



PROJECT MEMO

TO:	Westport Planning Commission	DATE:	March 28, 2023
FROM:	Nicole Stickney, AICP Tri-Cities - (509) 380-5883	PROJECT NO.:	2220921.30
		PROJECT NAME:	Westport SMP Periodic update
SUBJECT:	Westport Shoreline Master Program (SMP) Periodic Update		

DESCRIPTION OF PROPOSAL

The City of Westport is conducting a periodic review and updating its Shoreline Master Program (SMP), along with all other jurisdictions in the State of Washington, 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 purpose of the Planning Commission hearing is to hear public testimony regarding the proposed changes to the SMP, which serves to regulate development located in the City’s shoreline jurisdiction, and make a recommendation to the City Council.**

BACKGROUND

As required by the State Shoreline Management Act, local governments must periodically review and update their shoreline master program which are based on the State’s Shoreline Master Program Guidelines (WAC 173-26) but tailored to the specific circumstances and needs of the local community.

History: The City prepared and adopted its first SMP in the 1970’s following the adoption of the 1971 Shoreline Management Act with the intent of balancing development and protection in the shorelines. In the forty years since, the City’s shorelines have physically changed in many ways. In addition, state laws and rules have advanced as development and conservation practices have evolved. Because of all these changes, the City adopted an update to its SMP in 2017 tailored to local conditions that considers existing and planned development within the City’s shorelines prepared under a grant agreement with the Washington State Department of Ecology.

Some state laws, rules, and guidance have been updated since the 2017 SMP update, which may require amendments to the SMP. The Department of Ecology (Ecology) publishes a checklist of state laws, rules, or other applicable documents published each year that require local governments to review their SMP for conformance. RCW 90.58.080(4) requires the City of Westport to periodically review and, if necessary, revise the master program on or before June 30, 2023 (as amended). In 2022, the City’s consultant, AHBL, reviewed the checklist and identified opportunities for amendments. Additionally, Ecology publishes an Ocean Management Checklist of state law, rules, and applicable updated information related to Ocean Resources Management Act (ORMA) and the Washington State Marine Spatial Plan (MSP) for coastal waters.

What is included in the SMP? The SMP includes the City’s vision of how shoreline areas can be used and provides the policy basis and regulations to guide shoreline development, public access, and habitat protection. The goals and policies of the SMP are to be incorporated into the City’s Comprehensive Plan, as required by the State Growth

Management Act (RCW 36.70A). The shoreline regulations regulate shoreline areas in harmony with existing development regulations. The critical area regulations found in Appendix 2 of the SMP regulate development that affects the City's critical areas *within the shoreline jurisdiction*.

Affected area: The Shoreline Management Act defines the extent of the geographic area in the city subject to the SMP, referred to in the SMP as the city's shoreline jurisdiction. The SMP applies to the shorelines of the city including the ordinary high water mark (OHWM) and the western boundary of the state including harbors, bays, estuaries, and inlets, segments of streams or rivers where the mean annual flow is more than twenty (20) cubic feet per second, lakes and reservoirs twenty (20) acres and greater in area and shorelands adjacent to these water bodies including lands extending landward for two hundred (200) feet in all directions as measured on a horizontal plane from the OHWM, adopted Federal Emergency Management Agency (FEMA) floodways and contiguous floodplain areas landward two hundred (200) feet from such adopted FEMA floodways, and all wetlands and river deltas associated with the streams, lakes, and tidal waters subject to the SMA.

The following water bodies are subject to the City's SMP: the Pacific Ocean and Grays Harbor.

How are items to be updated determined? The update is based on a checklist provided by Ecology that details the changes to state laws / rules / guidance which may trigger the need for SMP amendments. The checklist was completed by the City's consultant, AHBL. Additionally, the update is based on the Ocean Management Checklist and associated guidance provided by Ecology which details changes in state law, rules, and applicable updated information related to Ocean Resources Management Act (ORMA) and the Washington State Marine Spatial Plan (MSP).

The update also considers changes to local plans and regulations, and changes to address local circumstances, new information or improved data. The City also considers comments from stakeholders and the public, as well as Ecology and other reviewers (being mindful of budget constraints and the limited scope required during a periodic review).

What's next? After reviewing all comments and testimony given at or prior to the public hearing, the Planning Commission may issue a preliminary recommendation on the SMP update which would become effective if no further comments are received by the city as of the close of the comment period¹. Once the recommendation of the Planning Commission is given to the City Council and the City Council may adopt the SMP and associated documents, and then Ecology will have its 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. This also means that Ecology has the ability to review and require changes to the parts of our critical areas ordinance and any other ordinances incorporated into the SMP.

¹ The hearing will occur on April 18, 2023 but the comment period extends through April 19, 2023. The Planning Commission therefore has the option to (1) meet again following the close of the comment period to make a final recommendation to the City Council, or could (2) potentially avoid a second meeting by passing a motion, making a recommendation to the City Council with the caveat that if staff receives any more comments that should be further reviewed by the Planning Commission the recommendation will be reviewed at a future meeting.

