

# PROJECT MEMO



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<b>TO:</b>	City of Cosmopolis City Council	<b>DATE:</b>	June 7, 2023
<b>FROM:</b>	Nicole Stickney, AICP and Ali Masterson Tri-Cities - (509) 380-5883	<b>PROJECT NO.:</b>	2211013.30
		<b>PROJECT NAME:</b>	City of Cosmopolis SMP
<b>SUBJECT:</b>	Cosmopolis Shoreline Master Program (SMP) Periodic Update - Adoption		

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This memo serves as a staff report to the City Council for the Cosmopolis Shoreline Master Program (SMP) Periodic Review project, for the **June 21, 2023 meeting**.

## **Attachments:**

- **Resolution**
- **[Resolution Attachment]** Draft SMP Amendment Document (Dated May 16, 2023, labeled “SMP Draft for City Council Adoption” and prepared by AHBL for the City Council public hearing; proposed changes are shown in redlines)
- Final Periodic Review Checklist and List of Amendments
- Record of Comments and Responses dated April 20, 2022

## **List of Supporting Materials on the Record**

(Many of these items are available at <https://www.cosmopoliswa.gov/community-resources/economic-development/shorline-master-program.html> )

1. Notice to the Public of Joint Public Hearing, SEPA Environmental Review, and Comment Periods
2. Affidavit of Publication in The Daily World on March 20, 2023
3. SEPA Environmental Review Document and DNS issued March 20, 2023
4. Project Memo from AHBL to the City of Cosmopolis Planning Commission dated April 10, 2023
5. Planning Commission meeting minutes from joint public hearing held on April 10, 2023
6. Ecology Initial Determination of Consistency from Ecology to the City of Cosmopolis dated May 11, 2023

## **DESCRIPTION OF PROPOSAL**

The City of Cosmopolis 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 Cosmopolis 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**

#### **Chapter 1. INTRODUCTION**

- 1.04 – *Shoreline Master Program Development* – Revised to better reflect and differentiate the previous comprehensive update and this periodic review.
- 1.05 – *Applicability* – Added new section to capture developments not required to obtain shoreline permits or local reviews. (F)
- 1.06.02 – *Shorelines of Statewide Significance*:
  - Revised citation to RCW 90.58.020 (*Policies for Shorelines of Statewide Significance*) (C).
  - Added “environmentally” to qualify sensitive areas of limited development for public access (C.10).
- 1.07 – *Relationship to Other Codes, Ordinances, and Plans*:
  - Added a statement clarifying that the applicant is responsible for complying with all state and federal requirements, in addition to SMP provisions.
- 1.11 – *Effective Date* – Replaced date of adopted SMP with placeholder language.

#### **Chapter 3. SHORELINE ENVIRONMENT DESIGNATIONS**

- 3.01 – Revised statement about the purpose of the City’s Comprehensive plan to clarify that it primarily addresses planning elements. Deleted “land use” from list of planning elements (*Shoreline Environment Designation System*) (C).

#### **Chapter 4. GENERAL POLICIES AND REGULATIONS**

- 4.02.01 – Rearranged policy language for clarity and to align with steps in notification process (*Archaeological and Historic Resources - Policies*) (D).
- 4.03.01 – *Policy* – Added “ecological” to clarify that no net loss of ecological functions should be met (*Environmental Impacts and Mitigation – Policy*).
- 4.04 *Critical Areas and Shoreline Vegetation Conservation*:
  - 4.04.02 – *Regulations – General Regulations*:
    - Replaced “statement” with “letter” of exemption (A.1).

