



# PROJECT MEMO



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<b>TO:</b>	City of Montesano City Council	<b>DATE:</b>	March 27, 2023
<b>FROM:</b>	Nicole Stickney, AICP, and Emily Weimer, AICP Tri-Cities - (509) 380-5883	<b>PROJECT NO.:</b>	2211017.30
		<b>PROJECT NAME:</b>	City of Montesano SMP
<b>SUBJECT:</b>	Montesano Shoreline Master Program (SMP) Periodic Update - Adoption		

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This memo serves as a staff report to the City Council for the Montesano Shoreline Master Program (SMP) Periodic Review project.

**Key Attachments include:**

- **Draft Ordinance**
- **[Ordinance Exhibit A]** Draft SMP Amendment Document (Dated 3/22/2023, labeled “Draft for City Council Adoption” and prepared by AHBL for the City Council public hearing; proposed changes are shown in redlines)
- Project Memo from AHBL to Mike Olden; Reach 6 (Chehalis) and 35-foot Buffers for Recreation (Dated 3/7/2023)
- Final Periodic Review Checklist and List of Amendments

**Packet of Supporting Materials on the Record**

1. Notice to the Public - Public Hearing, SEPA Environmental Review and Comment Period
2. Affidavit of Publication (The Daily World)
3. SEPA Environmental Review Document – Revised DNS dated August 25, 2022
4. Project Memo from AHBL to the City of Montesano Planning Commission dated September 9, 2022
5. Project Memo from AHBL to the City of Montesano Planning Commission dated October 12, 2022
6. Draft Planning Commission meeting minutes (For public hearing dated October 19, 2022)
7. Record of Comments and Responses (None – Dated October 28, 2022)
8. Ecology Initial Determination of Consistency from Ecology to the City of Montesano, dated November 10, 2022

## DESCRIPTION OF PROPOSAL

The City of Montesano is nearly finished with the process of conducting a periodic review of the Shoreline Master Program (SMP). The periodic review is a requirement of all jurisdictions in the State of Washington having Shorelines of Statewide Significance, to comply with State law and updated regulations (RCW 90.58 and WAC 173-26 and WAC 173-27). The State’s Shoreline Management Act (RCW 90.58) requires each SMP to be reviewed and revised, if needed, on an eight-year schedule established by the Legislature. The Washington Department of Ecology (Ecology) has directed Montesano to complete the periodic review by June 30, 2023.

The purpose of the City Council meeting is to review the record regarding the proposed changes to the SMP, which serves to regulate development located in the City’s shoreline jurisdiction, and determine if legislative

action (adoption) should occur. The Planning Commission has recommended adoption, and staff further recommends adoption.

The Department of Ecology (Ecology) has issued an initial determination of consistency. Following adoption by the City council, the SMP will not be in effect unless and until the City receives official notice from Ecology that the changes are accepted.

## BACKGROUND

See the Planning Commission memo for further details.

## LIST OF PROPOSED EDITS / CHANGES<sup>1</sup>

### **Phase 1 Proposed Changes – Reviewed by the City’s Planning Commission and Prepared Prior to the 30-day Comment Period**

- Updated Montesano Municipal Code references as needed and modified Section 4.05 to list the city’s Flood Damage Prevention Code which previously had not been included.*
- Updated multiple definitions in Section 8.02 to match RCW’s or per Ecology guidance*
- Added language regarding the legislature’s adopted 90-day target for local review of Washington State Department of Transportation (WSDOT) projects under Section 7.03.*
- Added the new shoreline permit exemption for retrofitting existing structure to comply with ADA.*
- Updated Section 1.05 to include section F covering “Exceptions to Local Review” addressing Remedial hazardous substance cleanup actions, Boatyard improvements to meet NPDES requirements and certain WSDOT maintenance and safety projects and activities.*
- Added language to Section 5.09.02 regarding forestry use to improve clarity*
- OFM adjusted the cost threshold for substantial development to \$8,504. This was updated*
- The definition of “development” in was updated to add the suggested Ecology language: “Development does not include dismantling or removing structures if there is no other associated development or re-development.”*
- Section 7.04.01 was changed to add a work into a phrase: “[public hearing required if] One or more interested persons has submitted to the Shoreline Administrator, within 15 days of the final publication of notice of the application, a written request for a public hearing together with a valid statement of the reasons for the request” and we also updated: “[public hearing required if] The estimated total cost of the proposed development exceeds \$500,000 \$1,000,000”*

