

WHATCOM COUNTY COUNCIL AGENDA BILL

NO. AB2008-302

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
<i>Originator:</i> Peter Gill				8/5/2008	<i>Introduction</i>
<i>Division Head:</i>				9/9/2008	Hearing
<i>Dept. Head:</i> David Stalheim					
<i>Prosecutor:</i> Royce Buckingham	<i>[Signature]</i>	9-9-08			
<i>Purchasing/Budget:</i>					
<i>Executive:</i> Pete Kremen					

TITLE OF DOCUMENT:

Ordinance amending the official Whatcom County Shoreline Management Program; removing the administrative procedures from the Shoreline Management Program.

ATTACHMENTS:

(1) Proposed Ordinance

SEPA review required? () Yes (x) NO SEPA review completed? () Yes (x) NO	Should Clerk schedule a hearing? (x) Yes () NO Requested Date: September 9, 2008
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SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

AMENDING WHATCOM COUNTY CODE, TITLE 23 – SHORELINE MANAGEMENT PROGRAM; REMOVING THE ADMINISTRATIVE PROCEDURES FROM THE SHORELINE MANAGEMENT PROGRAM

COMMITTEE ACTION:

COUNCIL ACTION:

8/5/2008: Introduced
 9/9/2008: Council Adopted 6-1 Brenner
 opposed Ord. 2008-034

Related County Contract #:	Related File Numbers: AB2008-261A-C & AB2008-303	Ordinance or Resolution Number: Ord. 2008-034
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Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: www.co.whatcom.wa.us/council.

SPONSORED BY: Consent
PROPOSED BY: PDS
INTRODUCTION DATE: 8/5/2008

ORDINANCE NO. 2008-034

**AMENDING WHATCOM COUNTY CODE, TITLE 23 – SHORELINE MANAGEMENT PROGRAM;
REMOVING THE ADMINISTRATIVE PROCEDURES FROM THE SHORELINE MANAGEMENT
PROGRAM**

WHEREAS, the Whatcom County Shoreline Management Program (WCC, Title 23 [SMP]) was originally adopted on May 27, 1976 and approved by the Department of Ecology on August 27, 1976; and

WHEREAS, Whatcom County passed Ordinance #2007-017 adopting the Shoreline Management Program amendment on February 27, 2007, the State Department of Ecology must approve it before it becomes effective; and

WHEREAS, the State Department of Ecology has conditionally approved the Whatcom County Shoreline Management Program amendment; and

WHEREAS, the administrative permit review and enforcement procedures of the Shoreline Management Program are performed exclusively by Whatcom County; and

WHEREAS, removing the administrative procedures from the Shoreline Management Program eliminates the need for changes to be reviewed through the Washington State Shoreline amendment process; and

WHEREAS, local adoption of administrative procedures allows for more expediency and flexibility to update and integrate with other permit processing activities; and

WHEREAS, integration of the procedures within the Shoreline Management Program provides for consistency with other provisions and a single document for easy reference; and

WHEREAS, in accordance with the requirements of the Washington State Shoreline Guidelines (WAC 173 – 26); and

WHEREAS, RCW 36.70.795 requires the adoption of findings of fact which justify Council action; and

WHEREAS, the County Council has adopted the following Findings and Conclusions:

FINDINGS OF FACT AND CONCLUSIONS

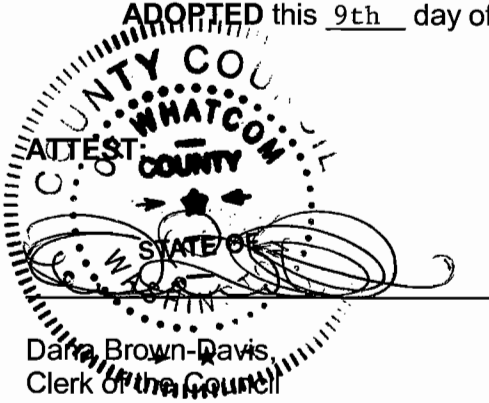
1. The Washington State Legislature passed the Washington State Shoreline Management Act (RCW 90.58 [SMA]) in June 1971 and it was passed by public initiative in 1972. Under the SMA, each county and city is required to adopt and administer a local shoreline management program to carry out the provisions of the Act.

2. The Shoreline Management Program Guidelines (WAC 173-26) are the standards and guidance that have been adopted by the Department of Ecology that local governments must follow in drafting their local shoreline management programs.
3. The use of separate local administrative and enforcement procedures is consistent with the 2003 Washington State Shoreline Master Program Guidelines (WAC 173-26-191(2)(a)(iii)(C)),
4. The local administrative and enforcement procedures conform to the Shoreline Management Act, specifically RCW 90.58.140, 90.58.143, 90.58.210 and 90.58.220 and to chapter 173-27 WAC.
5. The State Department of Ecology signed its decision letter with changes to the Whatcom County Shoreline Program amendments on July 31, 2008.

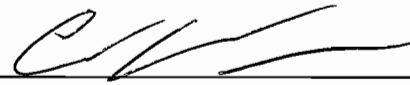
NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:

- Section 1: Whatcom County Code, Title 23 – Shoreline Management Program is hereby amended as indicated in Exhibit 1 of this ordinance.
- Section 2: The local administrative provisions in Exhibit 2 are hereby removed from the Shoreline Management Program.
- Section 3: Ordinance #2007 – 017, that adopted the Shoreline Management Program amendments on February 27, 2007, is hereby repealed.
- Section 4: Adjudication of invalidity of any of the sections, clauses, or provisions of this ordinance shall not affect or impair the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

ADOPTED this 9th day of September, 2008.




**WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON**



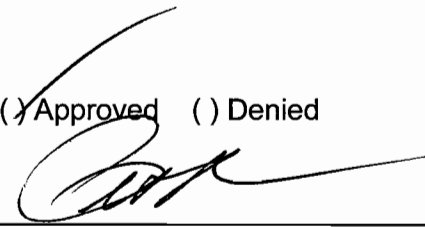
Carl Weimer, Council Chair

APPROVED as to form

Approved Denied



Civil Deputy Prosecutor



Pete Kremen, County Executive

Date: 9-10-08

Exhibit 1

SUBMITTED PROPOSED WHATCOM COUNTY SMP AMENDMENT

The following section will be added as WCC 23.05.01 to allow additional flexibility in local administration.

Administrative Procedures

As described in adopted Whatcom County ordinance 2008 – XXX, the general administrative sections of Title 23 (Whatcom County Shoreline Management Program) are not part of this Program. They are, however, included with the text of this document for consistency and ease of use. Department of Ecology will be notified of any changes to the administrative chapters listed below.

The use of separate local administrative and enforcement procedures is consistent with the 2003 Washington State Shoreline Master Program Guidelines (WAC 173-26-191(2)(a)(iii)(C)), Administrative provisions:

“Local governments may include administrative, enforcement, and permit review procedures in the master program or the procedures may be defined by a local government ordinance separate from the master program. In either case, these procedures shall conform to the Shoreline Management Act, specifically RCW 90.58.140, 90.58.143, 90.58.210 and 90.58.220 and to chapter 173-27 WAC.”

This allows Whatcom County to revise local administrative procedures (fees, application meetings, authority of Administrator, etc) without another formal state amendment process. These chapters must still be consistent and remain consistent with the related provisions in the Shoreline Management Act and state shoreline rules (WACs). In the event of a conflict, the state RCW or WAC, as amended, will prevail over the local ordinance.

The following sections are part of the Whatcom County Administrative Procedures ordinance 2008 – XXX, separate from Title 23.

- Ch 23.60.05 – Minimum Application Requirements
- Ch 23.60.06 – Pre-application Conference
- Ch 23.60.07 - Fees
- Ch 23.60.08 – Notice of Application
- Ch 23.60.09 – Permit Application Review
- Ch 23.60.10 – Consolidated Permit Review
- Ch 23.60.11 - SEPA Compliance
- Ch 23.60.13 – Public Hearings
- Ch 23.60.14 – Permit Conditions
- Ch 23.60.15 – Notice of Decision
- Ch 23.60.16 – Initiation of Development

Ch 23.60.18 - Rescission
Ch 23.60.19 – Expiration
Ch 7 – Administration
Ch 8 – Legal Provisions

Exhibit 2: Administrative Procedures

The local administrative sections of Title 23 (Whatcom County Shoreline Management Program) are included below. They are numbered according to how they appear in the Shoreline Management Program were they are included for efficiency in administration of the code. Department of Ecology will be notified of any changes to the administrative chapters listed below, but is not required to amend the Shoreline Management Program in response.

These chapters must still be consistent and remain consistent with the related provisions in the Shoreline Management Act and state shoreline rules (WACs). In the event of a conflict, the state RCW or WAC, as amended, will prevail over the local ordinance.

23.60.05 Minimum Application Requirements

- A. Where other approvals or permits are required for a use or development that does not require an open record hearing, such approvals or permits shall not be granted until a shoreline approval or permit is granted. All shoreline approvals and permits shall include written findings prepared by the Administrator documenting compliance with bulk and dimensional standards and other policies and regulations of this Program.
- B. A complete application for a substantial development, conditional use, or variance permit shall contain, at a minimum, the following information; provided that the Administrator may vary or waive these requirements according to administrative application requirements and may vary or waive these requirements on a case-by-case basis. The Administrator may require additional specific information depending on the nature of the proposal and the presence of sensitive ecological features or issues related to compliance with other county requirements.
 - 1. Applicant/Proponent Information
 - a. The name, address and phone number of the applicant/proponent, applicant's representative, and/or property owner if different from the applicant/proponent.
 - b. The applicant/proponent should be the owner of the property or the primary proponent of the project and not the representative of the owner or primary proponent.
 - 2. Property Information
 - a. The property address and identification of the section, township and range to the nearest quarter, quarter section or latitude and longitude to the nearest minute. All applications for projects located in open water areas away from land shall provide a longitude and latitude location.
 - b. Identification of the name of the shoreline (water body) that the site of the proposal is associated with.
 - c. A general description of the property as it now exists including its use, physical and ecological characteristics, improvements and structures.

