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<td>1</td>
<td>General Comment</td>
<td>Rudy Peone, Chairman Spokane Tribal Business Council</td>
<td>On behalf of the Spokane Tribe of Indians (&quot;Tribe&quot;), please accept these comments on the proposed revisions to the Spokane County Shoreline Master Program (&quot;SMP&quot;) update required by the Washington State Department of Ecology (&quot;WDOE&quot;). The Tribe strongly supports WDOE's changes and urges the County to adopt them along with the additional suggested changes below. Although, the WDOE changes will not address all of the threats to the shorelines within the County they are a significant improvement over the original update.</td>
<td>Comment acknowledged.</td>
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<td>2</td>
<td>General Comment</td>
<td>Rudy Peone, Chairman Spokane Tribal Business Council</td>
<td>The health and well-being of the waters that flow through the Spokane Tribe’s reservation are a paramount interest of the Tribe. Additionally, the Tribe is concerned not only with the health of the rivers and creeks within its Reservation, but also with the entirety of these waters as they flow through the Tribe’s ancestral lands. The Tribe’s Reservation was established in 1877, after the Tribe was removed by violent force from its domain. Northern Pac. Ry. Co. v. Wismer, 246 U.S. 283, 288 (1918). The Tribe's ancestral lands include the entirety of the Spokane River within what is now Washington State and Spokane County, along with almost all of the tributaries and water bodies that will be subject to these regulatory changes. See Spokane Tribe of Indians v. United States, 163 Ct. Cl. 58, 2 (1963 ). As the County is aware there is a direct link between near shore development and water quality, and these regulatory changes along with the below suggestions can help improve water quality in the County. For many decades the Tribe's subsistence use of its waters downstream from County waters has been thwarted by upstream pollution, raised water temperatures, and during certain times of the year portions of the Spokane River are uninhabitable for aquatic life due to depressed oxygen levels and high levels of total dissolved gas (&quot;TDG&quot;). Additionally, PCBs and other toxins make fish consumption potentially dangerous to human health and negatively affect the Tribe’s use of the River's fishery. In response to the infringement on the Tribe’s fishing, cultural, and agricultural rights in its waters, the Tribe applied for and received treatment in the same manner as a state status (&quot;TAS&quot;) under the Clean Water Act (&quot;CWA&quot;), 33 U.S.C. § 1377, on July 23, 2002. The Tribe’s first water quality standards were approved on April 22, 2003. However, projects to improve water quality and control water pollution within the Reservation have not been successful in bringing its waters back to health due to upstream pollution and hydropower facilities within its waters. Improvements in the Tribe’s water quality depend almost entirely on improvements upstream. Low dissolved oxygen during the summer months in portions of the lower arm of the Spokane River and elevated levels of PCBs and other toxins violate the Tribe’s EPA approved water quality standards. Importantly, once fish passage is achieved at Grand Coulee Dam it will be critical for the waters to be clean and safe for the return of anadromous fish. The Tribe’s goal of preparing Tribal waters for the return of anadromous fish to the Spokane and Columbia Rivers.</td>
<td>Comment acknowledged. We appreciate the Spokane Tribe’s dedication to improving water quality and controlling water pollution in the Spokane River Basin. We share your commitment, and believe that this comprehensive update to the Spokane County Shoreline Master Program (SMP) is an integral tool that will control land use practices which contribute to reduction of nonpoint source pollution in the watershed.</td>
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becomes more and more difficult as water quality continues on a downward trend due to upstream pollution. Improved land use regulations upstream from the Reservation will have positive impacts on the Tribe’s water resources.

### Archaeological Areas and Historic Sites  Section 5.3.13

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<th>Rudy Peone, Chairman Spokane Tribal Business Council</th>
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Additionally, the shorelines of the region are culturally significant for the Spokane Tribe. As stated above, the Spokane Tribe’s ancestral lands cover the entire Spokane River and the majority of tributaries and water bodies in the County. Spokane burial sites and artifacts are routinely found along the Spokane River and the Tribe wishes to see stronger protections of those sites. These regulations have the potential to provide greater protection of the Tribe’s cultural resources outside the Reservation.

