SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET

ITEM NO: **PH2 - Action**

DATE: March 26, 2009

SUBJECT: First Reading of Ordinance 1032-09 Amendment to Shoreline Master Program, Chapter 7, "Administrative Procedures"

CONTACT PERSON: Robert Martin, Community Development Director

ISSUE:
Consider public input received at Public Hearing (Agenda Item H-2), input received by the Planning Board at its February 3, 2009 Meeting, and Recommendation from Planning Board from its February 3, 2009 Meeting.

ACTION:
Move for First Reading of Ordinance 1032-09, amending Sultan Shoreline Master Program, Chapter 7, Administrative Procedures.

ALTERNATIVES:
After consideration of the proposal and the public input, the Council may determine to:

1. Adopt the Amendments to Sultan Shoreline Master Program, Chapter 7, Administrative Procedures as recommended by the Planning Board.
2. Amend the current Planning Board Draft prior to adoption.
3. Direct City Staff to modify the proposed plan and return for further consideration.

RECOMMENDATION:
Staff and the Planning Board recommend that the City Council make any changes deemed appropriate based on the input received at the Council's Public Hearing, and adopt Ordinance 1032-09.

ATTACHMENTS:
Attachment A: Ordinance 1032-09
Attachment B: Planning Board Minutes; February 3 (in pertinent part)

CITY OF SULTAN
WASHINGTON
ORDINANCE NO. 1032-09

AN ORDINANCE OF THE CITY OF SULTAN, WASHINGTON, ADOPTING AMENDMENTS TO THE SULTAN SHORELINE MASTER PROGRAM, CHAPTER 7, ADMINISTRATIVE PROCEDURES, REMOVING THE CITY COUNCIL FROM QUASI-JUDICIAL PROCESS, STREAMLINING ADMINISTRATIVE PROCEDURES; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City of Sultan, is required to adopt a Shoreline Master Program (hereinafter referred to as SMP) under RCW 90.58.080, and

WHEREAS, the City adopted a SMP and provided notice on August 28, 2008, that the Washington Department of Ecology had taken final action to approve said Program as required by WAC 173-26-120 (9) and WAC 173-26-130 (1) providing for the required 60-day appeal period, and

WHEREAS, no appeals were filed, and the Sultan SMP became effective on October 29, 2008, and

WHEREAS, the adopted SMP at Chapter 7, Administrative Procedures, provided that certain quasi-judicial procedures were to be conducted by the City Council, and

WHEREAS, the City Council has directed that all quasi-judicial procedures be removed from Council jurisdiction and that said procedures be vested in the City of Sultan Hearing Examiner, and

WHEREAS, certain other procedural clarifications were determined to be appropriate for the clear and effective management of said Chapter 7, and

WHEREAS, the Planning Board duly advertized and conducted a public hearing on a draft of the proposed amendments to said Chapter 7 at its regular meeting of February 3, 2009, and

WHEREAS, the Planning Board, after making certain changes to the draft document, approved a motion to recommend that the City Council adopt the proposed amendments to Chapter 7, and

WHEREAS, notice of a City Council public hearing on amendment of the Sultan SMP was advertized on March 18, 2009, and

WHEREAS, the City Council conducted a public hearing on the amendments of Chapter 7 of the Sultan SMP, and has considered input received at that hearing, and the recommendation of the Planning Board and the public input received at the public hearing of the Planning Board:

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SULTAN, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. The CITY OF SULTAN SHORELINE MASTER PROGRAM, CHAPTER 7, ADMINISTRATIVE PROCEDURES, is hereby AMENDED AS FOLLOWS (Attachment A).

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 3. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE _____DAY OF _____, 2009.

CITY OF SULTAN

_____
Carolyn Eslick, Mayor

ATTEST/AUTHENTICATED:

_____
Laura Koenig, City Clerk

Approved as to form:

_____
Margaret J. King, City Attorney

Passed by the City Council:
Date of Publication:
Effective Date:

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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.

B. 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.

C. Effective Date

Per WAC 173-26-120(7)(b)(i) the effective date of the City of Sultan Shoreline Master Program is July 17, 2008.

D. Administrator

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

   a. Overall administrative responsibility for this Shoreline Master Program;

   b. 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;

   c. Authority to grant statements of exemptions from shoreline substantial development permits; and

   d. Authority to determine compliance with RCW 43.21C, the State Environmental Policy Act.