- d. A general description of the vicinity of the proposed project including identification of the adjacent uses, structures and improvements, intensity of development and physical characteristics.
 - e. A vicinity map showing the relationship of the property and proposed development or use to roads, utilities, existing developments and uses on adjacent properties.
 3. A site plan identifying existing conditions consisting of photographs, text, maps and elevation drawings, drawn to an appropriate scale to clearly depict all required information, that shall include:
 - a. The boundary of the parcel(s) of land upon which the development is proposed. A survey may be required where substantial questions exist regarding the location of property lines or other important features.
 - b. The ordinary high water mark of all water bodies within, located on or adjacent to the project boundary. For any development where a determination of consistency with the applicable regulations requires a precise location of the ordinary high water mark, the applicant/proponent shall provide a survey and describe the biological and hydrological basis for the location as indicated on the plan. Where the ordinary high water mark is neither adjacent to or within the boundary of the project, the plan shall indicate the distance and direction to the nearest ordinary high water mark of a shoreline.
 - c. Existing land contours at intervals sufficient to accurately determine the existing character of the property. Areas within the boundary that will not be altered by the development may be indicated as such and contours approximated for that area.
 - d. Existing critical areas as designated in WCC 16.16 together with any supporting information consistent with the reporting requirements of WCC 16.16.
 - e. A description of the character of vegetation found on the site, including dominant plant species, vegetation structure, presence of invasive species and related information. A vegetation survey of plant communities may be required.
 - f. A description of the existing conditions including the ecological functions and processes affecting, maintaining, or influencing the shoreline.
 - g. The dimensions and locations of all existing structures and improvements including, but not limited to; buildings, paved or graveled areas, roads, utilities, septic tanks and drainfields, and stormwater management facilities.
 4. A site plan and supporting information describing the features of the proposed development:

- a. The dimensions and locations of all proposed structures and improvements including but not limited to; buildings, paved or graveled areas, roads, utilities, septic tanks and drainfields, material stockpiles or surcharge, and stormwater management facilities.
 - b. Proposed land contours overlain on existing contours. The contours shall be at intervals sufficient to accurately determine the extent of proposed change to the land that is necessary for the development. Areas within the boundary that will not be altered by the development may be indicated as such and contours approximated for that area.
 - c. Where applicable, a landscaping plan for the project.
 - d. Quantity, source and composition of any fill material that is placed on the site whether temporary or permanent.
 - e. Quantity, composition and destination of any excavated or dredged material.
 - f. A vicinity map showing the relationship of the property and proposed development or use to roads, utilities, existing developments and uses on adjacent properties.
 - g. Where applicable, a depiction of the impacts to views from existing residential uses and public areas.
 - h. A summary characterization of the effects of the project on existing ecological functions and processes in the vicinity of the project. If the project is likely to have adverse effects on shoreline ecological functions or processes, a mitigation plan shall be provided demonstrating measures that will be taken to offset impacts in accordance with the policies in SMP 23.90.03.
 - i. Where applicable, critical area mitigation plans in accordance with WCC 16.16.260.
 - j. On all variance applications the plans shall clearly indicate where development could occur without approval of a variance, the physical features and circumstances on the property that provide a basis for the request, and the location of adjacent structures and uses.
5. Shoreline permits shall be applied for on forms provided by the county.
 6. Operation and maintenance plan(s) as required pursuant to other applicable sections of this Program.

23.60.06 Pre-application Conference

- A. Prior to filing a permit application for a shoreline substantial development permit, variance or conditional use permit decision, the applicant shall contact the county to schedule a pre-

application conference which shall be held prior to filing the application, provided that such meetings shall not be required for development activities associated with shoreline restoration projects, agriculture, commercial forestry, or the construction of a single family residence.

- B. The purpose of the pre-application conference is to review and discuss the application requirements with the prospective applicant and provide initial comments on the development proposal. The pre-application conference shall be scheduled by the county, at the request of an applicant, and shall be held in a timely manner, within thirty (30) days from the date of the applicant's request. A project coordinator shall be assigned by the county following the pre-application conference.
- C. The Administrator may waive the requirement for a pre-application conference if it is determined to be unnecessary for review of an application. Nothing in this section shall be interpreted to require more than one pre-application conference or to prohibit the applicant from filing an application if the county is unable to schedule a pre-application conference within thirty (30) days following the applicant's request.
- D. Information presented at or required as a result of the pre-application conference shall be valid for a period of one-hundred-eighty (180) days following the pre-application conference. An applicant wishing to submit a permit application more than one-hundred-eighty (180) days following a pre-application for the same permit application shall be required to schedule another pre-application conference.
- E. At or subsequent to a pre-application conference, the county may issue a preliminary determination that a proposed development is not permissible under applicable county policies or regulatory enactments. In that event, the applicant shall have the option to appeal the preliminary determination to the hearing examiner as provided for in SMP 23.60.15 as an alternative to proceeding with a complete application.

23.60.07 Fees

- A. Required fees for all shoreline substantial development permits, shoreline conditional use permits, shoreline variances, statements of exemption, appeals, pre-application conferences and other required reviews and/or approvals shall be paid to the County at the time of application in accordance with the Whatcom County Unified Fee Schedule in effect at that time.
- B. When any given project requires more than one of the following permits or applications, the total amount of shoreline fees shall be reduced by twenty-five percent (25%):
 - 1. Preliminary plat application
 - 2. Rezone application
 - 3. Major development permit
 - 4. Planned unit development
 - 5. Binding site plan
- C. When any project requires a shoreline conditional use permit or shoreline variance in addition to a shoreline substantial development permit, the fees for the conditional use or variance shall be reduced by half.

- D. In the event that actions of an applicant result in the repetition of the review, inspections and other steps in the approval process, those items or steps repeated shall be charged to and paid by the applicant prior to any further processing of the application by the County. The cost shall be in accordance with the adopted fee schedule.
- E. If an application is withdrawn within thirty (30) days of submittal, and no work has commenced at the site of the proposal for which the application was made, a refund of not more than fifty percent (50%) of the shoreline fees paid may be granted by the Administrator. This amount may be reduced where staff time, public notice and other costs exceed fifty percent (50%) of the fees paid.
- F. No fees shall be collected from an agency of Whatcom County government.

