

Memo

To: Public Works Standing Committee Members
From: Ethan Spoo, Senior Planner
Date: 6/30/2011
Re: Shoreline Master Program – Project Update

PROJECT STATUS

The Shoreline Master Program (SMP) Update project is at the end of Phase II of this five phase project. Phase II is the existing conditions portion of the project. As part of Phase II, AHBL (the City's consultant) produced an "Inventory and Characterization Report." This report documents the existing environmental and land use characteristics of the City's shoreline. Staff sent the Inventory and Characterization report to the Department of Ecology (DOE) for their review in early June.

The project remains on-schedule according to the City's contract with AHBL. The consultant continues to meet or exceed staff expectations in terms of delivering work products on-time, on-budget, and at the quality level we expect. The consultant has budgeted to spend \$52,279 through June of this year and staff anticipates that the consultant will spend 100% of that amount, but not exceed it.

NEXT STEPS

The first task to be completed in Phase III is a community visioning meeting. Staff and the consultant are planning this visioning meeting for July 20 at City Hall from 6:00 – 8:00 p.m. All are welcome to attend. The meeting time will be divided between a formal presentation and small group sessions. There will be "issue stations" where small groups meet and citizens can ask questions and learn about shoreline planning issues. Staff and the consultant anticipate having 4-5 stations addressing important shoreline planning topics such as property owner needs, shoreline protection, and public access. The visioning meeting will be the most visible event for this project so far. Staff will invite the public to attend this meeting with advertisements in the Whidbey News Times, channel 10, and on the City's website, as well as mailings to shoreline property owners.

July will also see the first meeting of the Shoreline Citizen Advisory Committee. This ad hoc committee will meet once per month for approximately six months to discuss shoreline policy and review draft language for the new Shoreline Master Program. The committee is composed of seven people representing diverse interests including members of the planning commission, city council, park board, marina advisory committee, Navy, business community and environmental interest. The first Shoreline Citizen Advisory Committee meeting is scheduled for July 7 at 5:30 p.m. at the City Hall council chambers. All are welcome to attend.

REVIEW OF KEY ISSUES

Now that additional public involvement efforts are beginning, it's a good time to review key issues for this project. Council members may begin to receive questions from citizens about the scope and outcomes of this project. As those questions begin to be asked, it is important to keep in mind the following key points/questions about the project:

- **What is a shoreline master program?** A shoreline master program, or SMP, is a document which puts in place goals, policies and regulations for land use and development along the City's shoreline.
- **Shoreline planning is a joint city-state effort.** The City is required to update its SMP under the state Shoreline Management Act by December 1, 2012. The City drafts and adopts the new SMP. The state provides funding for, reviews, and approves the new SMP.
- **Why is this update necessary?** In 2003, the state adopted new rules for "no net loss" of the shoreline environment. "No net loss" essentially means that the City must demonstrate that the shoreline environment will be protected and identifies areas for future restoration.
- **What will the update mean for me as a property owner?** The City is in the early stages of public input for this project and encourages property owners to attend and participate in meetings for this project to help shape the final SMP document. Property owners should check the City's website for upcoming meetings and events for this project.

It is important to remember that residential uses are considered to be a "preferred use" under the Shoreline Management Act. The City's new SMP not change this status. One of the main tasks of the Shoreline Citizen Advisory Committee will be to discuss any requirements for repair or additions to buildings, docks, and bulkheads within the shoreline to meet the no net loss requirement. Impacts and benefits to property owners from the new SMP will become more clear as this project progresses.

- **Regulatory Framework.** Attached is a summary of the regulatory framework surrounding shoreline planning. Any combination of federal, state, and local regulations or agencies can influence shoreline development. This framework speaks to the complicated nature of planning along the City's shorelines which requires taking into account federal and state regulations, as well as local goals.