2. The duties and responsibilities of the Administrator shall include:

   a. 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.

   b. Advising interested citizens and applicants of the goals, policies, regulations and procedures of this program.

   c. Making administrative decisions and interpretations of the policies and regulations of this program and the Shoreline Management Act.

   d. Collecting applicable fees based on annual fee schedule.

   e. Determining that all applications and required information and materials are provided.

   f, Making field inspections, as necessary.

   g, Reviewing, insofar as possible, all provided and related information deemed necessary for application needs.

   h. Determining if a Shoreline Substantial Development Permit, Conditional Use or Variance Permit is required.

i. 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.

j. Submitting Variance and Conditional Use applications and making written recommendations on such permits to the Hearing Examiner for review and recommendation.

k. Assuring that proper notice is given to appropriate persons and the public for all hearings.

l. Providing an annual summary report of the shoreline management permits issued during the past calendar year to the City Council.

m. Investigating, developing and proposing amendments to this Master Program as deemed necessary to more effectively and equitably achieve its goals and policies.

n. 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.

o. Forwarding shoreline permits to Ecology for filing or Ecology action.

p. 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 ($5,718) 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 materials[1];

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;

6. The marking of property lines or corners, when such marking does not significantly interfere with the normal public use of the surface waters;

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

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[1] The Substantial Development dollar threshold on the adoption date of this Shoreline Master Program is $5,718. 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.

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:

    a. The activity does not interfere with the normal public use of the surface waters;

    b. 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;

    c. 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;

    d. 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.

Information Required for Application Submittal

B. Information Required for All Applications

Applications for Shoreline Exemptions, Substantial Use Permits, Conditional Use Permits, and Variances are required to provide the following information in written or map form as appropriate:

1. **Application Forms.** Applications for all shoreline permits 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:

   a. Drawn to scale (1 foot equals 40, 100, 200 or 400 feet or other scale approved the Administrator) and including:

   b. Site boundary.

   c. Property dimensions in the vicinity of project.

   d. Ordinary high water mark.

   e. Typical cross section or sections showing:

   f. Existing ground elevation

   g. Proposed ground elevation

   h. Height of existing structures

   i. Height of proposed structures

   j.Where appropriate, proposed land contours using one-foot intervals, if development involves grading, cutting, filling, or other alteration of land contours.

   k. Dimensions and locations of existing structures that will be maintained.

   l. Dimensions and locations of proposed structures.

   m. Source, composition and volume of fill material.

   n. Composition and volume of any extracted materials and identify proposed disposal area.

   o. Location of proposed utilities, such as sewer, septic tanks and drainfields, water, gas and electricity.

   p. Information regarding compliance with local and state health regulations, if the development proposes septic tanks.

   q. Shoreline environment designations according to the Master Program.

   r. 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.).

4. 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.

5. Determination of 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).

Statement of Exemption

C. Statement of Exemption

1. 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.

2. 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.

3. Before issuing a Statement of Exemption, the Administrator shall review the Master Program to determine if the proposed development requires a Substantial Development Permit, 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.

3. **Application Forms.** Applications for such shoreline exemptions shall be made on forms provided by the Administrator.

4. **Site Plan.** A site plan shall meet the requirements of the underlying development permit and shall include the following items listed in Section III B above.

Substantial Development Permits

D. Substantial Development Permits

1. Application Forms.

a. 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.

b. For Substantial Development Permits that involve application for a Variance and Conditional Use Permit requests, the application shall also demonstrate compliance with the provisions of Section IV in this chapter.

2. **Administrative Decision on 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.

Conditional Uses and Variances

E. Process for Conditional Uses and/or Variances

When a complete application and associated information for Conditional Uses and/or Variances have been received by the Administrator, the actions listed below shall be taken.

Public Notice.a. The Administrator shall have a Notice of Application for **Conditional Use, or Variance (as applicable) published in a newspaper of general circulation ten (10) days prior to the date of the hearing, 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.

b. The Notice of Application for Conditional Use, or Variance 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.

c. The Notice of Application for a, 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.

d. The Administrator shall also have the applicant post the Notice of Application for a Conditional Use or Variance (as applicable) on-site per SMC 16.124.

e. 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 Hearing Examiner shall review an application for a Conditional Use or Variance using the following information:

a. The application containing all general information and addressing all criteria called for in sections IV-A and/or IV-B below.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.

h. 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. Public Hearing for a Conditional Use or Variance Permit.

a. 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.

b. 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 ten (10) 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.

4. Hearing Examiner Review Criteria.
The Hearing Examiner shall review the application and related information for conformance with the Criteria provided in Section IV below, and make a decision 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 ExaminerDecision. The Hearing Examiner shall issue a written decision 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 2.26 D.

8. 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.

9. Department of Ecology Review of Variance and Conditional Use Permits.

a. After the Hearing Examiner 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.

b. 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.

c. Upon receipt of the Department of Ecology's decision, the Administrator shall notify those interested persons having requested notification of such decision.

d. 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.