5.3.13 on page 79 provides that if archaeological, cultural, or historical sites, buildings, artifacts, or other related resources are encountered work is to stop until approved by "the Spokane Historic Preservation Office, the Washington State Department of Archeology and Historic Preservation, and appropriate tribal entities." This is insufficient. For areas with suspected, probable, or documented cultural and archaeological resources, a site inspection or evaluation by a professional archaeologist in coordination and consultation with the Tribe should be required prior to any work beginning. This advance work can save the applicant time and money.

Protection of archaeological, cultural and historic resources is an important element of the SMA and Guidelines. As requested, in order to better protect archaeological and historic sites and artifacts, and to comply with the WAC 173-26-221(1)(c)(ii), policy language has been added (a new Section 5.3.13.a) to require a site inspection in areas with documented cultural and archaeological resources, as advised by the Spokane Tribe. See the December 11, 2012 BOCC approved alternative language.

### Protecting Shoreline Ecology and Aesthetics  Section 5.2.5.

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<th>Rudy Peone, Chairman Spokane Tribal Business Council</th>
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The Tribe opposes reducing the buffers to one-hundred-( 100) feet in the Rural Conservancy and Urban Conservancy environments except for lots two-hundred-(200) feet or less deep in Table 5B, the buffer table. We would also recommend that the Shoreline Residential environment buffer be one-hundred-fifty-(150) feet except for lots two-hundred-(200) feet or less deep. (See pages 93 - 95).

The Shoreline Master Program Guidelines (WAC 173-26) address shoreline buffers and setbacks and vegetation conservation in several sections – including steps in developing a master program (such as resource inventory and characterization), assigning environment designations, and developing policies for shoreline vegetation conservation.

The ecological functions of shoreline vegetation for streams are listed in WAC 173-26-201(3)(d)(i)(C) and in Section 201(3)(d)(viii), where local governments are directed to “Identify how existing shoreline vegetation provides ecological functions and determine methods to ensure protection of those functions. Identify important ecological functions that have been degraded through loss of vegetation. Consider the amount of vegetated shoreline area necessary to achieve ecological objectives.”

The shoreline vegetation conservation section [WAC 173-26-221(5)] defines vegetation conservation as “activities to protect and restore vegetation along or near marine and freshwater shorelines that contribute to the ecological functions of shoreline areas.” These activities include “the prevention or restriction of plant clearing and earth grading, vegetation restoration, and the control of invasive weeds and nonnative species.” Vegetation conservation can protect ecological functions, plant and animal species and their habitats, as well as protect
human safety and property, increase the stability of river banks and coastal bluffs, reduce the need for shoreline stabilization, improve visual and aesthetic qualities of the shoreline and enhance shoreline uses.

The Guidelines acknowledge the importance of vegetation in urban areas. “…The importance of this vegetation, in terms of the ecological functions it provides, is often as great as or even greater than in rural areas due to its scarcity.”

Spokane County, through the resource inventory and characterization, and with the assistance of the Spokane County Conservation District and Ecology, identified the ecological processes and functions that are important to the local shoreline, both upland and aquatic, and conserve vegetation needed to maintain those functions. The Guidelines require master programs to include policies and regulations that address vegetation conservation and restoration. The SMP Guidelines require SMPs to include policies and regulations designed to achieve no net loss of shoreline ecological functions [WAC 173-26-186(8)(b)]. Measures may include clearing and grading regulations, setbacks and buffers, critical area regulations, conditional use requirements, mitigation requirements, incentives and nonregulatory programs. Ecology believes that the suite of buffers for the various environment designations with several options for flexibility to allow reasonable use and development of private and public property, are appropriate and essential to meet the policy and standards of the SMA and Guidelines, in concert with the SMP use regulations and restoration plan. (See Ecology’s September 21, 2012 Findings and Conclusions and Required Changes).

Natural Environment Designation: Along the Spokane River and Latah Creek, and other streams and lakes in Spokane County where intact riparian and upland habitats exist (within environment designations “Natural”) and larger parcel sizes will afford reasonable uses and development, Ecology is requiring 200-foot wide buffers.

Rural and Urban Conservancy Environment Designations: Where riparian and upland habitats are fragmented or incomplete and where reasonable use would not be precluded, we require 150-foot wide buffers. Prohibiting certain development activities as well as encouraging voluntary and incentive-based restoration programs in these areas will protect the multiple functions that riparian areas provide.