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<sup>1</sup> For reference only; also see the SMP document for redlined changes and the list of “SMP provisions to be changed by the amendment as proposed” which is included in the *Ecology Initial Determination of Consistency* document

*-Section 7.08 was modified to remove unnecessary and undesirable language: “If liability has been established for the cost of restoring an area affected by violation, the court shall make provisions to assure that restoration will be accomplished within a reasonable time at the expense of the violator. 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.”*

*-Removed discussion about Bald Eagles in Appendix 2 since they have been delisted.*

*-Made changes to wetland buffer requirements per Ecology publication updates (which are based upon Best Available Science) and listed types of compensatory mitigation options*

*-Made adjustments to Shoreline Environment Designations map as requested by Ecology or completed to correct apparent errors*

**Phase 2 Proposed Changes – Additional Edits or Changes Made following the Comment Period to Respond to Comments, Make Changes according to Ecology’s Initial Determination correspondence, and to address the Shoreline Buffer requirements at the Chehalis River Reach 6 (which is degraded)**

*-Corrections to typos*

*-Removal of the word “Buffer” which was added during the update process in Section 4.04.02 (A)(5) in an effort to provide clarity, but instead found to be problematic and misleading*

*-Edit made to Section 4.04.02(B)(8) to clarify largest shoreline buffers should be used.*

*-New footnote to Table 4-1 Shoreline Buffers to specifically address Tent camping. (This change was justified with a Memo for documentation)*

*-Correction made to Section 6.07.02(B)(1)(c) regarding replacement of shoreline stabilization structures (the regulation will be less stringent with the change)*

*-Refined the discussion of “Recreational Facilities” in the definitions (water oriented vs. non-water oriented)*

## **PUBLIC NOTICE/ COMMENTS**

Public participation was a very important cornerstone of this periodic update process.

This project was launched with Council’s adoption of a public participation plan, which was followed by a letter mailed to stakeholders / agencies / partners (including persons who own property in the shoreline jurisdiction according to tax records, tribes, etc.) to provide notice and information about the pending update, and gave the opportunity for people to “sign up” to be included on an email notification list. A website was set up with an overview, updates, contacts, events, and a document library at

[https://www.ezview.wa.gov/site/alias\\_1788/34991/overview.aspx](https://www.ezview.wa.gov/site/alias_1788/34991/overview.aspx) . The website has been regularly updated throughout the process.

Public notice of the joint City/ Ecology public hearing included the following:

- Posting of a notice to the project website
- Posting of a notice on the City's website
- Email to the SMP update email list and to individuals/ agencies on the SEPA email list (Joint notice for the public hearing and for the SEPA determination)
- Notification completed by Ecology
- Publication in The Daily World

Additionally, a *Request for Review and Notice of Intent to Adopt Amendment*, as required under RCW 36.70A.106, was submitted to the Washington State Department of Commerce on September 6, 2022.

**The official comment period for the SMP was held from September 19 – October 19, 2022.** AHBL consultants were responsible for compiling all comments received in writing into response matrix, to document the comments as well as a response for each comment. However, no written comments were received.

## ENVIRONMENTAL REVIEW

The City, acting as the lead agency for the proposal under the State Environmental Policy Act (SEPA), reviewed the proposed non-project action for probable adverse environmental impacts and previously issued a determination of non-significance (DNS) for the proposal (previous amendment cycle) on February 3, 2016 (SEPA register # 201600583).

During this periodic update, the City reaffirmed that the proposal will not have probable significant adverse impacts on the environment and issued a revised DNS on August 25, 2022 (SEPA register # 202204336).

## PAST AND PROJECTED TIMELINE

*The processing of this item has included the following thus far:*

Date	Action or Event
April 20, 2022	Public Participation Plan Sent to Ecology
June 22, 2022	AHBL provided an Initial Draft SMP Update document to City Staff
June 30, 2022	AHBL completed draft review checklist
July 18, 2022	City Staff completed review of Initial Draft document and provided comments back to AHBL
July 18, 2022	AHBL meeting with City staff
July 27, 2022	AHBL provided revised Draft SMP Update document to City Staff
August 17, 2022	City staff met with Planning Commission to provide overview and materials
August 30, 2022	City sent a letter to potential interested parties (and individuals/ agencies on record who participated in the last update)
August 25 – Sept. 1, 2022	Newspaper notice published; Public notice emailed and posted to websites; Issued SEPA Threshold Determination;