10. Appeals of Administrative Decision on Substantial Development Permit.

a. Any decision made by the Administrator on an Application for a Substantial Development Permit may be appealed to the Hearing Examiner subject to the following provisions:

b. Appeals shall be submitted in writing to the city clerk no later than 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.

c. 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.

d. The Hearing Examiner may affirm, modify, reverse the Administrator's decision, remand to the Administrator 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.

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

11. Appeals to State Shoreline Hearings Board.

a. 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 may only be filed with the Shoreline Hearings Board after the Hearing Examiner has issued his decision on the local appeal of the Administrator's decision. An appeal of the Hearing Examiner's final decision 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.

b. An appeal of a Hearings Examiner's decision on 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.

12. 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.

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 in Section IV-B below.

2. **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.

3. **Criteria for Granting Variances Landward of the Ordinary High Water Mark.** 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 <u>all</u> 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 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. f. That the public rights of navigation and use of the shorelines will not be adversely affected by granting the Variance.

g. 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

h. 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.

4. Criteria for Granting Variances Waterward of the Ordinary High Water Mark.

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) or in wetlands as designated in WAC 173-22, 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.

d. That the public rights of navigation and use of the shorelines will not be adversely affected by granting the Variance.

e. 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

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

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

B. Conditional Use

1. Purpose.

a. 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.

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

a. That the proposed use will be consistent with the policies of RCW 90.58.020 and the policies of the Master Program;

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.

f. 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.

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.

VI. NONCONFORMING DEVELOPMENT, DEVELOPMENT and BUILDING PERMITS, and UNCLASSIFIED USES

A. Nonconforming Development

Nonconforming development is a shoreline use or structure which was lawfully constructed or established prior to the effective date of the Act or the Master Program, or amendments thereto, but which does not conform to present regulations or standards of the Master Program or policies of the act. In such cases, the following standards shall apply:

1. Nonconforming development may be continued provided that it is not enlarged or expanded and said enlargement does not increase the extent of nonconformity and by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses;

2. A nonconforming development which is moved any distance must be brought into conformance with the Master Program and the Act;

3. If a nonconforming structure is damaged to an extent not exceeding seventy-five (75) percent replacement cost of the nonconforming structure, it may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, so long as restoration is completed within one year of the date of damage, with the exception that, single family nonconforming development may be one hundred (100) percent replaced if restoration is completed within three years of the date of damage;

4. If a nonconforming use is discontinued for twelve (12) consecutive months or for twelve (12) months during any two-year period, any subsequent use shall be conforming; it shall not be necessary to show that the owner of the property intends to abandon such nonconforming use in order for the nonconforming rights to expire;

5. A nonconforming use shall not be changed to another nonconforming use, regardless of the conforming or nonconforming status of the building or structure in which it is housed; and

6. An undeveloped lot, tract, parcel, site, or division which was established prior to the effective date of the Act and the Master Program, but which does not conform to the present lot size or density standards may be developed so long as such development conforms to all other requirements of the Master Program and the Act.

7. A use which is listed as a conditional use but which existed prior to adoption of the Master Program for which a Conditional Use Permit has not been obtained shall be considered a nonconforming use. A use which is listed as a conditional use but which existed prior to the applicability of the Master Program to the site and for which a Conditional Use Permit has not been obtained shall be considered a nonconforming use.

8. A structure for which a Variance has been issued shall be considered a legal nonconforming structure and the requirements of this section shall apply as they apply to preexisting nonconformities.

B. Development and Building Permits

No building permit or other development permit for a project in Sultan's shorelands shall be issued for any parcel of land developed or divided in violation of this Master Program. All purchasers or transferees of property shall comply with provisions of the Act and this Master Program and each purchaser or transferee may recover damages from any person, firm, corporation, or agent selling, transferring, or leasing land in violation of the Act or this Master Program including any amount reasonable spent as a result of inability to obtain any development permit and spent to conform to the requirements of the Act or this Master Program as well as cost of investigation, suit and reasonable attorney's fees occasioned thereby. Such purchaser, transferee, or lessor may, as an alternative to conforming their property to these requirements, may rescind the sale, transfer, or lease and recover cost of investigation and reasonable attorney's fees occasioned thereby from the violator.

C. 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.

VII. ENFORCEMENT AND PENALTIES

A. Enforcement.

1. The City of Sultan Enforcement and Penalties Code, as codified in Chapter 16.132 of the Sultan Municipal Code, Ordinance 630 § 2 -1995, 7/18/95, (Appendix C) are 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.

