 6 Shoreline Policies and Regulations:

7. Mining: Remove mining policies and regulations shown in strike out text section from Chapter 6 (page 39).

9. Recreation Facilities (Non-motorized recreation gold mining) (pages 42-43): Remove the following policy and regulation:

~~Policy # 3: Small scale, non-motorized recreational 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 WDFW's Gold and Fish Pamphlet~~

~~Regulation # 2: Small scale, non-motorized recreational prospecting should only be allowed in the aquatic zone and all prospectors must confirm with Snohomish County and other applicable agencies prior to prospecting.~~

~~Aquatic: Small scale, non-motorized recreational prospecting may be permitted as an exempt use when consistent with the provisions of this Mater Program~~

Chapter 7 Shoreline Administrative Procedures:

II Shoreline Permit Requirements:

A 1: Exemptions from Substantial Development Permit Requirements:

Delete the \$5000 minimum shoreline exemption threshold cost for a Substantial Development Permit and increase it to \$5718. The following additional text for A-1 is recommended:

The Substantial Development dollar threshold on the adoption date of this Shoreline Master Program is \$5718. Under current law, the dollar threshold will be recalculated every five years by the Office of Financial Management (OFM). OFM will post updated dollar thresholds in the Washington State Register. See RCW 90.58 030(3) (e). The Legislature can change the dollar threshold at any time.

IV Variance and Conditional Use Permit Criteria: Add the following:

Section A, (Variances) third statement. Remove: "A variance is also required when the reasonable use provisions under the critical areas regulations is implemented within shoreline jurisdiction" The Critical areas reasonable use provision does not apply to the SMP (see Ch. 6, section 2).

Section A, Item 3. Criteria for Granting Variances: This section is equivalent to WAC 173 27-170 (review criteria for variance permits). There are a few inconsistencies that the following additions would address:

Item a: Remove "a" before "a reasonable use of the property"

Add the following from WAC 173-27-170 after item e:

Variance permits for development and/or uses that will be located waterward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)(b), or within any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:

(a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes all reasonable use of the property;

(b) That the proposal is consistent with the criteria established under subsection 3 of this section; and

(c) That the public rights of navigation and use of the shorelines will not be adversely affected.

Variances from the use regulations of the master program are prohibited.

A-9

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

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,
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SHORELINE MASTER PROGRAM

CITY OF SULTAN



SHORELINE MASTER PROGRAM

FINAL
JUNE 28, 2007

DRAFT

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Shoreline Environments

INTRODUCTION TO SHORELINE ENVIRONMENTS

The basic intent of a shoreline environment designation is to encourage development that will enhance the present or desired character of a shoreline. To accomplish this, segments of shoreline are given an environment designation based on existing development patterns, the biological and physical character of the shoreline, and the goals and aspirations of the community as expressed through this Master Program and the Sultan Comprehensive Plan, and consistent with the provisions of the shoreline guidelines.

Environment designations are categories that reflect the type of development that has or should take place in a given area. The Shoreline Master Program Guidelines recommend classifying shoreline environments using the following categories: "high intensity," "shoreline residential," "urban conservancy," "rural conservancy," "natural," and "aquatic."

These categories represent a relative range of development, from high to low intensity land use:

"High intensity" is appropriate for areas of high intensity water-oriented commercial, transportation, and industrial development.

"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.

"Rural conservancy" is intended for areas that protect ecological functions and conserve existing natural resources and that support, or have the capability to support, agricultural and recreational uses.

"Natural" is intended to protect shorelines that remain relatively free of human influence or that include intact or minimally degraded shoreline functions that cannot support human use.

And finally, "Aquatic" is a designation intended to protect, restore, and manage the areas waterward of the ordinary high water mark.

Additionally, local governments may establish an alternative environment designation(s), provided that it is consistent with the purposes and policies of the Shoreline Management Act and the Guidelines, including WAC 173-26211(5).

For each environment designation that is applied locally, there are management policies that are specific to that designation. Management policies are used as the basis for determining uses and activities that can be permitted in each environment designation. Specific development standards are also established, which specify how and where permitted development can take place within each shoreline environment.

The Need for Consistency

The Shoreline Management Act requires that policies for lands adjacent to the shorelines be consistent with the Shoreline Management Act, implementing rules, and the local shoreline master program. Conversely, local comprehensive plans provide the underlying framework within which master program provisions should fit. The Growth Management Act requires that shoreline master program policies be incorporated as an element of the comprehensive plan, and that all elements be internally consistent. In addition, under the Growth Management Act, all development regulations must be consistent with the comprehensive plan.

The Shoreline Guidelines identify three criteria for use in evaluating the consistency between master program environment designation provisions and the corresponding comprehensive plan elements and development regulations. In order for shoreline designation provisions, local comprehensive plan land use designations, and development regulations to be internally consistent, all three of the conditions below should be met:

- (a) Provisions not precluding one another.

Comprehensive plan provisions and shoreline environment designation provisions should not preclude one another. To meet this criterion, the provisions of both the comprehensive plan and the master program must be able to be met. Further, when considered together and applied to any one piece of property, the master program use policies and regulations and the local zoning or other use regulations should not conflict in a manner that all viable uses of the property are precluded.

(b) Use compatibility.

Land use policies and regulations should protect preferred shoreline uses from being impacted by incompatible uses. The intent is to prevent water oriented uses, especially water dependent uses, from being restricted on shoreline areas because of impacts to nearby non-water-oriented uses. To be consistent, master programs, comprehensive plans, and development regulations should prevent new uses that are not compatible with preferred uses from locating where they may restrict preferred uses or development.

(c) Sufficient infrastructure.

Infrastructure and services provided in the comprehensive plan should be sufficient to support allowed shoreline uses. Shoreline uses should not be allowed where the comprehensive plan does not provide sufficient roads, utilities, and other services to support them. Infrastructure plans must also be mutually consistent with shoreline designations. Where they do exist, utility services routed through shoreline areas shall not be a sole justification for more intense development.

City of Sultan Shoreline Environment Designations

This Master Program establishes five shoreline environments for the City of Sultan. These shoreline environments shall include the shorelines of the City of Sultan, including shorelands, surface waters and bedlands.

These environments are derived from the Sultan Shoreline Characterization, the Shoreline Comprehensive Plan and the environments recommended by the Shoreline Guidelines and the Shoreline Management Act. The Shoreline Characterization provides an inventory of natural and built conditions in the City's shoreline jurisdiction. The conditions identified in the inventory have been compared with the recommended shoreline environments and the most appropriate environments selected. The five environments are:

1. Urban Center
2. Shoreline Residential
3. Urban Conservancy
4. Natural
5. Aquatic

Each shoreline environment description includes a definition and statement of purpose, followed by designation criteria, management policies, and development standards. Any undesignated shoreline area is automatically assigned a conservancy environment designation.

Urban Center Environment

Purpose

The Urban Center Environment is intended to provide for high-intensity urban commercial development and associated structures in areas of existing urban development while protecting and restoring ecological functions. An additional purpose is to provide appropriate public access.

Designation Criteria

An Urban Center environment designation is appropriate for those shoreline areas that are physically separated from natural and aquatic environments (such as by a street, highway railroad or other structure), that currently support high-intensity uses related to commerce or transportation and are designated for commercial uses in the Sultan Comprehensive Plan. Waterfront areas should not be designated Urban Center.

Areas Designated

Description

The **Urban Center** designation is appropriate for a portion of the Sultan and Skykomish river shorelines, located in Segments B and C of the inventory, which is predominantly commercial and designated for future commercial use.

Inventory Segment	Area Designated	Shoreline Designation
<p>B</p> <p>SULTAN RIVER (confluence with Skykomish River)</p>	<p>Area east of First Street between Main Street and Alder Street</p>	<p>Urban Center</p>
<p>C</p> <p>SKYKOMISH RIVER (north bank from confluence with Wallace River to Confluence with Sultan River)</p>	<p>Area including and north of the BNSF and HWY 2 right-of-way and east from a point mid-block between First Street and Second Street</p>	<p>Urban Center</p>

Rationale

Urban Center designation is appropriate for areas of existing and planned commercial use that are physically separated from the river. These two areas of shoreline designated as Urban Center are zoned Urban Center under the Sultan development regulations and are already dominated by a variety of commercial uses that are oriented toward Highway 2 and Sultan's Main Street. These two areas are physically separated from the rivers by the BNSF railroad and Highway 2 to the south and by First Street to the west. The Urban Center designation is found in two segments. In the segment along the Highway 2 and

BNSF corridor, development would only occur on the upland side of the right-of-way and there would not be a need for an additional building setback. The segment along First Street is physically separated from the shoreline by a park and Snohomish County jurisdiction. There is potential for additional development, however by definition the area is located approximately 300 feet from the Sultan River and there would not be a need for an additional building setback.

Management Policies

1. Full utilization of existing Urban Center areas should be achieved before further expansion of the Urban Center environment designation is allowed.
2. First priority of uses shall be given to water dependent, water related and water enjoyment uses; however second priority shall be given to non-water uses as the area does not have direct access to the city's shorelines.
3. Policies and regulations shall assure no net loss of shoreline ecological functions as a result of new development. Where applicable, new development shall include environmental cleanup and restoration of the shoreline to comply with any relevant state and federal law.
4. Where feasible, visual and physical public access should be required as provided for in WAC 173-26-221(4)(d).
5. Aesthetic objectives should be implemented by means such as sign regulations, appropriate development siting, screening and architectural standards, and maintenance of natural vegetative buffers.