Shoreline Residential Designation: To accommodate existing development patterns and to address the need for water dependent
and water oriented development within designated areas of Spokane County, Ecology is requiring 100 foot-wide buffers.

Using more protective riparian buffers does not mean that flexibility is not offered to property owners. Science-based buffers could potentially be reduced on a case by case basis to accommodate the other policy goals of the SMP. To ensure no net loss, proper on-site or off-site mitigation, informed by a restoration plan, can be used when smaller buffers are necessary to accommodate preexisting uses, smaller, pre-existing parcels adjacent to the shoreline, water dependent uses, or other local circumstances. Shoreline variance permits may be approved as situations warrant.

Ecology concludes that the county’s SMP proposal, subject to and including Ecology’s required changes (itemized in Attachment B1 and B2 and the alternative language adopted by the BOCC on 12/11/12), is consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions). This includes a conclusion that the proposed SMP, subject to required changes, contains sufficient policies and regulations to assure that no net loss of shoreline ecological functions will result from implementation of the new master program amendments (WAC 173-26-201(2)(c).

No additional changes are required.

According to Cumulative Impacts Study prepared by Spokane County (June 2006), there has been a minimal amount of platting activity in shoreline areas and there has been virtually no rezoning of shoreline property initiated by landowners. All rezoning of shoreline properties occurred as a result of programs to comprehensively rezone the unincorporated area of Spokane County in 1991, 2002 and 2005.

Nearly all subdivided property fronting on streams and lakes were recorded in the first half of the 1900s, prior to the existence of modern day platting laws. Only a few lots with water frontage have been created through modern platting regulations in the past 55 years. Nearly all platted shoreline property was divided prior to the adoption of the SMA and nearly all of the smaller lots (less than 5 acres) have been developed, mostly with single family dwellings. However, numerous parcels have been created in shoreline areas through Spokane County’s “Certificate of Exemption” process. Essentially, these are parcels that are allowed to be created without platting because such divisions are specifically exempted from platting regulations by the State Subdivision Plan.
Statute, RCW 58.17. A few are vacant and will likely be developed with residences in the foreseeable future as allowed by the Shoreline Master Program update and the underlying Comprehensive Plans and Zoning Codes.

Municipal zoning codes are the primary regulations specifying land usage and development densities (by way of minimum lot sizes, lot widths, setbacks and other performance criteria). Municipal zoning codes will also be the documents which largely determines lot setbacks, building height limits, building bulk and lot coverage, and minimum frontage which precludes creation of narrow flag lots. These documents provide for very low densities of development and land utilization in shoreline areas located outside the Urban Growth Areas (UGA). Nearly all areas outside the UGA are zoned Rural Traditional (allowing a maximum density of 1 home per 10 acres) and Rural Conservation (allowing a maximum density of 1 home per 20 acres or a density of 1 home per 10 acres through the cluster platting process). The width of the lot (shoreline frontage) can’t be less than 330 feet. These designations apply to approximately 95% of the shorelines in Spokane County subject to SMA. Both of these zones are consistent with the goals and policies of the SMP.

In addition, new residences must be located outside of the channel migration zone, which encompasses most of the Little Spokane River, Hangman Creek, Deadman Creek, Dragoon Creek, Rock Creek and Pine Creek (Section 5.2.6 of the SMP).

Limited infill is allowed through the common line setback provision for homes which are located within 150 feet of a proposed new residential structure. See the response to comment #14.

No change is required.

Application of the Critical Area Ordinance and Flood Damage Protection Ordinance Regulations within the Shorelines of the State on page 126 provides that critical areas within shoreline jurisdiction are managed exclusively by the SMP. This is a workable approach, but the SMP does not expand shoreline jurisdiction to include the buffers necessary to protect those critical areas and this jurisdictional gap must be addressed. The Tribe recommends that either the shoreline jurisdiction be expanded to include the necessary buffers, or that critical areas buffer apply to critical areas in the shoreline jurisdiction whose buffers would extend outside shoreline jurisdiction.