2. Enforcement action by the department or local government may be taken whenever a person has violated any provision of the act or any master program or other regulation promulgated under the act. The choice of enforcement action and the severity of any penalty should be based on the nature of the violation, the damage or risk to the public or to public resources, and/or the existence or degree of bad faith of the persons subject to the enforcement action.

B. Civil Penalty.

1. A person who fails to conform to the terms of a substantial development permit, conditional use permit or variance issued under RCW 90.58.140, who undertakes a development or use on shorelines of the state without first obtaining a permit, or who fails to comply with a cease and desist order issued under these regulations may be subject to a civil penalty by local government. The department may impose a penalty jointly with local government, or alone only upon an additional finding that a person:
   a. Has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule; or

   b. Has been given previous notice of the same or similar type of violation of the same statute or rule; or

   c. The violation has a probability of placing a person in danger of death or bodily harm; or

   d. Has a probability of causing more than minor environmental harm; or

   e. Has a probability of causing physical damage to the property of another in an amount exceeding one thousand dollars.

2. In the alternative, a penalty may be issued to a person by the department alone, or jointly with local government for violations which do not meet the criteria of subsection (1)(a) through (e) of this section, after the following information called for in items (a) through (e) below has been provided in writing to a person through a technical assistance visit or a notice of correction. No penalty shall be issued by the department until the individual or business has been given a reasonable time to correct the violation and has not done so.

3.

   a. A description of the condition that is not in compliance and a specific citation to the applicable law or rule;

   b. A statement of what is required to achieve compliance;

   c. The date by which the agency requires compliance to be achieved;

   d. Notice of the means to contact any technical assistance services provided by the agency or others; and

   e. Notice of when, where, and to whom a request to extend the time to achieve compliance for good cause may be filed with the agency.

3. Amount of penalty. The penalty shall not exceed one thousand dollars for each violation. Each day of violation shall constitute a separate violation.

4. Aiding or abetting. Any person who, through an act of commission or omission procures, aids or abets in the violation shall be considered to have committed a violation for the purposes of the civil penalty.

5. Notice of penalty. A civil penalty shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department and/or the local government, or from both jointly. The notice shall describe the violation, approximate the date(s) of violation, and shall order the acts constituting the violation to cease and desist, or, in appropriate cases, require necessary corrective action within a specific time.

6. Application for remission or mitigation. Any person incurring a penalty may apply in writing within thirty days of receipt of the penalty to the department or local government for remission or mitigation of such penalty. Upon receipt of the application, the department or local government may remit or mitigate the penalty only upon a demonstration of extraordinary circumstances, such as the presence of information or factors not considered in setting the original penalty.

When a penalty is imposed jointly by the department and local government, it may be remitted or mitigated only upon such terms as both the department and the local government agree.

C. Criminal Penalty

1. In addition to incurring civil liability under RCW 90.58.210, any person found to have willfully engaged in activities on the shorelines of the state in violation of the provisions of this chapter or any of the master programs, rules, or regulations adopted pursuant thereto shall be guilty of a gross misdemeanor, and shall be punished by a fine of not less than twenty-five nor more than one thousand dollars or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment:

2. PROVIDED, that the fine for the third and all subsequent violations in any five-year period shall be not less than five hundred nor more than ten thousand dollars:

3. PROVIDED FURTHER, That fines for violations of RCW 90.58.550, or any rule adopted thereunder, shall be determined under RCW 90.58.560.

D. Public and Private Redress

1. Any person subject to the regulatory program of the Master Program who violates any provision of the Master Program or the provisions of a permit issued pursuant thereto shall be liable for all damages to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to such violation.

2. The city attorney may bring suit for damages under this section on behalf of the city. Private persons shall have the right to bring suit for damages under this section on their own behalf and on behalf of all persons similarly situated.

3. If liability has been established for the cost of restoring an area affected by violation, restoration shall be accomplished within a reasonable time at the expense of the violator as established by the courts.

4. In addition to such relief, including monetary damages, the court, in its discretion, may award attorneys' fees and costs of the suit to the prevailing party.

E. Delinquent Permit Penalty

1. A person applying a permit after commencement of the use or activity may, at the discretion of the City be required, in addition, to pay a delinquent permit penalty not to exceed three (3) times the appropriate permit fee:
2. Provided, that a person who has caused, aided or abetted a violation within two (2) years after the issuance of a regulatory order, notice of violation or penalty by the department or the City against said person may be subject to a delinquent permit penalty not to exceed ten (10) times the appropriate permit fee. Delinquent permit penalties shall be paid in full prior to resuming the use or activity.