Shoreline Residential Environment

Purpose

The Shoreline Residential Environment is intended to accommodate residential development and associated structures that are consistent with the Shoreline Management Act. An additional purpose is to provide appropriate public access and recreation uses.

Designation Criteria

A Shoreline Residential environment designation is appropriate for those shoreline areas that are predominantly single-family or multifamily residential development or are planned and platted for residential development.

Areas Designated

Description

The **Shoreline Residential** designation is appropriate for portions of the Sultan River and Skykomish River shorelines that are predominantly residential and designated for future residential use.

Inventory Segment	Area Designated	Shoreline Designation
<p>A</p> <p>SULTAN RIVER (north of the confluence with the Skykomish River to the Sultan City Limits)</p>	<p>West bank of Sultan River west of the wastewater treatment plan and south of Reese Park</p>	<p>Shoreline Residential</p>
<p>C</p> <p>SKYKOMISH RIVER (north bank from confluence with Wallace River to Confluence with Sultan River)</p>	<p>North bank of Skykomish River including and east of Fifth Street and south of BNSF right-of-way</p>	<p>Shoreline Residential</p>
<p>UGA</p> <p>SULTAN RIVER (east bank north of City Limits within UGA)</p>	<p>East bank of Sultan River north of the Sultan City Limits, landward of the floodway.</p>	<p>Shoreline Residential</p>

Rationale

The segments of shoreline designated as Shoreline Residential are predominately residential and are planned for low to moderate residential density.

Management Policies

1. Standards for density or minimum frontage width, setbacks, and lot coverage limitations shall follow underlying zoning requirements for low to moderate residential. Buffers, shoreline stabilization, vegetation conservation, critical area protection, flood management, and water quality shall be set by the Sultan Municipal Code to assure no net loss of shoreline ecological functions, taking into account the environmental limitations and sensitivity of the shoreline area, the level of infrastructure and services available, and other comprehensive planning considerations.
2. Multifamily and multi-lot residential and recreational developments should provide public access and joint use for community recreational facilities.
3. Access, utilities, and public services should be available and adequate to serve existing needs and/or planned future development.

4. Commercial development is prohibited in the Shoreline Residential Environment, with the exception of limited home occupations and as a conditional use in underlying zoning.

Urban Conservancy Environment

Purpose

The purpose of the Urban Conservancy environment is to protect and restore ecological functions of open space, floodplain and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses.

Designation Criteria

Areas designated Urban Conservancy are those areas that are appropriate for and planned for development that is compatible with maintaining or restoring the ecological functions of the area, that are generally not suited for water-dependent uses if any of the following characteristics apply:

1. They are suitable for water-related or water-enjoyment uses;
2. They are open space, floodplain or other sensitive areas that should not be more intensively developed;
3. They have potential for ecological restoration;
4. They retain important ecological functions, even though partially developed; or
5. They have the potential for development that is compatible with ecological restoration.

Areas Designated

Description

The **Urban Conservancy** designation is appropriate for segments of the shorelines that have some urban uses and have potential for restoration of ecological functions and enhanced public access.

Inventory Segment	Area Designated	Shoreline Designation
A SULTAN RIVER (north of the confluence with the Skykomish River to the Sultan City Limits)	East bank of Sultan River north of Alder Street and south of the City Limits lying landward of the floodway and shoreline associated wetlands	Urban Conservancy

Inventory Segment	Area Designated	Shoreline Designation
B SULTAN RIVER (confluence with Skykomish River)	West and east banks of the Sultan River east of Albion Street and west of First Street, not including that area of the river designated Aquatic	Urban Conservancy
C SKYKOMISH RIVER (north bank from confluence with Wallace River to Confluence with Sultan River)	Area south of the BNSF right-of-way and west of Fifth Street, not including that area of the river designated Aquatic	Urban Conservancy
UGA SULTAN RIVER (east bank north of City Limits within UGA)	East bank of Sultan River north of the Sultan City Limits, inside of the floodway.	Urban Conservancy

Rationale

The shorelines designated Urban Conservancy are areas of lower-intensity urban development, such as parks, that provide for public access and may be appropriate for ecological restoration.

Management Policies

1. Uses that preserve the natural character of the area or promote preservation of open space, floodplain or sensitive lands either directly, or over the long term, should be the primary allowed uses. Uses that result in restoration of ecological functions should be allowed if the use is otherwise compatible with the purpose of the environment and the setting.
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. The subdivision of property that would support additional shoreline modification or significant vegetation removal in the foreseeable future is to be P.
3. Public access and public recreation objectives should be implemented whenever feasible and significant ecological impacts can be mitigated.
4. Water-oriented uses should be given priority over nonwater-oriented uses. For shoreline areas adjacent to commercially navigable waters, water-dependent uses should be given highest priority.

Natural Environment

Purpose

The purpose of the Natural environment designation is to protect those shoreline areas that are relatively free of human influence or that include intact or minimally degraded shoreline functions intolerant of human use. These systems require that only very low intensity uses be allowed in order to maintain the ecological functions and ecosystem-wide processes. Restoration of degraded shorelines should be sought within this environment.

Designation Criteria

Any shoreline area exhibiting the following characteristics should be designated Natural:

1. The shoreline is ecologically intact and therefore currently performing an important, irreplaceable function or ecosystem-wide process that would be damaged by human activity;
2. The shoreline is considered to represent ecosystems and geologic types that are of particular scientific and educational interest; or
3. The shoreline is unable to support new development or uses without significant adverse impacts to ecological functions or risk to human safety.

Such shoreline areas include largely undisturbed portions of shoreline areas such as wetlands, estuaries, unstable bluffs, coastal dunes, spits, and ecologically intact shoreline habitats.

“Ecologically intact shorelines,” as used here, means those shoreline areas that retain the majority of their natural shoreline functions, as evidenced by the shoreline configuration and the presence of native vegetation. Generally, but not necessarily, ecologically intact shorelines are free of structural shoreline modifications, structures and intensive human uses. In forested areas, they generally include native vegetation with diverse plant communities, multiple canopy layers, and the presence of large woody debris available for recruitment to adjacent water bodies. Recognizing that there is a continuum of ecological conditions ranging from near natural to totally degraded and contaminated, this term is intended to delineate those shoreline areas that provide valuable functions for the larger aquatic and terrestrial environments that could be lost or significantly reduced by human development.

Areas Designated

Description

The Natural environment designation is appropriate for much of the Sultan River within the City Limits. Most of this area is in public ownership as part of Osprey and Reese parks, both of which contain large areas of natural vegetation and wetlands.

Inventory Segment	Area Designated	Shoreline Designation
<p style="text-align: center;">A</p> <p style="text-align: center;">SULTAN RIVER (confluence with Skykomish River)</p>	<p>Reese Park on the west side of the Sultan River</p> <p>East bank the Sultan River from the Aquatic area east to the edge of the floodway or dense native vegetation and wetland plant communities, whichever is more inclusive, from Alder Street to the City Limits and including wetlands adjacent to Winters Creek that are within the Shoreline area</p>	<p style="text-align: center;">Natural</p>
<p style="text-align: center;">D</p> <p style="text-align: center;">Wallace River (North Bank)</p>	<p>Cemetery Park on the North Side of the Skykomish River. A wide area of intact riparian forest with significant in-stream habitat. Includes two acres of wetlands.</p>	<p style="text-align: center;">Natural</p>

Rationale

The shorelines designated Natural are generally, ecologically intact shorelines with few modifications or structures, and have a greater potential for restoration.

Management Policies

1. Any use that would substantially degrade the ecological functions or natural character of the shoreline area should not be allowed.
2. The following new uses should not be allowed in the "natural" environment:
 - Commercial uses,
 - Agricultural uses,
 - Industrial uses,
 - Nonwater oriented recreation; or
 - Roads, utility corridors, and parking areas that can be located outside of shoreline areas designated as "natural."

3. Single family residential development may be allowed as a conditional use within the "natural" environment if the density and intensity of such use is limited as necessary to protect ecological functions, and the use is consistent with the purpose of the environment.
4. Commercial forestry may be allowed as a conditional use in the "natural" environment provided it meets the conditions of the State Forest Practices Act and its implementing rules and is conducted in a manner consistent with the purpose of this environment designation.
5. Scientific, historical, cultural, educational research uses, and low intensity water-oriented recreational access uses may be allowed, provided that no significant ecological impact on the area will result.
6. New development or significant vegetation removal that would reduce the capability of vegetation to perform normal ecological functions should not be allowed. Subdivision of property in a configuration that, to achieve its intended purpose, will require significant vegetation removal or shoreline modification that adversely impacts ecological functions should not be allowed. That is, each new parcel must be able to support its intended development without significant ecological impacts to the shoreline ecological functions.

Aquatic Environment

Purpose

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.

Designation Criteria

Lands waterward of the ordinary high-water mark should be designated Aquatic environment.

Areas Designated

Description

Portions of the Sultan, Skykomish and Wallace rivers waterward of the ordinary high water mark (OHWM) (and within the jurisdiction of this Master Program) are appropriate to be designated Aquatic.

Rationale

These areas are waterward of the ordinary high water mark.

Management Policies

1. New over-water structures should be allowed only for water-dependent uses, public access, or ecological restoration, or for transportation or utility crossing for which there is no feasible alternative.
2. The size of new over-water structures should be limited to the minimum necessary to support the structure's intended use.
3. Multiple use of over-water facilities should be encouraged in order to reduce the impacts of shoreline development and increase effective use of water resources.
4. All developments and uses on navigable waters or their beds should be located and designed to minimize interference with surface navigation, to consider impacts to public views, and to allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration.
5. Uses that adversely impact the ecological functions of critical freshwater habitats should not be allowed except where necessary to achieve the objectives of the legislative findings, overarching policies, and shoreline use preferences that provide the foundation for the Shoreline Management Act (RCW 90.58.020), and then only when their impacts are mitigated according to the sequence described in WAC 173-26-201(2)(e) as necessary to assure no net loss of ecological functions.
6. Shoreline uses and modifications should be designed and managed to prevent degradation of water quality and alteration of natural hydrographic conditions.