23.60.08 Notice of Application

- A. Upon receipt of a completed shoreline substantial development permit, shoreline variance, or shoreline conditional use permit application, the County shall issue a Notice of Application for a Proposed Land Use Action in the manner set forth in WCC 2.33.060 (Permit Review Procedures) notwithstanding the requirement for an open record public hearing, and to notify the applicant/proponent of his/her notice responsibility under that section.
- B. The public comment period for a shoreline substantial development permit, shoreline variance, or shoreline conditional use permit shall be thirty (30) days following the date of notice of application. Public comments may be submitted at any time prior to the closing of the record of an open record predecision hearing or, if no open record public hearing is required, prior to the decision on the project permit.
- C. The public hearing shall not be closed to the receipt of written comments prior to thirty (30) days following the date of the notice.
- D. Application for any approval or permit not requiring a shoreline substantial development permit, shoreline variance, or shoreline conditional use permit shall be governed by the applicable notice requirement for that permit and shall not be subject to additional notice by this section. Any public comments submitted pursuant to applications for other approvals or permits shall be considered in review of compliance with standards, policies and regulations of this Program.
- E. The rights of treaty tribes to resources within their usual and accustomed areas shall be accommodated through the notification and comment provisions of the permit review process. Tribal treaty rights may be addressed through specific permit conditions. Direct coordination between tribes and the applicant/proponent is encouraged.

23.60.09 Permit Application Review

- A. All shoreline permit applications, exemptions, or other approvals shall be subject to the provisions of this Program that are in effect at the time of application.
- B. To facilitate review of an application the decision maker shall consider any or all of the following:
 - 1. The application and attached information;

2. The SEPA checklist, threshold determination, Environmental Impact Statement, or other environmental studies and/or documentation;
 3. Written comments from interested persons;
 4. Information and recommendations from any public agency and from the Administrator in cases where the Administrator is not the decision maker;
 5. Information or comment presented at a public hearing, if held, on the application; and
 6. The policy and provisions of the Act and this Program including the criteria enumerated in SMP 23.60.01, .03 and .04, as applicable.
- C. In compliance with the provisions of WCC 2.33 the decision maker shall be responsible to process permit applications for shoreline substantial development permits, shoreline variance and shoreline conditional use permits, in a timely manner.
- D. Shoreline statements of exemption shall be processed in accordance with the provisions of SMP 23.60.02.3.A.
- E. Any application for a shoreline permit or approval that remains inactive for a period of one-hundred-eighty (180) days shall expire and a new application and repayment of fees shall be required to reactivate the proposal; provided that, the Administrator may grant a single ninety (90) day extension for good cause. Delays such as those caused by public notice requirements, State Environmental Policy Act review, litigation directly related to the proposal, or changes in government regulations shall not be considered as part of the inactive period.
- F. If a shoreline permit is denied, no reapplication for the same or essentially similar development may be made until one (1) year from the date of denial.

23.60.10 Consolidated Permit Review

- A. Whenever an application for a permit under the Program requires a permit or approval under another county permit authority, such as zoning or subdivision, the shoreline permit application, time requirements and notice provisions for processing the shoreline permit shall apply, in addition to those of other regulatory programs.
- B. The provisions of WCC 2.33 shall apply to the consolidated application, review and approval of applications that require an open record hearing. Any shoreline use or development that is subject to other approvals or permits that requires an open record hearing under another permit authority, such as zoning or subdivision, shall be subject to consolidated review and the decision maker designated for the open record hearing shall be the decision maker for the consolidated review.

23.60.11 State Environmental Policy Act (SEPA) Compliance

- A. Whenever an application for shoreline substantial development permit, shoreline variance, shoreline conditional use permit, or statement of exemption is subject to the

rules and regulations of SEPA (RCW 43.21C), the review requirements of SEPA, including time limitations, shall apply, where applicable.

- B. Applications for shoreline permit(s) or approval(s) that are not categorically exempt under SEPA shall be subject to environmental review by the responsible official of Whatcom County pursuant to the State Environmental Policy Act (WAC 197-11).
- C. As part of SEPA review, the responsible official may require additional information regarding the proposed development in accordance with WAC 197-11.
- D. Failure of the applicant/proponent to submit sufficient information for a threshold determination to be made shall be grounds for the responsible official to determine the application incomplete.

23.60.11 (Not a local administrative provision, see SMP)

23.60.13 Public Hearings

- A. The Administrator shall determine whether an application requires a public hearing pursuant to the criteria below no later than fifteen (15) days after the minimum public comment period provided by SMP 23.60.08. An open record public hearing shall be required for all of the following:
 - 1. The proposal has a cost or market value in excess of one-hundred-thousand dollars (\$100,000) except for single family residences, agriculture, commercial forestry and ecological restoration projects; or
 - 2. The proposal would result in development of an area larger than 5 acres; or
 - 3. The proposal is a new or expanded marina, pier, aquaculture structure, any building over 35 feet high, mine, dam, stream diversion, landfill; or
 - 4. The Administrator has reason to believe the proposal would be controversial based on public response to the Notice of Receipt of Application and other information; or
 - 5. The proposal is determined to have a significant adverse impact on the environment and an Environmental Impact Statement is required in accordance with the State Environmental Policy Act; or
 - 6. The proposal requires a variance and/or conditional use approval pursuant to this Program; or
 - 7. The use or development requires an open record public hearing for other Whatcom County approvals or permits.
- B. An open record public hearing on shoreline permit applications shall be held in accordance with the provisions of WCC 2.33, unless a continuance is granted pursuant to the rules and procedures of the Hearing Examiner or other hearing body and subject to time requirements for compliance with the State Environmental Policy Act.