Inclusion of the buffers necessary to protect critical areas is optional for the county (see RCW 36.70A.480 (6) and RCW 90.58.030(2) (f) (ii)). Spokane County has adopted the Critical Area Ordinances by reference into the SMP. The CAO regulations governing buffers for the Critical Areas both within and outside of shoreline jurisdiction are the same, and would provide the same level of protection.

No change is required.

Definitions
On page 139 the SMP contains a definition of “substantially degrade.” This is the incorrect standard; the standard is no net loss. 1 “Substantially degrade” will

The term “substantially degrade” is used in the Shoreline Management Program Guidelines (WAC 173-26-211(5)(b)(i)(A) where providing
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<td>7</td>
<td>General Comment</td>
<td>Spokane Tribal Business Council</td>
<td>Allow a net loss and should be deleted along with any reference to it.</td>
<td>No change is required.</td>
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<td>8</td>
<td>General Comment</td>
<td>Lands Council, Trout Unlimited, Spokane Riverkeeper, Gonzaga Environmental Law Clinic, and Futurewise</td>
<td>Thank you for the opportunity to comment on the proposed revisions to Spokane County Shoreline Program Master (SMP) Update required by the Washington State Department of Ecology. We recommend that Spokane include the required changes in the SMP Update and also include several other improvements. Ecology’s required changes will better protect the shoreline environment from damage and shoreline property owners from natural hazards. Our recommended improvements will also better protect fish and wildlife habitat and provide needed public access to publically owned shorelines consistent with the Shoreline Management Act.</td>
<td>Comment acknowledged.</td>
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| 9    | Channel Migration Zones Section 1.4.1; Section 5.2.6 | Lands Council, Trout Unlimited, Spokane Riverkeeper, Gonzaga Environmental Law Clinic, and Futurewise | About 200 individual email comments. We support Ecology’s required revisions to Spokane County Shoreline Master Program. Spokane’s current shoreline master program was approved in 1975. Since then we have learned much about how to protect the shoreline environment and to protect people and property from natural hazards such as channel migration zones. Ecology’s required revisions will improve protection for fish habitat, the shoreline environment, and people and property. Some of the most important improvements are:  
• The application of the channel migration zone provisions in Section 1.4.1 on page 4 of Ecology’s Required Changes in Attachment B1 (September 21, 2012) and in Section 5.2.6 on pages 60 and 61 to all of the channel migration zones in the Little Spokane River, Hangman Creek, Dragoon Creek, Hangman (Latah) Creek, Rock Creek and Pine Creek. These areas are very dangerous areas to build and these regulations will protect people and property. | Comment acknowledged. |
| 10   | Shoreline Modifications Section 5.3.18 | Lands Council, Trout Unlimited, Spokane Riverkeeper, Gonzaga Environmental Law Clinic, and Futurewise | About 200 individual email comments. The requirement that dikes be located outside channel migration zones will protect these important habitats and help maintain flood storage capacity reducing damage to upstream property owners. See page B7 of Ecology’s Required Changes in Attachment B1 (September 21, 2012). | Comment acknowledged. |
Section 5.3.18

Riverkeeper, Gonzaga Environmental Law Clinic, and Futurewise
About 200 individual email comments

(September 21, 2012). These structures can damage fish and wildlife habitats and interfere with the public use of rivers, streams, and lakes. These standards will reduce these adverse impacts, but allow these structures when they are truly needed.

Use and Development Matrix Table 5A

Lands Council, Trout Unlimited, Spokane Riverkeeper, Gonzaga Environmental Law Clinic, and Futurewise
About 200 individual email comments

- The improved Table 5A, Use and Development Matrix, on pages 89–92 of Ecology’s Required Changes in Attachment B1 (September 21, 2012). This table is now clearer and better protects the shoreline environment.

Comment acknowledged.

Use and Development Matrix Table 5A

Lands Council, Trout Unlimited, Spokane Riverkeeper, Gonzaga Environmental Law Clinic, and Futurewise
About 200 individual email comments

- We also support the shoreline environment designation changes in Table II A as they will better protect the shoreline environment. See pages 149 to 153 of Ecology’s Required Changes in Attachment B1 (September 21, 2012).

Comment acknowledged.