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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

- *Added invasive species removal to list of qualifiers for required revegetation area conditions (Revegetation) (E.1).*
- *4.05.02 Flood Hazard Management – Regulations – Revised provision for new structural flood hazard management measures from “no alternative exists” to “no alternative is feasible,” and added floodplain restoration as a condition in which the structure may be placed waterward of associated wetlands and shoreline buffers (E).*

## **Chapter 5. SPECIFIC SHORELINE USE POLICIES AND REGULATIONS**

- *5.03 Allowed Shoreline Uses – Added new rows for ocean uses (Table 5-1: Permitted, Conditional, and Prohibited Uses).*
- *5.06.02 Aquaculture – Regulations: Applicability – Deleted “statement” and replaced with “letter” of exemption (A.3).*
- *5.09.02 Forest Practices – Regulations – Revised regulation to clarify that conversions to non-forestry uses shall be reviewed against the general provisions of the SMP (B).*
- *5.12.02 Parking Regulations – Deleted “applicable” when referring to requirements and regulations (D).*
- *5.18 Ocean Management:*
  - *5.18 – Preamble – Added new section defining ORMA geographical area and protection standards for new ocean use proposals.*
  - *5.18.01 – Policies – Added policy about use of MSP for new ocean use proposals.*
  - *5.18.02 – Regulations – Added new section containing standards for new ocean uses, including ocean mining and energy production standards, and ISU designation and protection standards, from Ecology’s example MSP language.*

## **Chapter 6. SHORELINE MODIFICATION POLICIES AND REGULATIONS**

- *6.04.01 Dredging and Dredge Material Disposal – Policies– Revised to prohibit dredging waterward of the OHWM except as part of a flood hazard management program (E).*
- *6.05.02 In-Water Structures – Regulations – Deleted demolition debris from list of items that do not qualify as in-water structures (K).*
- *6.07.02 Shoreline Stabilization – Regulations – Deleted number of feet. from replacement threshold for considering replacement as a new structure (Repair and Maintenance of Existing Shoreline Stabilization Structures) (B) (1.C).*

## **Chapter 7. SHORELINE ADMINISTRATION**

- *7.03 Application– Notices – Added new provision about WSDOT project review (H).*
- *7.04.05 Shoreline Permits and Approvals – Added new provision to implement ORMA and the Marine Spatial Plan (MSP) requirements.*
- *7.05.03– Notice of Decision – Relocated reference to WAC 173-27-130.*
- *7.06.02 – Revisions of Shoreline Permits–Deleted inaccurate reference to Ecology conditioning for review of variance/conditional use revisions (C).*
- *7.09.03 – Annexation of a Shoreline of the State–Revised provision to reflect amendment process and deleted reference to WAC 173-26-150 (A).*

## Chapter 8. DEFINITIONS

- Added terms ‘Marine Spatial Plan for Washington’s Pacific Coast (MSP)’; ‘Ocean Disposal’; ‘Ocean Energy Production’; ‘Ocean Mining’; ‘Ocean Oil and Gas Use and Activities’; ‘Ocean Research’; ‘Ocean Salvage’; ‘Ocean Transportation’; ‘Ocean Use’; ‘Ocean Uses, New’; ‘Species, Listed’ and ‘Species, Proposed’.
- Deleted definitions for ‘In kind compensation’; ‘Off site compensation’; ‘On site compensation’; ‘Priority Species’; ‘Species, Endangered’; ‘Species, Threatened’; ‘Species, Sensitive’; and ‘Wetland Mosaic’.
- Modified definition for ‘Bog’; ‘Compensation’; ‘Development’; ‘Important, Sensitive and Unique Areas (ISUs)’; ‘Isolated Wetlands’; ‘Mature Forested Wetland’, ‘Native Vegetation’; ‘Proposed, Threatened, Sensitive, and Endangered Species’; ‘Recreational Facilities’; ‘Stream’; Species, Priority; ‘Substantial Development’; ‘Wetland or Wetland Areas’.