VIII. MASTER PROGRAM – REVIEW and AMENDMENTS

A. Master Program Review

This Master Program shall be periodically reviewed as necessary to reflect changing local circumstances, new information or improved data and changes in State statutes and regulations. This review process shall be consistent with WAC 173-19 requirements and shall include a local citizen involvement effort and public hearing to obtain the views and comments of the public.

B. Amendments to Master Program

Any of the provisions of this Master Program may be amended as provided for in RCW 90.58.120 and .200 and Chapter 173.26 WAC. Amendments or revision to the Master Program, as provided by law, do not become effective until approved by the Department of Ecology.

Proposals for shoreline environment redesignation (i.e., amendments to the shoreline maps and descriptions), must demonstrate consistency with the criteria set forth in WAC 173-16-040 (4).

February 3, 2009 PLANNING BOARD MEETING MINUTES

PLANNING BOARD MEMBERS PRESENT:
Frank Linth
Steve Harris
Keith Arndt
Robin Shaw
Jerry Knox

CITY STAFF:
Bob Martin, DCD
Carole Feldmann, Secretary

CALL TO ORDER: Meeting called to Order at 7:00 PM

Pledge of Allegiance:

Roll Call: See Above

Changes to the Agenda: None

Planning Board Member Comments:

Arndt: A.B.A.T.E Motorcycle Club is considering the City of Sultan to hold their annual motorcycle event in Sultan and would like to see the Community support the club moving their event here instead of Snohomish. This event brings upward of 12,000 people to the event.

Approval of Minutes:

Knox moves to accept the Minutes of January 20, 2009 Planning Board Meeting, 2nd by Harris, all in favor, all Ayes.

HEARING AND ACTION ITEMS

H-1: Public Hearing on Amendment of Shoreline Master Program, Chapter 7, Administrative Procedures:

Martin: We are here to hold a Public Hearing on the proposed Amendment of the Shoreline Master Program Chapter 7, Administrative Procedures and take public comment, and close or continue the Hearing as appropriate. The purpose of the hearing is to take public comment on removing the City Council from responsibility for quasi-judicial process in the Shoreline Master Program and transfer that responsibility to the Hearing Examiner. Adjust other procedures in Chapter 7 to clarify and streamline administration of the Shoreline Master Program. Action will be taken on the proposal following the hearing as listed in Agenda Item A-1.

The reason for the amendment pertains to the Shoreline Master Program (SMP) having been adopted and approved by the State as required by RCW 90.58 and WAC 173-26. It became effective on October 29, 2008, after expiration of the statutory 60-day appeal period. The newly adopted document is being published at this time.

The SMP was constructed using the Council as the final quasi-judicial decision maker. The Council has provided direction that all quasi-judicial procedures are to be vested in the Hearing Examiner.

Despite the recent adoption of the SMP, it is necessary to amend the Administrative Procedures (Chapter 7) to remove the Council from responsibility for quasi-judicial process and transfer that responsibility to the Hearing Examiner.
This is a procedural amendment only. It does not enact any changes in the substantive provisions of the Program, and will not result in any changes in implementation of policy or affects on the environment that are not contemplated by the language of the existing document.
While writing the language to remove the Council from quasi-judicial activities, Staff also took the opportunity to organize Chapter 7 to more effectively describe the procedures. In particular, the proposed draft clarifies that a Shoreline Substantial Development Permit is reviewed and decided at the Staff level (administrative review) with appeal to the Hearing Examiner. This was the intent of the newly-adopted document, but was not clearly stated. Other quasi-judicial functions (Variances and Conditional Uses) are addressed by the Staff constructing a report based on the Applicant's submittal with a Public Hearing by the Hearing Examiner. The Hearing Examiner's decision is appealable to the Shoreline Management Hearing Board or other appropriate appellate body.

Planning Board Comments on the Public Hearing:

Knox: Notes on page A-13 under appeals paragraph d, questions the reference to the remand back to the Hearing Examiner, should be corrected. Other minor language errors to be reviewed and corrected were noted.

Shaw: Notes on page 3 under Exemptions the dollar amount of $5718.00 conflict with the dollar amount in the foot note of $5178.00 and wants to know if that is a error, and be corrected.

Additional discussion between Bob Martin and Planning Board members on language and possible conflicts and clarifications issues is discussed.

Arndt moves to recommend the Amendment of Shoreline Master Program, Chapter 7, Administrative Procedures with corrections as indicated in their discussions to City Council for approval, 2nd by Knox, all Ayes.

Public Comments on Hearing: None

Linth moves to close the Public Hearing, so moved by Arndt, 2nd by Knox, all Ayes.

Planning Board Member Comments: