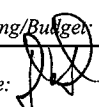


**WHATCOM COUNTY COUNCIL AGENDA BILL**

NO. 2008-352

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator: David Stalheim	DS	10-10-08	RECEIVED  OCT 14 2008  WHATCOM COUNTY COUNCIL	10-21-08	Natural Resources/ Introduction
Division Head:				11/12/2008	Hearing
Dept. Head: David Stalheim	DS	10-10-08			
Prosecutor:	<del>DS</del>	10-10-08			
Purchasing/Budget:					
Executive: 	FR	10-14-08			

**TITLE OF DOCUMENT:**  
*Ordinance amending administrative procedures for the Whatcom County Shoreline Management Program.*

**ATTACHMENTS:**  
*Ordinance*

SEPA review required?    ( ) Yes    ( x ) NO	Should Clerk schedule a hearing?    ( x ) Yes    ( ) NO
SEPA review completed?    ( ) Yes    ( ) NO	Requested Date: November 12, 2008

**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.)*

Ordinance amending Ordinance 2008-034 which amends the administrative procedures of the Whatcom County Shoreline Management Program to authorize Planning and Development Services Director to make decisions on shoreline conditional use permit applications.

**COMMITTEE ACTION:**  
 10/21/2008: Committee recommends introduction

**COUNCIL ACTION:**  
 10/21/2008: Introduced  
 11/12/2008: Council Adopted 7-0  
 Ord. 2008-044

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

Ord. 2008-044

**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](http://www.co.whatcom.wa.us/council).*

**SPONSORED BY:** Consent

**PROPOSED BY:** PDS

**INTRODUCTION DATE:** 10/21/08

**ORDINANCE NO.** 2008-044

**AMENDING ORDINANCE 2008-034 WHATCOM COUNTY CODE, TITLE 23 – SHORELINE MANAGEMENT PROGRAM REGARDING ADMINISTRATIVE PROCEDURES OF 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**, Whatcom County held a public hearing regarding Ordinance 2008-034 on September 9, 2008 regarding administrative procedures and the Whatcom County Shoreline Management Program; and

**WHEREAS**, Whatcom County passed Ordinance 2008-034; and

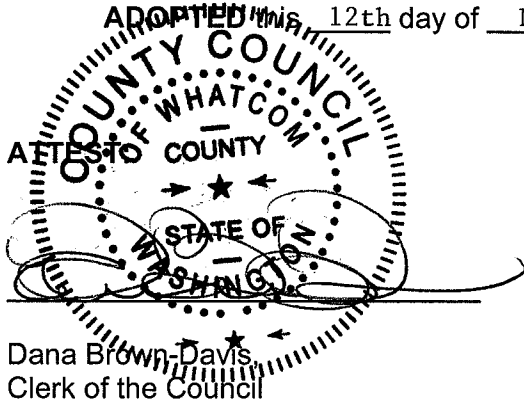
**WHEREAS**, the County Council has adopted the following Findings and Conclusions:

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

Section 1: Ordinance 2008-034 is amended as indicated in Exhibit 1 of this ordinance.

Section 2: 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 12th day of November, 2008.



Dana Brown-Davis  
Clerk of the Council

**WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON**

Carl Weimer, Council Chair

**APPROVED** as to form

Civil Deputy Prosecutor

Approved  Denied

Pete Kremen, County Executive

Date: 11-18-08

## 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 30, 2008.
6. On August 5, 2008, the Whatcom County Council approved Resolution 2008-056 accepting DOE's recommended and required changes of the Shoreline Management Program with alterations.
7. On August 8, 2008 Jay Manning, Director of the Washington State Department of Ecology, in accordance with WAC 173.26.120(7) and the policy of the Shoreline Management Act (RCW 90.58.020), approved the Whatcom County Shoreline Management Program.
8. On September 9, 2008, the Whatcom County Council held a public hearing to consider public comments on the Whatcom County Shoreline Management Program adopted by the Department of Ecology on August 8, 2008.
9. The Shoreline Management Program adopted by the Department of Ecology requires Shoreline Conditional Use permits for activities that were previously allowed through less burdensome shoreline permit procedures. The Shoreline Management Act provides discretion to local governments in how they administer the provisions of the Shoreline Management Act, including assignment of responsibilities for review and approval of development within the shoreline jurisdiction.

# Exhibit 1

## 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 proposal requires a conditional use permit to change a non-conforming use to a different non-conforming use pursuant to the criteria in WCC 23.50.07(J).
  78. 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.

**23.70.01 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 and shoreline conditional use 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.

### **23.70.03 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 requiring public hearings 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.