## SMP Appendix 2 – CRITICAL AREAS REGULATIONS

- 1.11 Mitigation:
  - Deleted redundant statement (B.5).
  - Revised monitoring requirement for consistency with list of mitigation measures (B.6).
- 2.04 Wetland Rating – Corrected point range for Category I wetlands (A.1).
- 2.07 Wetland Buffers
  - Table 2-1: Wetland Buffer Requirements if Table 2-2 is implemented and corridor provided – Revised the habitat score breakdown for Category I, II, and III wetlands and updated score references to reflect the 2014 rating system.
- Table 2-2: Required measures to minimize impacts to wetlands–Added a required measure to minimize stormwater runoff impacts; deleted measures to minimize ‘disruption of corridors or connections’.
- Table 2-3: Wetland buffer requirements if Table 2-2 is NOT implemented or corridor is NOT provided– Added new table defining wetland buffers required in the absence of minimization measures.
- 6.06 – Habitat Management Plan – Deleted reference to bald eagle management plan.

## Phase 2 Proposed Changes – Additional Edits or Changes Made following the Comment Period to Respond to Comments and to Make Changes according to Ecology’s Initial Determination correspondence

- SMP Ch. 5.18 Ocean Management – added/revised reference to 7.04 Shoreline Permits and Approvals.
- SMP Sec. 5.18.02 Ocean Management Regulations J – added accidentally omitted Fisheries Protection standards.
- SMP Sec. 6.04.01 Dredging and Dredge Material Disposal Policies E – changed language for clarity.
- SMP Sec. 7.04 Shoreline Permits and Approvals – added ORMA approval criteria.
- SMP Appendix 2. (Critical Areas Regulations) Sec. 2.07 Wetland Buffers B – added language for consistency with tables.

## 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.cosmopoliswa.gov/community-resources/economic-development/shorline-master-program.html> . The website has been regularly updated throughout the SMP periodic update 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 March 6, 2023.

The official comment period for the SMP was held from April 10, 2023 through May 10, 2023. 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. One written comment was 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 issued a determination of non-significance (DNS) for the proposal on March 20, 2023 (SEPA register #202301297).

## PAST AND PROJECTED TIMELINE

DATE	ITEM
<b>March 13, 2023</b>	City sent a letter to potential interested parties (and individuals/ agencies on record who participated in the last update)
<b>March 20, 2023</b>	Newspaper notice published; Public notice emailed and posted to websites; Issued SEPA Threshold Determination;
<b>March 6, 2023</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>March 20, 2023</b>	City and Ecology joint public comment period began
<b>April 10, 2023</b>	Joint Planning Commission / Ecology Public Hearing
<b>April 19, 2023</b>	Conclusion of public comment period
<b>April 10, 2023</b>	Planning Commission issued a Recommendation to Approve the amended SMP, as proposed

<b>April 11, 2023</b>	City issued response to the one public comment received
<b>April 20, 2023</b>	Materials submitted to Ecology for Initial determination
<b>May 11, 2023</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>May 16, 2023</b>	AHBL prepared a final document incorporating required and recommended changes from Ecology
<b>June 21, 2023</b>	City Council Adoption action
<b>June 22, 2023</b>	Submit Application for Final Determination to Ecology
<b>July 2023 (anticipated)</b>	Final Ecology Approval and SMP Adoption

## 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 Cosmopolis SMP in 2015.
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 Cosmopolis'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 April 10, 2023 to review and receive public comment on the proposed amendments to update the City's SMP.
11. The City completed environmental review under SEPA and issued a Threshold Determination of Non-Significance on March 20, 2023 (SEPA register #202301297).
12. The City filed a Growth Management Act 60-day notice of intent to adopt with the State of Washington Department of Commerce on March 6, 2023.
13. The proposed amendments to the City's SMP were placed on the project website using the EZ View platform on March 20, 2023 prior to the City's Planning Commission public hearing for public review.

14. The notice of the amendments, SEPA DNS, public hearing, and public comment period were published in the Daily Planet on March 20, 2022.
15. The official comment period for the SMP was open from March 20, 2023 to April 19, 2023.
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 Resolution No. \_\_\_\_\_ adopting 2023 amendments to the City's Shoreline Master Program and Providing for an Effective Date, based on the written findings as contained in the staff report."

Cc: Darrin Raines – City of Cosmopolis