- C. Decisions and recommended decisions of the Hearing Examiner shall be rendered within ten (10) working days of the date the public hearing record is closed unless the applicant/proponent agrees to an extension of time.
- D. Where the County Council is the permit decision maker they shall meet to consider the Hearing Examiner's recommendation within twenty-one (21) days of receipt thereof, at a closed record proceeding, at which time it may approve or disapprove the application, or remand the matter to the Hearing Examiner with instructions.
- E. Public hearing requirements for permit appeals shall be processed according to SMP 23.60.15.

23.60.14 Permit Conditions

In granting, revising, or extending a shoreline permit, the decision maker may attach such conditions, modifications, or restrictions thereto regarding the location, character, and other elements of the proposed development deemed necessary to assure that the development will be consistent with the policy and provisions of the Act and this Program as well as the supplemental authority provided in RCW 43.21C as applicable. In cases involving unusual circumstances or uncertain effects, a condition may be imposed to require monitoring with future review or re-evaluation to assure conformance with the Act and this Program. If the monitoring plan is not implemented, the permittee may be found to be noncompliant and the permit may be rescinded in accordance with SMP 23.60.18.

23.60.15 Notice of Decision, Reconsideration and Appeal

- A. A notice of decision for action on a shoreline substantial development permit, shoreline variance, or shoreline conditional use permit shall be provided to the applicant/proponent and any party of record in accordance with the review procedures of WCC 2.33 and at least ten (10) days prior to filing such decisions with the Department of Ecology pursuant to WAC 173-27-130. Decisions filed with the Department of Ecology shall contain the following information:
 - 1. A copy of the complete application;
 - 2. Findings and conclusions that establish the basis for the decision including but not limited to identification of shoreline environment designation(s), applicable Program policies and regulations and the consistency of the project with appropriate review criteria for the type of permit(s);
 - 3. The final decision of the local government;
 - 4. A completed permit data sheet (see Appendix A); and
 - 5. Where applicable, local government shall also file the applicable documents required by SEPA, or in lieu thereof, a statement summarizing the actions and dates of such actions taken under RCW 43.21C.
 - 6. When the project has been modified in the course of the local review process, plans or text shall be provided that clearly indicate the final approved plan.

B. Notice of decision for shoreline statements of exemption shall comply with SMP

23.60.02.3.E.

C. This Program shall only establish standing for parties of record for shoreline substantial development permits, shoreline variances, or shoreline conditional use permits. Standing as a party of record is not established by this Program for exempt actions pursuant to SMP 23.60.02.2; provided that, in such cases standing may be established through an associated permit process that provides for public notice and provisions for parties of record.

D. The applicant/proponent or any party of record may request reconsideration of any final action by the decision maker within ten (10) days of notice of the decision. Such requests shall be filed on forms supplied by the county. Grounds for reconsideration must be based upon the content of the written decision. The decision maker is not required to provide a written response or modify his/her original decision. He/she may initiate such action as he/she deems appropriate. The procedure of reconsideration shall not pre-empt or extend the appeal period for a permit or affect the date of filing with the Department of Ecology, unless the applicant/proponent requests the abeyance of said permit appeal period in writing within ten (10) days of a final action.

E. Appeals to the Shoreline Hearings Board of a decision on a shoreline substantial development permit, shoreline variance or shoreline conditional use permit may be filed by the applicant/proponent or any aggrieved party pursuant to RCW 90.58.180 within twenty-one (21) days of filing the final decision by Whatcom County with the Department of Ecology.

F. Whatcom County shall consider an appeal of a decision on a shoreline substantial development permit, shoreline variance or shoreline conditional use only when the applicant/proponent waives his/her right to a single appeal to the Shoreline Hearings Board. Such waivers shall be filed with the county in writing concurrent with a notice of appeal within ten (10) days of a final action. When an applicant/proponent has waived his/her right to a single appeal, such appeals shall be processed in accordance with the appeal procedures of SMP 23.60.15.H and shall be an open record hearing before the Hearing Examiner.

G. Any order, requirement or administrative permit decision, or determination by the Administrator based on a provision of this Program, except a shoreline substantial development permit, may be the subject of an appeal to the office of the Hearing Examiner by any aggrieved person. Such appeals shall be processed in accordance with the appeal procedures of SMP 23.60.15.H and shall be an open record hearing before the Hearing Examiner.

H. Appeal procedures:

1. Appeals shall be filed on forms supplied by the county within ten (10) calendar days of the issuance of a substantial development permit, shoreline variance or

shoreline conditional use permit and within twenty (20) calendar days of any other action of the Administrator being appealed.

2. A public hearing on the appeal shall be held within forty-five (45) working days following receipt of the application for appeal.
3. Legal notice of the public hearing shall be made by mailing notice of time, date, and location of the hearing to the appellant, any parties or record, the Washington Department of Ecology, and the Administrator at least fifteen (15) days prior to the hearing.
4. A decision by the Hearing Examiner shall be mailed within ten (10) working days of the public hearing to all parties of record unless otherwise mutually agreed to by all parties to the appeal.
5. Any party of record may request a closed record review of the Hearing Examiner's decision issued under SMP 23.60.15.H.4 by the County Council. Such an appeal shall be filed with the County Council on forms supplied by the county within ten (10) calendar days of the written decision. If appeal is made to the County Council, notice of appeal shall be provided to all parties of record at least fifteen (15) days prior to consideration by the County Council. The Council shall meet to review the Hearing Examiner's decision within twenty-one (21) days of transmittal thereof, at which time it may approve or disapprove the application, or remand the matter to the Hearing Examiner.
6. The time period for appeal to the Shoreline Hearings Board shall begin after the decision maker has filed the final County decision with the Department of Ecology.

23.60.16 Initiation of Development

- A. Development pursuant to a shoreline substantial development permit, shoreline variance, or conditional use permit shall not begin and shall not be authorized until twenty-one (21) days after the "date of filing" or until all review proceedings before the Shoreline Hearings Board have terminated.
- B. Date of filing:
 1. "Date of filing" of a substantial development permit is the date of actual receipt of the decision by the Department of Ecology.
 2. The "date of filing" for a shoreline variance or shoreline conditional use permit shall mean the date the permit decision rendered by the Department of Ecology is transmitted by the department to the County and the applicant/proponent.

23.60.17 (Not a local administrative provision, see SMP)

23.60.18 Rescission and Modification

- A. Any shoreline permit granted pursuant to this Program may be rescinded or modified upon a finding by the Hearing Examiner that the permittee or his/her successors in interest have not complied with conditions attached thereto. If the results of a monitoring

plan show a development to be out of compliance with specific performance standards, such results may be the basis for findings of non-compliance.

- B. The Administrator shall initiate rescission or modification proceedings by issuing written notice of non-compliance to the permittee or his/her successors and notifying parties of record at the original address provided in application review files.
- C. The Hearing Examiner shall hold a public hearing no sooner than fifteen (15) days following such issuance of notice, unless the applicant/proponent files notice of intent to comply and the Administrator grants a specific schedule for compliance. If compliance is not achieved, the Administrator shall schedule a public hearing before the Hearing Examiner. Upon considering written and oral testimony taken at the hearing, the Hearing Examiner shall make a decision in accordance with the above procedure for shoreline permits.
- D. These provisions do not limit the Administrator, the Prosecuting Attorney, the Department of Ecology or the Attorney General from administrative, civil, injunctive, declaratory or other remedies provided by law, or from abatement or other remedies.

23.60.19 Expiration

- A. The following time requirements shall apply to all substantial development permits and to any development authorized pursuant to a variance, conditional use permit, or statement of exemption:
 - 1. Construction shall be commenced or, where no construction is involved, the use or activity shall be commenced within two (2) years of the effective date of a shoreline permit or exemption or the permit shall expire; provided that, the Hearing Examiner or Administrator, as appropriate, may authorize a single extension for a period of not more than one (1) year based on a showing of good cause if a request for extension has been filed with the Hearing Examiner or Administrator as appropriate before the expiration date of the shoreline permit or exemption, and notice of the proposed extension is given to parties of record and the Department of Ecology.
 - 2. Authorization to conduct development activities shall terminate five (5) years after the effective date of a shoreline permit or exemption, provided that the Hearing Examiner or Administrator, as appropriate, may authorize a single extension for a period of not more than one (1) year based on a showing of good cause, if a request for extension has been filed with the Hearing Examiner or Administrator, as appropriate, before the expiration date of the shoreline permit or exemption and notice of the proposed extension is given to parties of record and the Department of Ecology.
 - 3. The effective date of a shoreline permit or exemption shall be the date of last action required on the shoreline permit or exemption and all other government permits and approvals that authorize the development to proceed, including administrative and legal actions on any such permit or approval. The applicant/proponent shall be responsible for informing the County of the pendency of other permit applications filed with agencies other than the County and of any related administrative and legal actions on any permit or approval. If no notice of the pendency of other permits or approvals is given to the County

prior to the date of the last action by the County to grant county permits and approvals necessary to authorize the development to proceed, including administrative and legal actions of the County, and actions under other county development regulations, the date of the last action by the County shall be the effective date.

- B. Notwithstanding the time limits established in SMP 23.60.19.A.1 and .2, upon a finding of good cause based on the requirements and circumstances of the proposed project and consistent with the policies and provisions of this Program and the Act, the Hearing Examiner or Administrator as appropriate may set different time limits for a particular substantial development permit or exemption as part of the action to approve the permit or exemption. The Hearing Examiner may also set different time limits on specific conditional use permits or variances with the approval of the Department of Ecology. The different time limits may be longer or shorter than those established in SMP 23.60.19.A.1 and .2 but shall be appropriate to the shoreline development or use under review. "Good cause based on the requirements and circumstances of the proposed project" shall mean that the time limits established for the project are reasonably related to the time actually necessary to perform the development on the ground and complete the project that is being permitted, and/or are necessary for the protection of shoreline resources.
- C. When permit approval includes conditions, such conditions shall be satisfied prior to occupancy or use of a structure or prior to the commencement of a nonstructural activity, provided that different time limits for compliance may be specified in the conditions of approval as appropriate.
- D. The Hearing Examiner or Administrator as appropriate shall notify the Department of Ecology in writing of any change to the effective date of a permit, authorized by SMP 23.60.19.A through C, with an explanation of the basis for approval of the change. Any change to the time limits of a permit other than those authorized by the sections of this Program previously listed shall require a new permit application.

Chapter 7 Administration

23.70.01 Administrator

- A. The Administrator, as defined in SMP 23.110.A, is hereby vested with the authority to:
 - 1. Overall administrative responsibility for this Program.
 - 2. Determine if a public hearing should be held on a shoreline permit application by the Hearing Examiner pursuant to SMP 23.60.13.
 - 3. Grant or deny statements of exemption.
 - 4. Authorize, approve or deny shoreline substantial development permits, except for those for which the Hearing Examiner or County Council is the designated decision maker.

5. Issue a stop work order pursuant to the procedure set forth in WAC 173-27-270 upon a person undertaking an activity on shorelines in violation of RCW 90.58 or this Program; and seek remedies for alleged violations of this Program's regulations, or of the provisions of the Act, or of conditions attached to a shoreline permit issued by Whatcom County.
 6. Decide whether or not a proposal is subject to the consolidated review process of WCC 2.33 and determine what other permits are required to be included in the consolidated review.
 7. Make field inspections as needed, and prepare or require reports on shoreline permit applications.
 8. Make written recommendations to the County Council or Hearing Examiner as appropriate and insofar as possible, assure that all relevant information, testimony, and questions regarding a specific matter are made available during their respective reviews of such matter.
 9. Propose amendments to the Planning Commission deemed necessary to more effectively or equitably achieve the purposes and goals of this Program.
 10. The Administrator shall perform the following administrative responsibilities:
 - a. Advise interested persons and prospective applicants/proponents as to the administrative procedures and related components of this Program;
 - b. Collect fees as provided for in SMP 23.60.07 of this Program; and
 - c. Assure that proper notice is given to interested persons and the public through news media, posting or mailing of notice.
 11. Review administrative and management policies, regulations, plans and ordinances relative to lands under County jurisdiction that are adjacent to shorelines so as to achieve a use policy on such lands that is consistent with the Act and this Program.
 12. Review and evaluate the records of project review actions in shoreline areas and report on the cumulative effects of authorized development of shoreline conditions. The Administrator shall coordinate such review with the Washington Department of Ecology, the Washington Department of Fish and Wildlife, the Lummi Nation and Nooksack Tribe and other interested parties.
 13. Make recommendations to the Planning Commission for open space tax designations pursuant to RCW 84.34.
- B. The Director of Planning and Development Services shall have the authority to develop administrative guidance materials related to the interpretations of principles and terms in this Program as required to provide for consistent and equitable implementation of this Program. Such administrative guidance documents shall be developed in consultation with the Washington State Department of Ecology to insure that any formal written

interpretations are consistent with the purpose and intent of RCW 90.58, the applicable guidelines, and the goals and objectives of this Program.

23.70.02 SEPA Official

The Whatcom County SEPA Responsible Official is designated by WCC 16.08.040. The Responsible Official or his/her designee is hereby authorized to conduct environmental review of all use and development activities subject to this Program, pursuant to WAC 197-11 and RCW 43.21C.

23.70.03 Hearing Examiner

The Whatcom County Hearing Examiner is hereby vested with the authority to:

- A. Grant or deny shoreline permits requiring public hearings.
- B. Grant or deny variances from this Program.
- C. Grant or deny conditional uses under this Program.
- D. For consolidated applications for permits for which the County Council is designated as the decision maker, the Hearing Examiner shall have the authority to hold an open record public hearing and make a recommendation to the County Council on shoreline permits as part of a consolidated review as provided in WCC 2.33.
- E. Decide on appeals of administrative decisions issued by the Administrator of this Program.

23.70.04 Planning Commission

The Whatcom County Planning Commission is hereby vested with the responsibility to review the Program from time to time as a major element of the County's planning and regulatory program, and make recommendations for amendments thereof to the County Council.

23.70.05 County Council

The Whatcom County Council is hereby vested with authority to:

- A. Initiate an amendment to this Program according to the procedures prescribed in WAC 173-26-100.
- B. Adopt all amendments to this Program, after consideration of the recommendation of the Planning Commission and pursuant to the procedural requirements of WCC 2.02, provided that substantive amendments shall become effective immediately upon adoption by the Department of Ecology.
- C. Make final decisions with regard to shoreline permit, shoreline variance or shoreline conditional use applications that require County Council action on a consolidated review as provided by WCC 2.33.
- D. Review and decide appeals to Hearing Examiner decisions pursuant to the procedures of SMP 23.60.15.

Chapter 8 Legal Provisions

23.80.01 Amendments

- A. The County Council or the Planning Commission may initiate an amendment to this Program according to the procedures prescribed in WAC 173-26-100. The Planning Commission shall conduct a public hearing on any amendment proposed by the County Council.

- B. Any person may petition the County Council or Planning Commission to amend this Program. Petitions shall specify the changes requested and any and all reasons therefore. The County Council or Planning Commission may schedule a public hearing on said petition(s) if it deems the proposed amendment would make this Program more consistent with the Act and/or any applicable Department of Ecology Guidelines, or more equitable in its application to persons or property due to changed conditions in an area.

- C. After approval or disapproval of a Program amendment by the Department of Ecology as provided in RCW 90.58.090, the County shall publish a notice that the Program amendment has been approved or disapproved by the Department of Ecology. For the purposes of RCW 36.70A.290, the date of publication for the amendment of a Program is the date the County publishes notice that the Program amendment has been approved or disapproved by the Department of Ecology.