Protecting Shoreline Ecology and Aesthetics Section 5.2.5.7

Lands Council, Trout Unlimited, Spokane Riverkeeper, Gonzaga Environmental Law Clinic, and Futurewise
About 200 individual email comments

Proposed 5.2.5 Paragraph 7 on pages 55 through 57 of Attachment B1 allows a common line setback to be used to reduce buffer widths to a minimum of 50 feet in Rural Conservancy, Urban Conservancy, and Shoreline Residential environments. The buffer averaging provisions, administrative buffer reductions, and allowance to reduce the buffer to 100 feet on existing lots less than 200 feet deep obviate the need for the common line setback and have better standards. We recommend that the common line setback provisions be omitted from the adopted SMP Update.

While Section 5.2.5.7 does allow a common line set back, the application of this provision will be limited primarily to the Shoreline Residential environment where lots are smaller (less than 150 feet in width) and where the areas are built out. Lots are usually 10 acres or greater in the Rural and Urban Conservancy and Natural environments, with a minimum lot width of 330 feet. In addition, mitigation is required for applicants who use this provision.

This provision only applies were a residential structure is within 150 feet of the proposed residential structure. Not all residential structures using this provision would be 50 feet from ordinary high water. For example, if a home on one side (within 150 feet) is 50 feet from the shoreline, and there are no structures within 150 feet on the other side, then the distance measured for averaging would be the default buffer (100 feet in the Shoreline Residential environment). So, the setback would be 75 feet ((50 + 100)/2). If there are no residential structures within 150 on either side, then the common line setback wouldn’t apply. This provision considers private property rights and provides some protection for visual access for land owners in those areas that are built.
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<td>15</td>
<td>Protection Shoreline Ecology and Aesthetics Section 5.2.5 Table B</td>
<td>Lands Council, Trout Unlimited, Spokane Riverkeeper, Gonzaga Environmental Law Clinic, and Futurewise</td>
<td>As we have seen the 100 foot wide, 150 foot wide, and 200 wide buffers provided for in Table 5B will not achieve no net loss of shoreline buffers. We also recommend that all Shoreline environment buffers be 250 feet except for lots 300 feet or less deep. These buffers are well supported by the science.</td>
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| 16   | Protecting Shoreline Ecology and Aesthetics Section 5.2.5. | Lands Council, Trout Unlimited, Spokane Riverkeeper, Gonzaga Environmental Law Clinic, and Futurewise | While we appreciate the improvements in the regulation of public non-motorized multi-use equestrian pedestrian/bike trails in proposed 5.2.5.5 h, i and j; we oppose adding new trails within shoreline buffers at all unless they connect to or from (in phases or otherwise) an existing regional multi-use non-motorized trail and only when the conditions listed under Section 5.2.5.5.h are met. This will better achieve no net loss of ecological function and will avoid costly mitigation for trails that won’t see the kind of use that justify their financial and environmental costs. The language in 5.2.5.5.h should be modified to read:  

"Public non-motorized multi-use equestrian pedestrian/bike trails shall only be allowed in the shoreline buffer to connect to or from (in phases or otherwise) an existing regional multi-use non-motorized trail and only when:"