Shoreline Environments and Specific Shoreline Developments

Chapter 6 of this Master Program establishes policies and regulations for a range of selected types of shoreline developments and activities. For each of these developments or activities, a determination is made on whether it can be permitted by a Shoreline Substantial Development Permit, a Shoreline Conditional Use Permit, or whether it is prohibited in the different shoreline environments.

Shoreline Environment Requirements: Development Standards and Specific Shoreline Development Regulation

	SHORELINE ENVIRONMENT DESIGNATION				
	Urban Center	Shoreline Residential	Urban Conservancy	Natural	Aquatic
Boating Facility					
• Boat Launch Ramps	CU	CU	CU	P	CU
• Docks	P	P	P	P	P
• Dry Boat Storage	CU	CU	CU	CU	P
• Marinas	P	P	P	P	P
Clearing and Grading	A	A	CU	CU	P
Commercial Development ¹					
• Water-dependent	A	P	CU	P	CU
• Water-related	A	P	CU	P	CU
• Water-enjoyment	A	P	CU	P	CU
• Nonwater-oriented	A	P	P	P	P
Dredging	P	P	P	P	CU
Dredge Spoil Disposal	P	CU	CU	CU	CU
Instream Structures	P	P	P	P	CU
Landfill ²	P	P	P	P	CU
Mining ³	P	P	P	P	CU
Parking ⁴	A	CU	CU	CU	P
Recreation Facilities ⁵	CU	CU	CU	CU	CU
Residential Development ⁶	A	A	CU	CU	P
Shoreline Modification					
• Bulkheads	CU	CU	CU	CU	CU
• Dikes and Levees	CU	CU	CU	CU	CU
• Revetments	P	CU	CU	CU	CU
Signs ⁷	A	CU	CU	CU	CU
Stormwater Facilities	A	A/CU ⁸	CU	CU	P
Transportation	A	A/CU ⁸	CU	CU ⁹	CU
Utilities	A	A/CU ⁸	CU	CU	CU

A = May be permitted (i.e., allowed) subject to a Shoreline Substantial Development Permit conditions and provisions contained in this Master Program.

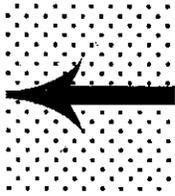
CU = May be permitted (i.e., allowed) as a conditional use.

P = Not an allowed use in this environment.

Notes

1 Over-water development is P, except as provided for in Chapter 6.

- 2 This activity can only be permitted in association with an approved shoreline development.
- 3 ~~Waterward of the ordinary high water mark, scalping of river bars may be permitted as a conditional use as provided for in Chapter 6.~~
- 4 This activity can only be permitted in association with an approved shoreline development; parking as a primary use, except in the Urban Center environment, is P.
- 5 Waterward of the ordinary high water mark, no recreational buildings or structures shall be built, except water-dependent and/or water-enjoyment structures as follows: ramps, bridges, and viewing platforms.
- 6 Over-water development is P.
- 7 Signs shall comply with the specific requirements set forth in Chapter 6 and shall be permitted only in association with an approved shoreline development.
- 8 Stormwater facilities, transportation facilities, and utility facilities are permitted when associated with a development that is consistent with the provisions of this Master Program, otherwise these uses are may be permitted as a conditional use when consistent with the provisions of this Master Program.
- 9 Transportation only permitted when the road, parking or utility corridor cannot be located outside the Natural Environment per WAC 173-26-211(5)(a)(ii)(B)



Shoreline Development Standards

	SHORELINE ENVIRONMENT DESIGNATION				
	Urban Center	Shoreline Residential	Urban Conservancy	Natural	Aquatic
Riparian Buffer Setback*	50ft	150 ft	150 ft	200 ft	n/a
Building Setback**	0 ft****	20 ft	20 ft	20 ft	n/a
Building Height Limit	50 ft	30 ft	30 ft	30 ft	n/a
Density	n/a	6 du/acre	6 du/acre	6 du/acre	n/a
Frontage Width	20-100 ft	40***-60 ft	40***-60 ft	60ft	n/a
Lot Coverage	90%	35%	35%	35%	n/a

*Riparian Buffer Setbacks function as a setback from the shoreline, and are to be measured from the OHWM. Outside of the shoreline jurisdiction Critical Area Regulation buffers apply as required by SMC 16.80.150.

**Building Setbacks function as an additional setback for construction activities that is measured from the end of the riparian setback.

***In PUDs only

****The Urban Center Environment is physically separated from the shoreline. One segment is separated by the Highway 2/BNSF corridor right-of-way. The other segment is set back almost 300 feet and physically separated by a park, Snohomish County jurisdiction, and First Street.

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City of Sultan Shoreline Environment Designation Map

The City of Sultan Shoreline Environment Designations depicts the areas under the jurisdiction of this Master Program and graphically portrays the boundaries of the City's five environment designations. There shall be only one official copy of this map, which shall be kept by the Administrator. This official copy shall be available for public inspection at all times during normal business hours. Unofficial copies shall be included as part of all distributed copies of this Master Program.

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6

Shoreline Policies and Regulations

INTRODUCTION

Based upon the goals established in this Master Program (Chapter 4), the following policies and regulations apply to uses, developments and activities in the shoreline area of Sultan. The policies and regulations are divided into two categories to reflect how they apply to the overall shoreline jurisdiction and within the various shoreline environments:

- *General Policies and Regulations*
- *Specific Shoreline Use and Shoreline Modification Policies and Regulations*

General Policies and Regulations

The General policies and regulations apply to all uses and activities that may occur within the shoreline jurisdiction *regardless of the Shoreline Master Program environment designation*. These policies and regulations provide the overall framework for the shoreline's management. These regulations are intended to be used in conjunction with the more specific use and activity policies and regulations in the Sultan Shoreline Master Program. General policies and regulations have been developed for the following:

1. Environmental Impacts
2. Environmentally Sensitive Areas: General
3. Environmentally Sensitive Areas: Floodplains
4. Environmentally Sensitive Areas: Wetlands
5. Public Access

In addition to the *General Policies and Regulations* listed in this chapter, all developments in the Skykomish River shoreline area must comply with the policies for shorelines of statewide significance. Those policies are listed in Chapter 3.

4. Dredge spoil disposal on land should occur in areas where environmental impacts will not be significant.

Dredging and Dredge Spoil Regulations

1. Applications for shoreline dredging and dredge spoil disposal shall provide, at a minimum, the following information:
 - a) Physical, chemical, and biological analysis of material to be dredged, including material composition, particle size distribution, volume and amount, organic content, source of material, volatile solids, chemical oxygen demand (COD), grease and oil, oxygen and heavy metals, nutrients, sulfides and biological organisms, both permanent and migratory/transitory.
 - b) Dredging technique, schedule, frequency, hours of operation, and procedures.
 - c) Method of dredge spoil disposal, including the location, size, capacity and physical characteristics of the soil disposal area, transportation method and routes, hours of operation, and schedule.
 - d) Location and stability of bedlands adjacent to proposed dredging area.
 - e) Hydraulic analyses, including current flows, direction, and projected impacts. Hydraulic modeling studies are required for large scale, extensive dredging projects.
 - f) Assessment of water quality impacts.
 - g) Biological assessment including migratory, seasonal, and spawning factors.
2. Dredging and dredge spoil disposal shall be permitted only where it is demonstrated that the proposed actions will not:
 - a) Result in significant damage to water quality, fish, and other essential biological elements, and will not adversely alter natural drainage and circulation patterns, currents, river flows, or reduce floodwater capacities, or adversely impact properly functioning conditions for proposed, threatened or endangered species or the functions and values of critical areas.
3. Proposals for dredging and dredge spoil disposal shall include all feasible mitigating measures to protect habitats and to minimize adverse impacts such as turbidity, release of nutrients, heavy metals, sulfides, organic materials, or toxic substances, depletion of oxygen, disruption of food chains, loss of benthic productivity, and disturbance of fish runs and important localized biological communities.
4. Dredging and dredge spoil disposal shall not occur in wetlands, except if the wetland alteration policies and regulations in this chapter are followed. Dredging and dredge spoil disposal in wetlands can occur for the purposes of enhancing valuable wetland functions. A design prepared by a qualified wetland scientist is required prior to allowing dredging and/or disposal of dredge spoils into a wetland.

5. Dredging within the floodway shall be permitted only:
 - For navigational purposes;
 - In conjunction with a water-dependent use;
 - As part of an approved habitat improvement project;
 - To improve flood control, water flow or water quality, provided that all dredged material shall be contained and managed so as to prevent it from reentering the water;
 - ~~For mining and/or mineral extraction;~~
 - In conjunction with a bridge, utility, navigational structure, or instream structure, for which there is a documented public need and where other feasible sites or routes do not exist.
6. When dredging is permitted, the dredging shall be the minimum necessary to accommodate the proposed use.
7. Dredging shall utilize techniques that cause minimum dispersal and broadcast of bottom material; hydraulic dredging shall be used wherever feasible in preference to agitation dredging.
8. Dredged spoil material may be disposed at approved upland sites. If these upland sites are dry lands and fall within shoreline jurisdiction, the disposal of dredge spoils shall be considered grading and must be consistent with all applicable provisions of this Master Program. If these upland sites are associated wetlands, then the disposal of dredge spoils shall be considered "Landfill" and must be consistent with all applicable provisions of this Master Program.
9. Depositing dredge spoils within water and riparian management zones shall be allowed only by Shoreline Conditional Use for one of the following reasons:
 - For wildlife habitat improvements;
 - To correct problems of material distribution that are adversely affecting fish resources; or
 - When land disposal alternatives are more detrimental to shoreline resources than depositing it in water areas.
10. If suitable alternatives for land disposal are not available or are infeasible, water disposal sites shall be identified consistent with the following criteria:
 - Disposal will not interfere with geohydraulic processes;
 - The dredge spoil has been analyzed by qualified personnel and found to be minimally or nonpolluting;

- Aquatic life will not be adversely affected; and
 - The site and method of disposal meets all requirements of applicable regulatory agencies.
11. The City may impose reasonable limitations on dredge disposal operating periods and hours and may require buffer strips at land disposal sites.

Dredging Environment Specific Regulations

Aquatic: Dredging may be permitted as a Shoreline Conditional Use.

Dredge Spoil Disposal Environment Specific Regulations

Aquatic, Urban Conservancy, Shoreline Residential and Natural: Dredge soil disposal may be permitted as a Shoreline Conditional Use.

Urban Center: Dredge soil disposal shall be a permitted use when associated with a development that is consistent with the provisions of this Master Program.

5. INSTREAM STRUCTURES

Instream structures function for the impoundment, diversion, or use of water for hydroelectric generation and transmission (including both public and private facilities), flood control, irrigation, water supply (both domestic and industrial). Instream structures can also function for recreational or fisheries enhancement and for the discharge of effluent. Both the structures themselves and their support facilities are covered by this section. This applies to their construction, operation and maintenance, as well as the expansion of existing structures and facilities.

Instream Structure Policies

1. Location and Design Features

- Applications for instream structures should clearly document the suitability of the proposed site and alternative locations for the specific type of development, including alternative locations. Such site suitability analysis should thoroughly consider the environmental effects of the proposed facilities at the primary site and at alternative sites.
- All instream structures should be designed to permit natural transport of bed load materials.
- Instream structures and their support facilities should be designed to minimize removal of riparian vegetation and the necessity of massive shore defense structures.

- All nonwater-oriented facilities associated with instream structures, such as staging and storage areas, switching yards, utility transmission lines and in many cases power houses, should be located outside of shoreline jurisdiction.
- In determining the appropriateness of hydroelectric development, the recommendations and conclusions of the Northwest Power Planning Council (1988) or equivalent state-adopted site ranking study should be considered.
- Mitigation should be required for loss of fisheries and wildlife resources, natural systems including wetlands, and other sensitive areas. No net loss in critical area function, value, or acreage should occur as a result of instream structures and properly functioning conditions for proposed, threatened or endangered species shall be conserved. When required, mitigation measures should be properly planned and monitored to ensure their effectiveness.
- When possible, instream structures should be designed and constructed to insure public access to and along the shoreline, in accordance with the public access policies and regulations contained in this Master Program. Existing public access and recreational opportunities should be retained, enhanced, or replaced.

Instream Structures Regulations

1. Instream structures may be permitted as a shoreline conditional use.
2. All permit applications shall contain, at a minimum, the following:
 - A site suitability analysis that provides sufficient justification for the proposed site. The analysis must fully address alternative sites for the proposed development.
 - The applicant must address the need for the project.
 - Proposed location and design of the instream structure, accessory structures, and access/service roads.
 - Provision for public access to and along the affected shoreline and proposed recreational features at the site, where applicable.
 - A plan that describes the extent and location of vegetation that is proposed to be removed to accommodate the proposed facility, and any site revegetation plan required by this Master Program.
 - A hydraulic analysis prepared by a licensed professional engineer which sufficiently describes the project's effects on floodway hydraulics, including potential increases in base-flood elevation, changes in stream velocity, and the potential for re-direction of the normal flow of the affected river.

- Biological resource inventory and analysis that sufficiently describes the project's effects on fisheries and wildlife resources, prepared by a professional biologist.
- Provision for erosion control, protection of water quality, and preservation of fishery and wildlife resources during construction.
- Long-term management plans that described, in sufficient detail, provisions for protection of in-stream resources during construction and operation. The plan shall include means for monitoring its success.

3. Structural Development

- Instream structures shall be designed, located, and constructed in such a manner as to avoid extensive topographical alteration.
- Instream structures that divert water shall return flow to the stream in as short a distance as possible.
- All instream structures shall be designed to permit the natural transport of bedload materials.
- Powerhouses associated with hydroelectric facilities shall be located a minimum of fifty (50) feet from the floodway, provided that this does not apply to raceways.

Instream Structure Environment Specific Regulations

Aquatic: Instream structures may be permitted as a Shoreline Conditional Use.

6. LANDFILL

Landfill is the placement of soil, rock, existing sediment or other material (excluding solid waste) to create new land, tideland or bottom land area along the shoreline below the OHWM, or on wetland or upland areas in order to raise the elevation.

Landfill Policies

1. Landfills waterward of the floodway should be discouraged and only allowed when necessary to facilitate water-dependent uses consistent with this Master Program for necessary river crossings and for projects beneficial to the environment.
2. The perimeter of landfills should be designed to avoid or eliminate erosion and sedimentation impacts, both during initial landfill activities and over time.
3. Where permitted, landfills should be the minimum necessary to provide for the proposed use and should be permitted only when tied to a specific development proposal that is permitted by the Master Program. Speculative landfill activity should be prohibited.

4. Mitigation for wetland impacts must be implemented pursuant to wetland policies and regulations contained in this Shoreline Master Program.

Landfill Regulations

1. Applications for landfill permits shall include the following:
 - a) Proposed use of the landfill area;
 - b) Physical, chemical, and biological characteristics of the fill material;
 - c) Source of landfill material.
 - d) Method of placement and compaction;
 - e) Location of landfill relative to natural and/or existing drainage patterns;
 - f) Location of the landfill perimeter relative to the floodway;
 - g) Perimeter erosion control or stabilization means;
 - h) Type of surfacing and runoff control devices; and
 - i) Location of wetlands or other sensitive areas.
2. Landfill waterward of the floodway shall be permitted as a shoreline conditional use only:
 - a) In conjunction with a water-dependent use permitted under this Master Program.
 - b) In conjunction with a bridge, utility or navigational structure for which there is a demonstrated public need and where no feasible upland sites, design solutions, or routes exist.
 - c) As part of an approved shoreline restoration project; or
 - d) For fisheries, aquaculture, or wildlife habitat enhancement projects.
 - e) Pier or pile supports shall be utilized in preference to landfills. Landfills for approved road development in floodways or wetlands shall be permitted only if pile or pier supports are proven structurally infeasible.
 - f) Landfills shall only be permitted in conjunction with a specific development already permitted by this Master Program or proposed simultaneously as part of a Shoreline Conditional Use Permit application. Speculative landfills are prohibited.
3. Landfill shall be permitted only where it is demonstrated that the proposed action will not:

- Result in significant damage to water quality, fish, and/or wildlife habitat.
 - Adversely alter natural drainage and current patterns or significantly reduce floodwater capacities.
4. Where landfills are permitted, the landfill shall be the minimum necessary to accommodate the proposed use.
 5. Dredging and dredge material disposal shall be done in a manner which avoids or minimizes significant ecological impacts and impacts which cannot be avoided should be mitigated in a manner that assures no net loss of shoreline ecological functions.
 6. Dredging waterward of the ordinary high-water mark for the primary purpose of obtaining fill material shall not be allowed, except when the material is necessary for the restoration of ecological functions. When allowed, the site where the fill is to be placed must be located waterward of the ordinary high-water mark.
 7. Disposal of dredge material on shorelands or wetlands within a river's channel migration zone shall be discouraged. In the limited instances where it is allowed, such disposal shall require a shoreline conditional use permit.
 8. Disposal of dredge material shall be done in accordance with the Washington State DNR Dredge Material Management Program. DNR manages disposal sites through a Site Use Authorization (SUA), all other required permits must be provided to DNR prior to the DNR issuing a SUA for dredge disposal.
 9. Landfills shall be designed, constructed, and maintained to prevent, minimize, and control all material movement, erosion, and sedimentation from the affected area. Landfill perimeters shall be designed and constructed with silt curtains, vegetation, retaining walls, or other mechanisms to prevent material movement. In addition the sides of the landfill shall be appropriately sloped to prevent erosion and sedimentation, both during initial landfill activities and afterwards.
 10. Fill materials shall be clean sand, gravel, soil, rock, or similar material. Use of polluted dredge spoils and sanitary landfill materials are prohibited. The developer shall provide evidence that the material has been obtained from a clean source prior to fill placement.
 11. Landfills shall be designed to allow surface water penetration into aquifers, if such conditions existed prior to the fill.

Landfill Environment Specific Regulations

Landfill may be permitted as a shoreline 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.

7. MINING

Mining is the removal and primary processing of naturally occurring materials from the earth for economic use. For purposes of this Master Program, "processing" includes screening, crushing, and stockpiling of materials removed from the site. Mining activities also include in-water dredging activities related to mineral extraction. Processing does not include general manufacturing, such as the manufacture of concrete.

Mining Policies

1. Only the mining of sand and gravel from river bars should be permitted, providing that all appropriate permits are secured for the proposed activity and the activity is consistent with this SMP and protective of endangered, threatened, or sensitive species. All other mining activities should be encouraged to locate outside shoreline jurisdiction.
2. Mining should not be allowed in unique and fragile areas, and all areas where negative impacts to endangered, threatened, or sensitive species may occur.
3. Mining activities should allow the natural shoreline systems to function with a minimum of disruption during their operation and should return the site to as near natural a state as possible upon completion.
4. All impacts shall be mitigated, and where possible, shoreline enhancement should also be encouraged.

Mining Regulations

1. Mining operations landward of the OHWM are prohibited.
2. Mining waterward of the OHWM is prohibited, except for scalping of river bars, which may be permitted as a shoreline conditional use, provided the proposed activity: secures all necessary permits; is consistent with the City's critical area regulations; the removal of the specified quantities of the sand and gravel will not adversely affect the natural process of gravel transportation of the river system; is protective of endangered, threatened, or sensitive species; and that in any one year, the mining activity removes no more than one-half of the material that is predictably replaced by deposition each year.
3. Excavation of sand, gravel, and other river materials by the open pit method is prohibited.
4. All mining impacts shall be mitigated, and where possible, shoreline enhancement shall be encouraged.

Mining Environment Specific Regulations

Aquatic: Mining may be permitted as a Shoreline Conditional Use.

Urban Center, Shoreline Residential, Urban Conservancy, Natural: Mining is prohibited.

8. **PARKING**

Parking is the use of land for the purpose of accommodating motor vehicles, motorized equipment, or accessory units, such as trailers. Land used for this purpose is leveled, cleared, and often covered with an impermeable surface.

Parking Policies

1. Parking in shoreline areas should be minimized.
2. Parking within shoreline jurisdiction should directly serve a permitted use on the property and should be sensitive to the adjacent shorelines and properties.
3. Parking facilities in shoreline areas should be located and designed to minimize adverse impacts including those related to stormwater runoff, water quality, visual qualities, public access, and vegetation and habitat maintenance.
4. Encourage the use of pervious materials in parking facilities.
5. Landscaping should consist of native vegetation in order to enhance the habitat opportunities within the shorelines area.
6. Discourage location of parking facilities in sensitive areas.

Parking Regulations

Parking for specific land use activities within the City of Sultan is subject to the requirements and standards set forth in the Sultan Municipal Code (Chapter 16.60 SMC, Ordinance 630 § 2, 1995, 7/18/95 – Appendix D). In addition, the following parking requirements shall apply to all developments within shoreline jurisdiction.

1. The location of parking areas in or near sensitive areas shall be avoided.
2. Parking in shoreline areas must directly serve an approved shoreline use.
3. Parking areas within shoreline jurisdiction shall be designed and landscaped to minimize adverse impacts upon adjacent shorelines and abutting properties. The landscaping shall consist of native vegetation, to be planted within one (1) year after completion of construction and provide an effective screening three (3) years after planting. Adequate screening or landscaping for parking lots shall consist of one or more of the following:
 - A strip 5 feet wide landscaped with trees, shrubs, and groundcover.
 - A building or enclosed structure.
 - A strip of land not less than 2.5 feet in width that is occupied by a continuous wall, fence, plant material, or combination of both; which shall be at least 3.5 feet high at time of installation. The plant material shall be evergreen and spaced not more than 1.5 feet on center if pyramidal in shape, or not more than 3 feet if wider in branching habit. If the plant material is used in

conjunction with a wall or fence meeting the minimum height requirements then said material may be of any kind and spacing.

The requirement for screening may be waived by the Administrator, where screening would obstruct a significant view from public property or public roadway.

4. All landscaping shall be designed to provide biofiltration functions for runoff from the parking area.
5. Alternatives to conventional storm water treatment, such as use of pervious materials, shall be considered in order to minimize impacts due to runoff and the need for storm water treatment. The city shall refer to the Ecology Storm Water Manual as adopted in SMC 16.92.010(D), Ordinance 630 § 2 -1995, 7/18/1995, (Appendix D) to deal with runoff and non-point source pollution.
6. All landscaping must be maintained in a neat and orderly manner. In no event shall such landscape areas be used for the storage of materials or parking of automobiles, or recreational or other vehicles.
7. Parking facilities shall not be permitted over the water.

Parking - Environment Specific Regulations

Urban Conservancy, Shoreline Residential and **Natural**: Parking may be permitted as a Shoreline Conditional Use and the following additional requirements shall apply.

1. Parking as a primary use shall be prohibited within the shoreline jurisdiction.
2. Parking or storage of recreational vehicles or travel trailers as a primary use shall be prohibited in all shoreline environment jurisdictions.
3. Parking shall be located on the landward side of the development unless parking is contained within a permitted structure. Where there is no available land area on the landward side of the development, parking shall extend no closer to the shoreline than a permitted structure.

Urban Center: Parking shall be a permitted use when consistent with the provisions of this Master Program.

9. RECREATIONAL FACILITIES

Recreational development provides opportunities for the refreshment of body and mind through forms of play, sports, relaxation, amusement, or contemplation. It includes facilities for passive recreational activities, such as hiking, photography, viewing, and fishing. It also includes facilities for active or more intensive uses such as parks, campgrounds, and golf courses. This section applies to both publicly- and privately-owned shoreline facilities intended for use by the public or a private club, group, association, or individual.

Recreational Facilities Policies

1. The coordination of local, state, and federal recreation planning should be encouraged so as to mutually satisfy recreational needs. Shoreline recreational developments should be consistent with all adopted park, recreation, and open space plans.
2. Shoreline areas with a potential for providing recreation or public access opportunities should be identified for this use and acquired by lease or purchased and incorporated into the public park and open space system.
- ~~1. Small scale, non-motorized, recreational 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 WDFW's Gold and Fish Pamphlet.~~
3. The linkage of shoreline parks, recreation areas, and public access points in a linear system, such as hiking paths, bicycle paths, and scenic drives should be encouraged.
4. Recreational developments should be located and designed to preserve, enhance, or create scenic views and vistas.
5. The use of jet-skis and similar recreational equipment should be restricted to special areas. This type of activity should be allowed only where no conflict exists with other uses and wildlife habitat.
6. All recreational developments should make adequate provisions for:
 - Vehicular and pedestrian access, both on-site and off-site.
 - Proper water, solid waste, and sewage disposal methods.
 - Security and fire protection for the use itself and for any use-related impacts to adjacent private property.
 - The prevention of overflow and trespass onto adjacent properties.
 - Buffering of such development from adjacent private property or natural area.

Recreational Facilities Regulations

1. Valuable shoreline resources and fragile or unique areas, such as wetlands and accretion shore forms, shall be used only for non-intensive and nonstructural recreation activities.
- ~~1. 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.~~
- 3.2. For recreation developments such as golf courses and playfields that require the use of fertilizers, pesticides, or other chemicals, the applicant shall submit plans demonstrating the methods to be used to prevent these chemical applications and resultant leachate.

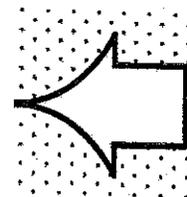
from entering adjacent water bodies. Vegetation buffer strips and, if possible, shade trees shall be required between the rivers, streams or wetlands and recreation developments that use fertilizers, pesticides, or other chemicals. The Administrator shall determine the maximum width necessary for buffer strips. Buffers shall not be less than ~~twenty-five~~ fifty (2550) feet wide, measured on a horizontal plane, perpendicular to the floodway edge. The developer shall also be required to leave a chemical-free swath at least one hundred (100) feet in width next to water bodies and wetlands. (See also Environmental Impact Regulations – Water).

3. Recreational facilities shall make adequate provisions, such as screening, buffer strips, fences, and signs, to prevent overflow onto adjacent private properties.
4. Waterward of the ordinary high water mark, no recreational buildings or structures shall be built, except water-dependent and/or water-enjoyment structures such as follows: docks, bridges, and viewing platforms. Such uses may be permitted as a shoreline conditional use.
5. Proposals for recreational development shall include adequate facilities for water supply, sewage, and garbage disposal.

Recreational Facilities Environments

Aquatic, Urban Center, Urban Conservancy, Shoreline Residential and Natural:
Recreation facilities may be permitted as a Shoreline Conditional Use when consistent with the provisions of this Master Program.

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



9. RESIDENTIAL DEVELOPMENT

Residential development refers to one or more buildings, structures, lots, parcels, or portions of parcels that are used or intended to be used to provide a place of abode for human beings. Residential development includes single family residences, duplexes, other detached dwellings, multifamily residences, apartments, townhouses, mobile home parks, other similar group housing, condominiums, subdivisions, planned unit developments, and short subdivisions. Residential development also includes accessory uses and structures such as garages, sheds, tennis courts, swimming pools, parking areas, fences, cabanas, saunas, and guest cottages. Residential development does not include hotels, motels, or any other type of overnight or transient housing or camping facilities.

Note: A Shoreline Substantial Development permit is not required for construction of a single family residence by an owner, lessee, or contract purchaser for his own use or the use of his family. However, such construction and all normal appurtenant structures must otherwise conform to this Master Program. In addition, when applicable, all residential development is subject to the Shoreline Variance and shoreline conditional use requirements of this Master Program. For example, a Shoreline Variance will be required for any residential development that proposes to locate within the shoreline environment setbacks established in Chapter 5 of this Master Program.

Uses and facilities associated with residential development, which are identified as separate use activities in this Master Program, such as clearing and grading and landfill are subject to the regulations established for those uses in this section. Clearing and grading may be exempted from the Shoreline Substantial Development Permit (SSDP) requirement, provided it is associated with an exempted single family residence and the following conditions are met: the clearing and grading activity is confined to the construction site and grading does not exceed 250 cubic yards.