<b>September 6, 2022</b>	Transmittal of SMP Amendments (SMP document and maps together with a completed update checklist) to Departments of Commerce and Ecology with 60-day Notice of Intent to Adopt
<b>September 19, 2022</b>	City and Ecology joint public comment period began
<b>October 19, 2022</b>	Joint Planning Commission / Ecology Public Hearing
<b>October 19, 2022</b>	Conclusion of public comment period
<b>October 19, 2022</b>	Planning Commission issued a Recommendation to Approve the amended SMP, as proposed
<b>October 20, 2022</b>	City issued formal response to public comments ( <i>there were none</i> )
<b>October 28 and 31, 2022</b>	Materials submitted to Ecology for Initial determination
<b>November 10, 2022</b>	Ecology issued a written statement of initial concurrence with the documents submitted, with a list of identified issues (Recommended Changes and Required Changes) listed out for the City to address
<b>Winter 2022/ 2023</b>	AHBL prepared a final document incorporating required changes (and some recommended changes) from Ecology as well as a Memo addressing tent camping on Reach 6 of the Chehalis
<b>April 11, 2023</b>	Introduction to City Council
<b>April 25, 2023 (Anticipated)</b>	City Council Adoption action
<b>By May 15, 2023 (Anticipated)</b>	Submit Application for Final Determination to Ecology
<b>June 2023 (Anticipated)</b>	Final Ecology Approval and SMP Adoption
<b>June 2023 (Anticipated)</b>	Effective date

## SUGGESTED FINDINGS

Written findings are needed for the City to adopt the SMP amendments under the periodic update. Listed below are the suggested written findings:

### Findings:

1. The State of Washington Shoreline Management Act of 1971 (Chapter 90.58 RCW) requires counties and cities to prepare SMPs to prevent the uncoordinated and piecemeal development on shoreline of the state.
2. Under RCW 90.58.050, the City and Ecology share joint authority and responsibility for the administration of the City's SMP. When the City's updated SMP is approved by Ecology, it has the authority of state law.
3. In 2003, Ecology adopted new rules based on RCW 90.58.200, that became effective January 17, 2004. These rules gave procedural and substantive direction to local jurisdictions for updating shoreline uses and regulations.
4. Ecology adopted and approved the existing Montesano SMP in 1992.
5. The State's Shoreline Management Act (RCW 90.58) requires each SMP to be reviewed and revised, if needed, on an eight-year schedule established by the Legislature and the City of Montesano's periodic update is due no later than June 30, 2023.
6. The SMP Guidelines (Chapter 173-26 WAC) are the standards and guidance that establish minimum standards for updating local SMPs.

7. The City was awarded a grant from Ecology to fund a portion of the update costs.
8. The proposed SMP is compatible with the City's adopted land use designations, policies, and goals contained with its Comprehensive Plan and its development regulations.
9. The proposed SMP recognizes private property rights and it is consistent with other property regulations and those rights afforded to property owners.
10. The City's Planning Commission held a public hearing on October 19, 2022 to review and receive public comment on the proposed amendments to update the City's SMP.
11. The City completed environmental review under SEPA issued a Threshold Determination of Non-Significance on February 3, 2016 (SEPA register # 201600583). During the 2023 periodic update, the City reaffirmed that the proposal will not have probable significant adverse impacts on the environment and issued a revised DNS on August 25, 2022 (SEPA register # 202204336).
12. The City filed a Growth Management Act 60-day notice of intent to adopt with the State of Washington Department of Commerce on September 6, 2022.
13. The proposed amendments to the City's SMP were placed on the project website using the EZ View platform on August 23, 2022 prior to the City's Planning Commission public hearing for public review.
14. The notice of the amendments, revised DNS, public hearing, and public comment period were published in the Daily Planet on September 1, 2022.
15. The official comment period for the SMP was open from September 19, 2022 to October 19, 2022.
16. All written comments received prior to and during the official comment period were compiled into a Response Matrix document for the City to consider and document their review and formal responses.
17. Following the public hearing, the City's Planning Commission voted unanimously to recommend approval of the proposed SMP amendments.

## ACTION

After the City Council adopts an updated SMP and associated documents, the Washington State Department of Ecology has final review of the SMP. Unlike other local regulations, Ecology has final review and approval authority over the City's SMP, including the ability to require changes.

Suggested motion: "I move to pass Ordinance No. \_\_\_\_\_ adopting amendments to the City's Shoreline Master Program and Providing for an Effective Date."

Cc: Mike Olden, PE – City of Montesano