

SULTAN PLANNING BOARD
AGENDA ITEM COVER SHEET

ITEM NO: A-2

DATE: January 6, 2009

SUBJECT: Set Public Hearing:
Shoreline Master Program

CONTACT PERSON: Robert Martin, Community Development Director

ISSUE: Remove The Council from responsibility for quasi-judicial process and transfer that responsibility to the Hearing Examiner.

DISCUSSION:

The Shoreline Master Program (SMP) has just 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 (see **Attachment A**).

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, 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.

AMENDMENT PROCEDURE:

As provided by RCW 90.58.120, Shoreline Master Programs have a specific amendment process that involves review and approval by the Department of Ecology. This process is stated in Chapter 7, Section VIII of the newly-adopted SMP. That provision is not changed by the proposed amendment, and is reproduced below;

Chapter 7, Section 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 re-designation (i.e., amendments to the shoreline maps and descriptions), must demonstrate consistency with the criteria set forth in WAC 173-16-040 (4).

The Department of Ecology has been contacted and has initially agreed that the proposed amendment is administrative in nature and will be handled by the Department as a “Minor Amendment” as regards their review and approval as required by statute. Final determination will be made upon review of the proposed changes.

Adoption of the proposed changes does not require a new State Environmental Policy Act (SEPA) submittal, because the newly-adopted document has undergone extensive SEPA review and there is nothing in the new document that was not contemplated in the original document.

Adoption of the proposed changes will be subject to the statutory 60-day appeal period that applied to the newly-adopted document.

RECOMMENDATION:

Review Attachment A with staff, make any changes deemed appropriate, and set January 20, 2009 as the date for a public hearing on amendment of the Shoreline Master Program Chapter 7, Administrative Procedures.

ATTACHMENTS:

Attachment A: Proposed amendment to SMP Chapter 7

Attachment B: RCW 90.58.120

RCW 90.58.120: Adoption of Rules under the Shoreline Management Act

RCW 90.58.120

Adoption of rules, programs, etc., subject to RCW 34.05.310 through 34.05.395 — Public hearings, notice of — Public inspection after approval or adoption.

All rules, regulations, designations, and guidelines, issued by the department, and master programs and amendments adopted by the department pursuant to RCW 90.58.070(2) or *90.58.090(4) shall be adopted or approved in accordance with the provisions of RCW 34.05.310 through 34.05.395 insofar as such provisions are not inconsistent with the provisions of this chapter. In addition:

(1) Prior to the adoption by the department of a master program, or portion thereof pursuant to RCW 90.58.070(2) or *90.58.090(4), at least one public hearing shall be held in each county affected by a program or portion thereof for the purpose of obtaining the views and comments of the public. Notice of each such hearing shall be published at least once in each of the three weeks immediately preceding the hearing in one or more newspapers of general circulation in the county in which the hearing is to be held.

(2) All guidelines, regulations, designations, or master programs adopted or approved under this chapter shall be available for public inspection at the office of the department or the appropriate county and city. The terms "adopt" and "approve" for purposes of this section, shall include modifications and rescission of guidelines.

[1995 c 347 § 308; 1989 c 175 § 182; 1975 1st ex.s. c 182 § 2; 1971 ex.s. c 286 § 12.]

Notes:

***Reviser's note:** RCW 90.58.090 was amended by 2003 c 321 § 3, changing subsection (4) to subsection (5).

Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347: See notes following RCW 36.70A.470.

Effective date -- 1989 c 175: See note following RCW 34.05.010.