Residential Policies

1. In accordance with the Public Access requirements in Chapter 6, residential developments of three (3) or more dwelling units should provide dedicated and improved public access to the shoreline.
2. Residential development and accessory uses should be prohibited over the water.
3. New subdivision development should be encouraged to cluster dwelling units in order to preserve natural features, minimize physical impacts, and provide for public access to the shoreline.
4. In all new subdivisions and planned residential developments, joint use shoreline facilities should be encouraged.
5. Accessory development should be designed and located to blend into the site as much as possible. Accessory uses and structures should be located landward of the principal residence when feasible.
6. Residential development should apply best management practices in developing surface and storm water facilities. The city shall refer to the Ecology Storm Water Manual as adopted in SMC 16.92.010(D), Ordinance 630 § 2 – 1995, 7/18/95, (Appendix D) to deal with runoff and non-point source pollution.

Residential Regulations

1. Residential development is prohibited waterward of the OHWM and within setbacks set within each shoreline environment designation. Riparian setbacks are specified for each shoreline environment designation in Chapter 5.
2. Residential development shall assure no net loss of ecological functions.
3. Residential development shall not be approved if geotechnical analysis demonstrates that 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.
4. If wetlands or other environmentally sensitive areas are located on the development site, clustering of residential units shall be required in order to avoid these areas. Clustering shall be in accordance with the Sultan development regulations (SMC 16.80 SMC, Ordinance 918-06, 11/4/06, Appendix D).

7

Administrative Procedures

I. GENERAL

This is hereby established an administrative system designed to assign responsibilities for implementation of this Shoreline Master Program (or "SMP") and shoreline permit review, to prescribe an orderly process by which to review proposals and permit applications and to ensure that all persons affected by this Master Program are treated in a fair and equal manner.

The City of Sultan Administration Code, as codified in Chapter 16.120 of the Sultan Municipal Code, Ordinance 630 § 2, 7/18/96 (Appendix C), is herein referenced by this master program. Any conflicts between the referenced ordinances and the SMP are resolved in favor of the regulation that is most protective of the ecological functions. Exceptions to the City of Sultan Administration Code in the Shoreline Jurisdiction are the Continuation of the Planning Commission, Planning Commission Powers and Duties, and variance and conditional use sections of the Administration Chapter under SMC 16.120.010, 16.120.20, and 16.120.050.

A. Legal Authority

The Sultan Shoreline Master Program is adopted in accordance with the Shoreline Management Act (Chapter 90.58 RCW) and the state Shoreline Guidelines (Chapter 173-26 WAC).

If any portion of the regulations of this Master Program are declared unlawful, such declaration shall not impair or render void the balance of these regulations.

Where these regulations provide that public access shall be provided, or an easement, fee ownership or otherwise shall be given to the City, all such regulations shall be construed to be limited to the extent of the lawful and constitutional authority of the City to require public access or to require the easement, fee ownership or interest requested.

C. Severability

If any provisions of this Master Program, or its application to any person or legal entity or parcel of land or circumstances is held invalid, the remainder of the Master Program, or the application of the provisions to other persons or legal entities or parcels of land or circumstances, shall not be affected.

D. Effective Date

This ordinance shall be effective five days from and after its passage, approval and publication as provided by law.

Introduced:

Passed:

Approved:

Attest:

Approved as to form:

E. Administrator

The Community Development Director or his/her designee, herein after known as the Administrator, is vested with:

1. Overall administrative responsibility for this shoreline master program;
2. Authority to approve, approve with conditions or deny shoreline Substantial Development Permits and permit revisions in accordance with the policies and provisions of this Master Program;
3. Authority to grant statements of exemptions from shoreline substantial development permits; and
4. Authority to determine compliance with RCW 43.21C, the State Environmental Policy Act.

The duties and responsibilities of the Administrator shall include:

1. Specifying the required application forms and submittal requirements including the type, details and number of copies for Substantial Development, Conditional Use and Variance applications. At a minimum, the application shall include the information required by this Master Program.
2. Advising interested citizens and applicants of the goals, policies, regulations and procedures of this program.
3. Making administrative decisions and interpretations of the policies and regulations of this program and the Shoreline Management Act.
4. Collecting applicable fees based on annual fee schedule.
5. Determining that all applications and required information and materials are provided.
6. Making field inspections, as necessary.

7. Reviewing, insofar as possible, all provided and related information deemed necessary for application needs.
8. Determining if a shoreline substantial development permit, conditional use or variance permit is required.
9. Conducting a thorough review and analysis of the shoreline Substantial Development Permit applications making written findings and conclusions and approving, approving with conditions, or denying such applications.
10. Submitting Variance and Conditional Use applications and making written recommendations on such permits to the Hearing Examiner for review and recommendation.
11. Assuring that proper notice is given to appropriate persons and the public for all hearings.
12. Providing an annual summary report of the shoreline management permits issued during the past calendar year to the City Council.
13. Investigating, developing and proposing amendments to this Master Program as deemed necessary to more effectively and equitably achieve its goals and policies.
14. Seeking remedies for alleged violations of this program, the provisions of the Shoreline Management Act, or of conditions of any approved shoreline permit issued by the City.
15. Forwarding shoreline permits to Ecology for filing or Ecology action.
16. Coordinating the preparation of plans, designs, and construction projects for restoration projects.

II. SHORELINE PERMIT REQUIREMENTS

Any person wishing to undertake a substantial development within shoreline jurisdiction shall apply to the City for a Shoreline permit. Based on the provisions of this Master Program, the Administrator shall determine if a Substantial Development Permit, a Shoreline Conditional Use Permit and/or a Shoreline Variance is required.

Exempt developments, which are outlined below in Section A, shall not require a Substantial Development Permit. However, an exempt development may require a Conditional Use Permit and/or a Shoreline Variance from Master Program provisions.

A. Exemptions from Substantial Development Permit Requirements

An exemption from the Substantial Development Permit requirements does not constitute an exemption from the policies and use regulations of the Shoreline

Management Act, the provisions of this Master Program or other applicable city, state, or federal requirements.

The following are exempt from the requirements for a substantial development permit for the purpose of this Master Program.

1. Any development of which the total cost or fair market value, whichever is higher, does not exceed five thousand seven hundred and eighteen (\$5,005,718) dollars, if such development does not materially interfere with the normal public use of the water or shorelines of the state. For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state. The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials¹;
2. Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition within a reasonable period after decay or partial destruction except where repair causes substantial adverse effects to the shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment;
3. Construction of a normal protective bulkhead common to single family residences. A "normal protective bulkhead" is constructed at or near the ordinary high water mark to protect a single family residence and is for protecting land from erosion, not for the purpose of creating dry land. Where an existing bulkhead is being replaced, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings;
4. Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with the Act or this Master Program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency;
5. Construction by an owner, lessee, or contract purchaser of a single family residence for his own use or for the use of his family, which residence does not have a building height that exceeds thirty five (35) feet and meets all requirements of the state agency or local government having jurisdiction thereof;

¹ The Substantial Development dollar threshold on the adoption date of this Shoreline Master Program is \$5,178. Under current law, the dollar threshold will be recalculated every five years by the Office of Financial Management (OFM). OFM will post updated dollar thresholds in the Washington State Register. See RCW 90.58.030(3)(e). The Legislature can change the dollar threshold at any time.

7. Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed or utilized primarily as part of an agricultural drainage or diking system.
8. Any project with certification from the Governor pursuant to Chapter 80.50 RCW.
9. Watershed restoration projects as defined in WAC 173-27-040. Local government shall review the projects for consistency with the Shoreline Master Program in an expeditious manner and shall issue its decision along with any conditions within forty-five (45) days of receiving all materials necessary to review the request for exemption from the applicant. No fee may be charged for accepting and processing requests for exemption for watershed restoration.
10. Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:
 - The activity does not interfere with the normal public use of the surface waters;
 - The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water quality and aesthetic values;
 - The activity does not involve the installation of any structure and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;
 - A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions.

B. Unclassified Uses

Uses that are not classified in *Chapter 5* may be authorized as Conditional Uses provided the applicant can demonstrate compliance with the criteria listed in Section III.B.3 and all other applicable policies and regulations of this Master Program.

III. SHORELINE PERMIT PROCEDURES

Pre-application

A. Information Prior to Submitting Application

Prior to submitting a complete application for a Substantial Development Permit, a Conditional Use Permit and/or a Variance, the applicant may request preliminary site plan review by the City. This will enable the applicant to become familiar with the requirements of this Master Program, other applicable regulations and the approval process. The preliminary site plan review shall be conducted according to procedures

established by the Administrator. This process may also be conducted jointly with other land use permit processes.

Submittal

B. Statement of Exemption

A Statement of Exemption must be obtained from the Administrator for a development that is exempt from Shoreline Substantial Development Permit requirements, but which requires other permit approvals, such as a building permit. This statement will verify that the development is exempt. The statement will also list any provisions that must be followed to ensure that the development is consistent with the Master Program and the Act. The Statement of Exemption shall be attached to the other permit approvals.

Whenever a development falls within the exemption criteria listed above and is subject to a U.S. Army Corps of Engineers Section 10 or Section 404 Permit, the Administrator shall prepare a Statement of Exemption and send a copy of this statement to the Washington Department of Ecology.

Before issuing a Statement of Exemption, the Administrator shall review the Master Program to determine if the proposed development requires a Shoreline Conditional Use Permit and/or a Variance. It may be necessary for the Administrator to conduct a site inspection to ensure that the proposed development meets the exemption criteria.

1. **Application Forms.** Applications for such shoreline exemptions shall be made on forms provided by the Administrator.
2. **Site Plan.** A site plan shall meet the requirements of the underlying development permit and shall include the following items listed Section C.2 below.

C. Substantial Development Permits

1. **Application Forms.** No substantial development, except those exemptions listed in this master program, shall be undertaken on shorelines of the City without first obtaining a Substantial Development Permit from the City. Applications for such permits shall be made on forms provided by the Administrator.

For Variance and Conditional Use Permit requests, the application shall also demonstrate compliance with the provisions of Section III in this chapter.

For all shoreline permits and in addition to the information requested on the application, the applicant shall provide, at a minimum, the following information:

2. **Site Plan** - drawn to scale (1 foot equals 40, 100, 200 or 400 feet or other scale approved the Administrator) and including:

- a. Site boundary.
- b. Property dimensions in the vicinity of project.
- c. Ordinary high water mark.
- d. Typical cross section or sections showing:
 - i) existing ground elevation
 - ii) proposed ground elevation
 - iii) height of existing structures
 - iv) height of proposed structures
- e. Where appropriate, proposed land contours using one-foot intervals, if development involves grading, cutting, filling, or other alteration of land contours.
- f. Dimensions and locations of existing structures that will be maintained.
- g. Dimensions and locations of proposed structures.
- h. Source, composition and volume of fill material.
- i. Composition and volume of any extracted materials and identify proposed disposal area.
- j. Location of proposed utilities, such as sewer, septic tanks and drainfields, water, gas and electricity.
- k. Information regarding compliance with local and state health regulations, if the development proposes septic tanks.
- l. Shoreline environment designations according to the Master Program.
- m. Designated shorelines and shorelines of statewide significance.

3. Vicinity Map

- a. Indicate site location using natural points of reference (roads, state highways, prominent landmarks, etc.).
- b. If the development involves the removal of any soils by dredging or otherwise, identify the proposed disposal site on the map. If the disposal site is beyond the confines of the vicinity map, provide additional information describing the precise location of the disposal site and its distance to the nearest city or town.

- c. Give brief narrative description of the general nature of the improvements and land use within 1,000 feet in all directions from development site (i.e., residential to the north, commercial to the south, etc.).

D. Application Fees

A filing fee in an amount established in the annual fee schedule adopted by resolution each year shall be paid to the City of Sultan at the time of application.

E. Complete Application

Complete application and documents for all shoreline permits shall be submitted to the Administrator for processing and review. The application will be reviewed for completeness and a determination of completeness made per SMC 16.120 (Ordinance 630 § 2 – 1995, 7/18/95, Appendix C).

Review

F. Permit Process

When a complete application and associated information have been received by the Administrator, the actions listed below shall be taken. These actions also apply to shoreline Conditional Use Permits and requests for Variances:

1. **Public Notice.** The Administrator shall have a Notice of Application for Substantial Development Permit, Conditional Use, or Variance (as applicable) published in a newspaper of general circulation, within the area in which the development is proposed. The applicant shall also provide notice of application to all properties located within 300 feet of the site.

The Notice of Application for Substantial Development Permit, Conditional Use, or Variance (as applicable) describes the location of the project and includes a statement that any person desiring to present their views to the Hearing Examiner may do so in writing within thirty (30) days of the final newspaper publication. The notice also provides the date when a public hearing will be held on the application and states that any person may submit oral or written comments at the hearing. All persons who indicate their desire to receive a copy of the final order shall be notified, in a timely manner, of the City Council's decision.

The Notice of Application for a Substantial Development Permit, Conditional Use, or Variance (as applicable) shall be provided within fourteen days after the determination of completeness and should include information required by WAC 173-27-110.

The Administrator shall also have the applicant post the Notice of Application for a Substantial Development Permit, Conditional Use or Variance (as applicable) on-site per SMC 16.120, (Ordinance 630 § 2 – 1995, 7/18/95, Appendix C).

The Administrator may require any other manner of public notice deemed appropriate to accomplish the objectives of reasonable notice to the adjacent landowners and the public.

2. Review. The Administrator or Hearing Examiner as applicable shall review an application for a Substantial Development Permit, Conditional Use or Variance using the following information:

- a. The application.
- b. Applicable SEPA documents.
- c. Evidence presented at the public hearing.
- d. Written and oral comments from interested persons.
- e. The findings, conclusions and recommendation of the Administrator.
- f. Information and comment from other city departments.
- g. Independent study of the Hearing Examiner.

The Hearing Examiner may require an applicant to furnish information and data in addition to that contained or required on the Substantial Development Permit, Conditional Use or Variance application.

3. Administrative Review of Substantial Development Permits. The Administrator shall review the application and related information and issue a written decision to approve, approve with condition, or deny the application for a Substantial Development Permit. No permit shall be granted unless the proposed development is consistent with the provisions of this Master Program, the Shoreline Management Act of 1971 and the rules and regulations adopted by the Department of Ecology thereunder.

4. Public Hearing for a Conditional Use or Variance Permit. At least one public hearing shall be held by the Hearing Examiner regarding an application for a Substantial Development Permit, Conditional Use or Variance. The public hearing should be held at the earliest possible date after the thirty (30) day public comment period has ended.

A written notice of the public hearing at which the Hearing Examiner will consider the application shall be mailed or delivered to the applicant a minimum of seven (7) days prior to the hearing. The Administrator's findings and conclusions and recommended action on the application shall be sent to the applicant with the notice of public hearing.

5. Hearing Examiner Review Criteria. The Hearing Examiner shall review the application and related information and make a recommendation to approve, approve with condition, or deny the application for a Conditional Use or Variance. No permit shall be granted unless the proposed development is consistent with the provisions of

this Master Program, the Shoreline Management Act of 1971 and the rules and regulations adopted by the Department of Ecology thereunder.

6. Burden of Proof on Applicant. The burden of proving that the proposed development is consistent with the criteria which must be met before a permit is granted shall be on the applicant. The applicant may, but is not required to, respond to public comments made at or prior to the hearing.

7. Hearing Examiner Recommendation. The Hearing Examiner shall issue a written recommendation to approve, approve with conditions, or deny the application for a Conditional Use or Variance. The Hearing Examiner may reconsider his recommendation in accordance with SMC 16.120 (Ordinance 630 § 2 – 1995, 7/18/95, Appendix C). Within five (5) days of the recommendation, the Administrator shall schedule the Hearing Examiner's recommendation for review and decision by the City Council.

8. Conditional Approval. Should the Administrator or City Council find that any application does not substantially comply with criteria imposed by the Master Program and the Shoreline Management Act, it may deny such application or attach any terms or condition which is deemed suitable and reasonable to affect the purpose and objective of this Master Program and the Act.

9. Bonds. The City may require the applicant to post a bond in favor of the City of Sultan to assure full compliance with any terms and conditions imposed by the City on any Substantial Development Permit, Conditional Use or Variance. Said bond shall be in an amount to reasonably assure the City that any deferred improvement will be carried out within the time stipulated.

10. City Council Decision. The City Council shall review Conditional Use and Variance applications at a closed record hearing.

- a. The record established by the Hearing Examiner (including testimony, exhibits, comment letters, plans, staff reports, etc.) shall be the record used by the Council unless it is supplemented by the City Council pursuant to this section. A request to supplement the record shall be made in a separate document that is attached to an appeal. The appeal shall not mention or refer to the material that is proposed to be added to the record. A request to supplement the record shall include a brief description of the nature of the material to be added and a separate, attached copy of the material to be added. The request to supplement the record must clearly establish that the new evidence or information to be added to the record was not available or could not have been reasonably produced at the time of the open record hearing before the Hearing Examiner.
- b. The Council may affirm, modify, or reverse the Hearing Examiner's recommendation, remand to the Hearing Examiner with directions for further proceedings or grant other appropriate

relief. If the Council reverses or modifies the Hearing Examiner's recommendation, the Council shall enter findings and/or conclusions to support the decision.

- c. The Hearing Examiner's recommendation shall be given substantial weight.
- d. Within five (5) days of the City Council's decision, the Administrator shall send the City Council's final order, including findings and conclusions to the following:
 - i. The applicant.
 - ii. The Department of Ecology.
 - iii. The Attorney General.

The Administrator shall provide Notice of Final Decision per SMC 16.120 (Ordinance 630 § 2 – 1995, 7/18/95, Appendix C).

11. Department of Ecology Review of Variance and Conditional Use

Permits. After the City Council has approved a Variance or Conditional Use Permit, the Administrator shall file the permit with the Department of Ecology for its approval, approval with conditions, or denial. When a Substantial Development Permit and a Conditional Use or Variance Permit are required for a development, the filing on local government's rulings on the permits shall be made simultaneously. The Department of Ecology will issue its decision on a Variance or Conditional Use Permit within thirty (30) days of filing. The submittal is not complete until all the required documents have been received by the Department of Ecology and the Attorney General. Upon receipt of the Department of Ecology's decision, the Administrator shall notify those interested persons having requested notification of such decision.

Development authorized by a Variance or Conditional Use Permit shall not begin until twenty-one (21) days following Ecology's approval, provided no appeal proceedings have been initiated.

12. Appeals

Local Appeals. Any decision made by the Administrator may be appealed to the Hearing Examiner subject to the following provisions:

Appeals shall be submitted in writing to the city clerk by 5:00 p.m. of the fifteenth calendar day following the date of the decision. When the last day of the comment period so computed is a Saturday, Sunday or city holiday, the period shall run until 5:00 p.m. on the next business day. The appeal shall be in writing and shall state specific objections to the decision and the relief sought. The appeal shall be accompanied with any applicable filing fees.