- D. The Administrator shall submit an annual report to the County Council reviewing the effectiveness of the Program in achieving its stated purpose, goals, and objectives. Such report may also include any proposed amendments deemed necessary to increase its effectiveness or equity. If said report contains proposed amendments, the Council may schedule a public hearing to consider such matter in accordance with the procedure described in SMP 23.80.01.A above. Said report shall also include a determination of whether or not the goal of no net loss of shoreline ecological function is being achieved and provide recommendations for achieving and maintaining the goal.

- E. Upon County Council adoption of a detailed community or subarea plan under the Whatcom County Comprehensive Plan, the Planning and Development Services Department shall prepare amendments, as appropriate, for the purpose of incorporating the goals, objectives, and standards of the community or subarea plan into this Program. The Planning Commission shall schedule a public hearing upon receipt of such proposals, and shall give due consideration to the community objectives so expressed.

23.80.02 Violations and Penalties

- A. In the event any person violates any of the provisions of this chapter, the County may issue a correction notice to be delivered to the owner or operator, or to be conspicuously posted at the site. In a non-emergency situation, such notice may include notice of the intent to issue a stop work order no less than ten (10) calendar days following the receipt of the correction notice, and provide for an administrative predeprivation hearing within ten (10) calendar days of the notice. In an emergency situation where there is a significant threat to public safety or the environment, the County may issue a stop work order. The stop work order shall include, in writing, the right to request an administrative predeprivation hearing within seventy-two (72) hours following receipt of the stop work order.
- B. In addition to incurring civil liability under SMP 23.80.03 and RCW 90.58.210, pursuant to RCW 90.58.220 any person found to have willfully engaged in activities on shorelines of the state in violation of the provisions of the Act or of this Program, or other regulations adopted pursuant thereto shall be punished by:
1. A fine of not less than twenty-five dollars (\$25) or more than one thousand dollars (\$1,000);
 2. Imprisonment in the county jail for not more than ninety (90) days; or
 3. Both such fine and imprisonment;
- provided that, the fine for the third and all subsequent violations in any five (5) year period shall not be less than five hundred dollars (\$500) nor more than ten thousand dollars (\$10,000). Provided further, that fines for violations of RCW 90.58.550, or any rule adopted thereunder, shall be determined under RCW 90.58.560. Each permit violation or each day of continued development without a required permit shall constitute a separate violation.
- C. The penalty provided in Subsection B shall be assessed and may 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. The notice shall include the amount of the penalty imposed and shall describe the violation with reasonable particularity. In appropriate cases, corrective action shall be taken within a specific and reasonable time.
- D. Within thirty (30) calendar days after the notice is received, the person incurring the penalty may apply in writing to the County for remission or mitigation of such penalty. Upon receipt of the application, the County may remit or mitigate the penalty upon whatever terms the County in its discretion deems proper. The County's final decision on mitigation or revisions may be reviewed by the Hearing Examiner if the aggrieved party files a written appeal therewith of said decision within ten (10) calendar days of its issuance.
- E. If work activity has occurred on a site in violation of this Program, prompt corrective action, restoration or mitigation of the site will be required when appropriate. If this provision is not complied with, the County may restore or mitigate the site and charge the responsible person for the full cost of such an activity. Additionally, any and all permits or approvals issued by the County may be denied for that site for a period of up to six (6) years.

- F. The County may suspend or revoke a permit if the applicant violates the conditions or limitations set forth in the permit or exceeds the scope of the work set forth in the permit.
- G. Any person who willfully violates any court order or regulatory order of injunction issued pursuant to this Program shall be subject to a fine of not more than five thousand dollars (\$5,000), imprisonment in the county jail for not more than ninety (90) days, or both.

23.80.03 Remedies

- A. The Whatcom County Prosecuting Attorney or Administrator, where authorized, shall bring such injunctive, declaratory, or other actions as are necessary to insure that no uses are made of the shorelines of the state located within Whatcom County in conflict with the provisions of this Program, the Act, or other regulations adopted pursuant thereto, and to otherwise enforce the provisions of this Program.
- B. Any person subject to the regulatory provisions of this Program or the Act who violates any provision thereof, or permit, or permit condition issued pursuant thereto shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to violation. The Whatcom County Prosecuting Attorney shall bring suit for damages under this section on their own behalf and on the behalf of all persons similarly situated. If liability has been established for the cost of restoring an area affected by a violation, the court shall make provision to assure that restoration will be accomplished within a reasonable time at the expense of the violator. In addition to such relief, including money damages, the court in its discretion may award attorney's fees and costs of the suit to the prevailing party.
- C. 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 any required permit or authorization, or who fails to comply with a stop work order may be subject to a civil penalty. The penalty shall be imposed pursuant to the procedure set forth in WAC 173-27-280 and become due and recovered as set forth in WAC 173-27-290(3) and (4). Persons incurring a penalty may appeal the same to the Shoreline Hearings Board or the County Council pursuant to WAC 173-27-290(1) and (2).
- D. Any order, requirement or determination by the Administrator pursuant to SMP 23.80.02 may be appealed in accordance with the provisions of SMP 23.60.15.G and H.

23.80.04 Abatement

Structures or development on shorelines considered by the Administrator to present a hazard or other public nuisance to persons, properties or natural features may be abated by the County under the provisions of the applicable provisions of the Uniform Code for

the Abatement of Dangerous Buildings, 1997 Edition or successor as adopted by Whatcom County, or by other appropriate means.