RELATIONSHIP TO THE COMPREHENSIVE PLAN

The SMP is consistent with the Comprehensive Plan elements. While the City is not subject to all of the requirements of the Growth Management Act (GMA)², the plan strives to ensure that there is consistency between the SMP's shoreline environment designation provisions and the Comprehensive Plan elements and development regulations.

PUBLIC NOTICE/ COMMENTS

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

This project was launched with Council's adoption of a public participation plan on February 7, 2023, which was followed by a letter mailed to stakeholders (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 webpage was established at https://www.ezview.wa.gov/site/alias_1843/35621/overview.aspx and it has been regularly updated.

Public notice of the joint City/ Ecology April 18, 2023 public hearing included (or will include) the following:

- Posting of a notice to the city's website
- Emailed 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* newspaper

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 **March 16, 2023**.

The official comment period for the SMP is open from March 20 – April 19, 2023. AHBL consultants will compile all comments received in writing in a response matrix, to document the comments as well as a response for each comment.

ENVIRONMENTAL REVIEW

The proposal is subject to environmental review. The City is the lead agency for the proposal under the State Environmental Policy Act (SEPA) and reviewed the proposed non-project action for probable adverse environmental impacts and issued a determination of non-significance (DNS) for this proposal on March 20, 2023.

PAST AND PROJECTED TIMELINE

² Westport's County, Grays Harbor, is known as "partially planning" under the GMA per RCW 36.70A.060, .170 and are thus subject to Critical Areas and Natural Resource Lands requirements only

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

February 7, 2023:	Council adopted a Public Participation Plan
March 6, 2023:	Completed preliminary draft of the SMP Amendments and ecology checklist
March 7, 2023:	City solicited early feedback from Ecology
March 18 & 21, 2023:	Newspaper notice published;
March 20, 2023:	Issue SEPA Threshold Determination; City and Ecology joint public comment period begins
March 20, 2023:	Email sent to potentially interested agencies

The projected future timeline includes:

April 18, 2023:	Joint Planning Commission/ Ecology Public Hearing at 5:30 p.m.
April 19, 2023:	Conclusion of public comment period; City to respond to public comments within 30 days and route materials to Ecology for initial determination
June 2023:	City Council adoption (tentative)
June 2023:	Submit Application for Final Determination from Ecology
TBD	Final Ecology Approval (Anticipated late June 2023)

FISCAL IMPACT

The City was awarded a grant from Ecology to pay towards the costs associated with the SMP update. The grant funding was provided to only update the SMP itself (there was no funding for updates or changes to reports and research produced as a part of the previous update, such as the Shoreline Inventory and Characterizations report).

SUGGESTED FINDINGS

Written findings will be needed for the City to adopt the SMP amendments under the periodic update. Listed below are DRAFT written findings that will be further developed as the process ensues:

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 City SMP in 2017.
 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 Westport periodic update is due no later than June 30, 2023 (as amended).
 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 completed environmental review under SEPA issued a Threshold Determination of Non-Significance on March 20, 2023.
 11. The City filed a Growth Management Act 60-day notice of intent to adopt with the State of Washington Department of Commerce on March 16, 2023.
 12. The proposed amendments to the City's SMP were placed on the City website prior to the City's Planning Commission public hearing for public review.
 13. Public hearing notice was published in *The Daily World* on March 18 and March 21, 2023.
 14. A public hearing before the City's Planning Commission was held on April 10, 2023.
 15. The official comment period for the SMP is open from March 20, 2023 to April 19, 2023 and the joint City / Ecology public hearing occurred during that time period.
 16. All written comments received prior to and during the official comment period will be compiled into a Response Matrix document for the City to consider and document their review and formal responses.
 17. Following completion of the public hearing before the City's Planning Commission, the City Council will hold a hearing to approve the updated SMP.
 18. The City will formally adopt the SMP following review and approval by Ecology and it will then become effective.
 19. The SMP aligns with the City's Comprehensive Plan and the two documents are not in conflict.

ACTION

The Planning Commission should conduct a public hearing to receive public comments on the proposed periodic update to the SMP. A copy of the draft SMP showing proposed amendments in tracked changes is attached to this memo for review. **Additional materials are available on the project website.**

AHBL recommends that the Planning Commission take action to forward a preliminary recommendation of approval, provided that no new substantial comments are submitted to the City prior to the conclusion of the public comment period. AHBL predicts that most comments will be submitted prior to the public hearing. If the

City receives a substantial comment(s)³, the motion of the Planning Commission is automatically revoked and the SMP will return to the Planning Commission for further review.

Suggested Motion:

“I move that the Planning Commission take revocable action to recommend to City Council approval of the SMP Periodic Update package, including the draft amendments that the Commission has reviewed and forward the recommendation with the suggested findings of fact.

I further move that if the City receives additional substantial comments between now and the end of the comment period which extends to April 27, 2023, the Planning Commission will instead hold an additional meeting to review the comments and reissue a recommendation.”

Cc: Kevin Goodrich, City Administrator

³ Substantial comments including comments on regulations or any of the substance of the plan. Insubstantial comments include typos that do not change the meaning, comments of support, or technical questions.