The record established by the Administrator (including testimony, exhibits, comment letters, plans, staff reports, etc.) shall be the record used by the Hearing Examiner unless it is supplemented by the Hearing Examiner pursuant to this section. A request to

supplement the record shall be made in a separate document that is attached to an appeal. The appeal shall not mention or refer to the material that is proposed to be added to the record. A request to supplement the record shall include a brief description of the nature of the material to be added and a separate, attached copy of the material to be added. The request to supplement the record must clearly establish that the new evidence or information to be added to the record was not available or could not have been reasonably produced at the time of the open record hearing before the hearing examiner.

The Hearing Examiner may affirm, modify, reverse the Administrator's decision, remand to the Hearing Examiner with directions for further proceedings or grant other appropriate relief. If the Hearing Examiner reverses or modifies the Administrator's decision, the Hearing Examiner shall enter findings and/or conclusions to support the decision.

The Administrator's decision on appeal shall be given substantial weight.

13. Appeals to State Shoreline Hearings Board. Any person aggrieved by the granting, denying, rescission or modification of a Shoreline permit may seek review from the State Shorelines Hearings Board. An appeal of a Shoreline Substantial Development Permit shall be initiated by filing an original and one copy of request for review with the Hearings Board within twenty-one (21) days of the Department of Ecology's receipt of the final decision by the City Council or Hearing Examiner. An appeal of a Variance or Conditional Use Permit shall be filed with the Hearings Board within twenty-one (21) days of the Department of Ecology's decision. The request for review shall be in the form required by the rules for practice and procedure before the Shorelines Hearings Board. The person seeking review shall also file a copy of the request for review with the State Department of Ecology and the Attorney General.

14. Washington State Department of Ecology Review. Development authorized by a Shoreline Substantial Development Permit shall not begin until thirty (30) days from the date the Administrator files the approved permit with the Department of Ecology and the Attorney General: provided no appeals have been initiated during this twenty-one (21) day period. The date of filing is the date the Department of Ecology and the Attorney General receive all the required documents.

IV. VARIANCE AND CONDITIONAL USE PERMIT CRITERIA

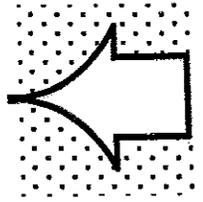
The Shoreline Management Act states that master programs shall contain provisions covering Conditional Uses and Variances. These provisions should be applied in a manner, which while protecting the environment, will assure that a person will be able to use his/her property in a fair and equitable manner.

A. Variances

1. **Purpose.** The purpose of a Variance is strictly limited to granting relief to specific bulk, dimensional, or performance standards set forth in the Master Program. A Variance is appropriate where there are extraordinary or unique

circumstances relating to the property such that the strict implementation of the Master Program would impose unnecessary hardships on the applicant.

~~A Variance is also required when the reasonable use provision under the Critical Areas Regulations is implemented within shoreline jurisdiction.~~



Construction pursuant to a Variance shall not begin nor can construction be authorized except as provided in RCW 90.58.020. In all instances, extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.

1. **Application.** An application for a shoreline Variance shall be submitted on a form provided by the Administrator and accompanying material as required by SMC 16.120 (Ordinance 630 § 2 – 1995, 7/18/95, Appendix C).

An applicant for a Substantial Development Permit who wishes to request a Variance shall submit the Variance application and the permit application simultaneously.

2. **Criteria for Granting Variances.** Variances for development that will be located landward of the ordinary high water mark, except those areas designated by the Department of Ecology as wetlands pursuant to WAC 173-22, may be authorized provided the applicant can demonstrate all of the following:
 - a. That the strict requirements of the bulk, dimensional, or performance standards set forth in the Master Program preclude or significantly interfere with a reasonable use of the property not otherwise prohibited by the Master Program.
 - b. That the hardship described above is specifically related to the property and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the Master Program and not, for example, from deed restrictions or the applicant's own actions.
 - c. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment.
 - d. That the Variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the area and will be the minimum necessary to afford relief.
 - e. That the public interest will suffer no substantial detrimental effect. Variance permits for development that will be located either waterward of the ordinary high water mark or within wetlands as designated in WAC 173-22, may be authorized provided the applicant can demonstrate all the criteria stated above as well as the following:
 - That the public rights of navigation and use of the shorelines will not be adversely affected by granting the Variance.
 - That the strict application of the bulk, dimensional or performance standards set forth in the Shoreline Master Program precludes all reasonable use of the property

- That the proposal is consistent with the criteria established under subsection 3.a. through 3.d. of this section.

In the granting of all Variances, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if Variances were granted to other developments in the area where similar circumstances exist, the total of the Variances should also remain consistent with the policies of RCW 90.58 and should not produce substantial adverse effects to the shoreline environment.

Requests for varying the use to which a shoreline area is to be put are not requests for Variances, but rather requests for Conditional Uses. Such requests shall be evaluated using the Conditional Use criteria set forth below.

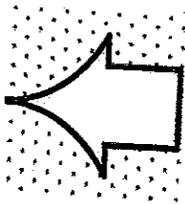
In accordance with WAC 173-27-170, variance permits for development and/or uses that will be located waterward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)(b), or within any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:

(a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes all reasonable use of the property;

(b) That the proposal is consistent with the criteria established under subsection 3 of this section; and

(c) That the public rights of navigation and use of the shorelines will not be adversely affected.

Variances from the use regulations of the master program are prohibited.



B. Conditional Use

1. **Purpose.** The purpose of a Conditional Use Permit is to allow greater flexibility in varying the application of the use regulations of the Master Program in a manner consistent with the policies of RCW 90.58.020; provided that Conditional Use Permits should also be granted in a circumstance where denial of the permit would result in a thwarting of state policy enumerated in RCW 90.58.020. In authorizing a Conditional Use special conditions may be attached to the permit by the City of Sultan or by the Department of Ecology to prevent undesirable effects of the proposed use. Uses that are specifically prohibited by the Master Program may not be authorized with the approval of a Conditional Use Permit.
2. **Application.** An application for a Shoreline Conditional Use shall be submitted on a form provided by the Administrator and accompanying material as required by SMC 16.120 (Ordinance 630 § 2 – 1995, 7/18/06, Appendix C).

An applicant for a Shoreline Substantial Development Permit which requires a Conditional Use Permit shall submit applications for both permits simultaneously.

3. **Criteria for Granting Shoreline Conditional Use Permits.** Uses classified as conditional uses may be authorized provided that the applicant can demonstrate all of the following:

- b. That the proposed use will not interfere with the normal public use of public shorelines;
- c. That the proposed use of the site and design of the project will be compatible with other permitted uses within the area and with goals and policies of the Comprehensive Plan;
- d. That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
- e. That the public interest will suffer no substantial detrimental effect.

In the granting of all Conditional Use Permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if Conditional Use Permits were granted for other developments in the area where similar circumstances exist, the total of the Conditional Uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

Uses that are specifically prohibited by this Master Program may not be authorized pursuant to this section.

V. TIME LIMITS AND REVISIONS

A. Time Requirements for Shoreline Permits

1. **Duration of Permits:** The City of Sultan may issue shoreline permits which determine the length of time a shoreline permit will be effective based on the specific requirements of the development proposal. If a permit does not specify a termination date, the following requirements apply, consistent with WAC 173-14-060:
 - a. **Time Limit for Substantial Progress.** Construction, or substantial progress toward completion, must begin within two (2) years after approval of the permits.
 - b. **Extension for Substantial Progress.** The City of Sultan may at its discretion, with prior notice to parties of record and the Department of Ecology, extend the two-year time period for the substantial progress for a reasonable time up to one year based on factors, including the inability to expeditiously obtain other governmental permits which are required prior to the commencement of construction.
 - c. **Five-Year Permit Authorization.** If construction has not been completed within five (5) years of approval by the City of Sultan, the City will review the permit and, upon showing of good cause, either extend the permit for one year, or terminate the permit. Prior to the City authorizing any permit extensions, it shall notify any parties of

record and the Department of Ecology. Note: Only one (1) single extension is permitted.

B. Revision of Permits.

When an applicant desires to revise a permit, the applicant must submit detailed plans and text describing the proposed changes. If the Administrator determines that the revisions proposed are within the scope and intent of the original permit, consistent with WAC 173-14-064, the Administrator may approve the revision. "Within the scope and intent of the original permit" means all of the following:

1. No additional over-water construction is involved, except that pier, dock, or float construction may be increased by five hundred (500) square feet or ten percent (10%), whichever is less;
2. Ground area coverage and height is not increased more than ten percent (10%);
3. Additional structures do not exceed a total of two hundred fifty (250) square feet;
4. The revision does not authorize development to exceed height, setback, lot coverage, or any other requirement of the City of Sultan Shoreline Master Program;
5. Additional landscaping is consistent with conditions (if any) attached to the original permit;
6. The use authorized pursuant to the original permit is not changed; and
7. No substantial adverse environmental impact will be caused by the project revision.

If the sum of the proposed revision and any previously approved revisions do not meet the criteria above, an application for a new Shoreline permit must be submitted. If the revision involves a Conditional Use or Variance which was conditioned by the Department of Ecology, the revision also must be reviewed and approved by the Department of Ecology (see WAC 173-14-064).

The City of Sultan or the Department of Ecology decision on revision to the permit may be appealed within twenty-one (21) days of such decision, in accordance with RCW 90.58.180 and WAC 173-14-064.

Construction allowed by the revised permit that is not authorized under the original permit is undertaken at the applicant's own risk until the expiration of the appeals deadline.