CITY OF OAK HARBOR

SHORELINE MASTER PROGRAM UPDATE

INVENTORY AND CHARACTERIZATION

PREPARED FOR:

CITY OF OAK HARBOR

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CLIENT REVIEW DRAFT – APRIL 2011



The following is an excerpt from the draft SMP Update, Inventory and Characterization Report:

1.5 REGULATORY FRAMEWORK OVERVIEW

City of Oak Harbor

Within the City of Oak Harbor, land use/development within the shoreline jurisdiction is subject to the SMP, as well as the City's Critical Areas Ordinance, Zoning Code, Comprehensive Plan, International Building Code (if the project incorporates development of a structure), as well as various other City, state and federal laws. Prior to commencing any use, development, or activity, an applicant must comply with all applicable laws.

State and Federal Regulations

In addition to City regulations, in and over-water development within the City's shoreline jurisdiction must also comply with the following state and federal regulations: the state Hydraulic Code, the state Shoreline Management Act, the federal Clean Water Act, and the federal Endangered Species Act. In addition to those regulations listed at the outset of this section, additional federal laws that may be relevant to a specific project review include the Clean Air Act, the National Environmental Policy Act, Anadromous Fish Conservation Act, and the Migratory Bird Treaty Act. Additional state laws that may be relevant to a specific project review include the State Environmental Policy Act, Growth Management Act, Water Resources Act, Salmon Recovery Act, and the Water Quality Protection Act. In addition, projects may also be subject to local, state, and federal tribal agreements and/or case law.

Hydraulic Code

The Hydraulic Code (RCW 77.55) gives the Washington Department of Fish and Wildlife (WDFW) the authority to review, condition, and approve or deny "*construction activity that will use, divert, obstruct, or change the bed or flow of state waters.*" During the department's review process, regulators can condition projects to avoid, minimize, restore, and compensate all adverse impacts associated with development.

Within the City, WDFW must review and approve most development activities within the marine shoreline as well as associated wetlands and streams. These development activities are primarily likely to include but are not limited to shoreline armoring, restoration and mitigation activities as well as overwater development (including pier and bulkhead repair or construction), among others.

Shoreline Management Act (SMA)

The SMA (RCW 90.58) is administered by the Washington State Department of Ecology. The goal of the SMA is "to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines." The three basic policies of the Act address shoreline use, environmental protection and public access. The SMA also requires that each city and county with "shorelines of the state" must prepare and adopt an SMP. SMP updates, such as the process for which this document is being prepared, as well as amendments to existing SMP regulations are effective only after Ecology approval.

Federal Clean Water Act

The Federal Clean Water Act is divided into two primary sections. These are Section 401 and Section 404.

Section 401 is related to the review, conditioning of projects, and approval or denial of federal permitted actions that result in discharges to state waters, including wetlands. Within the State of Washington, Section 401 of the Federal Clean Water Act is administered by the Washington State Department of Ecology.

Section 404 is related to review of projects that result in the discharge of dredged or fill material into waters of the United States, including wetlands. Section 404 applications are reviewed by the USACE, with oversight from U.S. EPA. Within the State of Washington, Section 404 permits that encompass actions within streams, lakes or wetlands are also reviewed by the Washington State Department of Ecology.

For both review processes, the agencies review project proposals to ensure that impacts are addressed in order of avoidance, minimization, restoration, and then compensation.

Federal Endangered Species Act (ESA)

Projects are often reviewed for impact on endangered species pursuant to the regulations provided by the Federal Endangered Species Act (ESA). Projects are prohibited from “take” of listed species (Section 9). Specifically, “take” is defined as “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct” (Section 3). The take prohibitions of the ESA apply to everyone, so any action of the City that results in a take of listed fish or wildlife would be a violation of the ESA and exposes the City to risk of lawsuit. Additionally, Section 7 of the ESA requires that activities with the potential to affect federally listed or proposed species and that either require federal approval, receive federal funding, or occur on federal land must be reviewed by the National Marine Fisheries Service (NOAA Fisheries) and/or U.S. Fish and Wildlife Service (USFWS) via a process called “consultation.”