Section 5.2.5.5 i. should be deleted. |
<p>| 8    | Public Access Section 5.2.8 | Lands Council, Trout Unlimited, Spokane | Ecology’s required amendments significantly improve the SMP Update’s public access provisions. But they are still inconsistent with WAC 173-26-221(4)(d) in out with some opportunities for infill. Again, mitigation would be required. No change is required. |</p>
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<td>9</td>
<td>17 Riverkeeper, Gonzaga Environmental Law Clinic, and Futurewise</td>
<td>two respects. First, proposed 5.2.8, Public Access, Paragraph 8 on page 63 of Attachment B1 does not require public access for multi-family residential developments. To be consistent with the Shoreline Master Program guidelines in WAC 173-26-221(4)(d) it must do so. This is not an academic concern as multi-family residential developments are an allowed use in the Shoreline Residential Environment.</td>
<td>The SMA requires Shoreline Master Programs (SMPs) to include a public access element to provide for public access to publicly-owned shorelines and a recreational element to preserve and enlarge recreational opportunities. [RCW 90.58.100(2)(b)(c)]. Public access to publicly owned shorelines is also a preferred use on shorelines of statewide significance. [RCW 90.58.020(5)(6)]. WAC 173-26-221(4)(d)(iii) requires that SMPs provide standards for the dedication and improvement of public access in developments for water-enjoyment, water-related, and non water-dependent uses and for the subdivision of land into more than four parcels. Specific to residential development, WAC 173-26-241 (3)(j) states that “new multiunit residential development, including the subdivision of land for more than four parcels, should provide community and/or public access in conformance to the local government’s public access planning and this chapter.” Ecology’s required changes include this provision in Section 5.3.8, with specific criteria for exceptions to protect private property rights and to address public health and safety concerns. For small subdivisions, the provision of community waterfront access may meet the public access requirement. These smaller subdivisions must maintain or enhance visual public access. Ecology believes that these public access provisions are proportional to the public access demand that such small subdivisions of land would create.</td>
<td>No change is required.</td>
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<td>9</td>
<td>18 Public Access Section 5.2.8 Lands Council, Trout Unlimited, Spokane Riverkeeper, Gonzaga Environmental Law Clinic, and Futurewise</td>
<td>Proposed 5.2.8, Public Access, Paragraph 10 on pages 63 to 64 of Attachment B1 allows single–family residential developments of greater than four parcels but less than ten parcels to meet their public access requirements by providing community access to the shoreline or to a common waterfront tract for the non-commercial recreational use of the property owners and guests. This is inconsistent with WAC 173-26-221(4)(d) and should be deleted. Public access should be required for these developments as WAC 173-26-221(4)(d) requires.</td>
<td>The SMA requires Shoreline Master Programs (SMPs) to include a public access element to provide for public access to publicly-owned shorelines and a recreational element to preserve and enlarge recreational opportunities. [RCW 90.58.100(2)(b)(c)]. Public access to publicly owned shorelines is also a preferred use on shorelines of statewide significance. [RCW 90.58.020(5)(6)]. WAC 173-26-221(4)(d)(iii) requires that SMPs provide standards for the dedication and improvement of public access in developments for water-enjoyment, water-related, and non water-dependent uses and for the subdivision of land into more than four parcels. Specific to residential development, WAC 173-26-241 (3)(j) states that “new multiunit residential development, including the subdivision of land for more than four parcels, should provide community and/or public access in conformance to the local government’s public access planning and this chapter.” Ecology’s required changes include this provision in Section 5.3.8, with specific criteria for exceptions to protect private property rights and to address public health and safety concerns. For small subdivisions, the provision of community waterfront access may meet the public access requirement. These smaller subdivisions must maintain or enhance visual public access. Ecology believes that these public access provisions are proportional to the public access demand that such small subdivisions of land would create.</td>
<td>No change is required.</td>
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<td>9</td>
<td>19 Archaeological Areas and Historic Sites Section 5.3.13 Lands Council, Trout Unlimited, Spokane Riverkeeper, Gonzaga Environmental Law Clinic, and Futurewise</td>
<td>We recommend that Proposed 5.3.13 on page 79 of Attachment B1 include the following additional regulation: b. Permits issued in areas with suspected, probable, or documented cultural or archaeological resources require a site inspection or evaluation by a professional archaeologist in coordination and consultation with affected Indian tribes before construction may begin to determine the requirements to be implemented to protect any cultural or archaeological resources likely to be on the site.</td>
<td>The policy language has been revised to address the concern. See the response to comment #3.</td>
<td>No change is required.</td>
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<td>Residential Section 5.3.8 Lands Council, Trout Unlimited, Spokane</td>
<td>There is a tendency to want to create narrow lots on the shoreline to maximize the number of shoreline lots, which are the most profitable lots. So the lots</td>
<td>See the response to comment #5.</td>
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<td>Riverkeeper, Gonzaga Environmental Law Clinic, and Futurewise; About 200 individual email comments</td>
<td>20</td>
<td>Spokane County SMP Update</td>
<td>along the shoreline end up narrow with the lot occupied with houses separated from each other by the minimum zoning setbacks. This wall of houses has is aesthetically unattractive, in violation of the policy of the Shoreline Management Act in RCW 90.58.020, and more importantly cuts off the uplands from the shorelines, adversely impacting wildlife which often rely on the shorelines for food and water. The wall of houses can also interfere with season migrations from upland habitats to and from riparian habitats. So there should be a minimum lot width or lot width ratio that allows for reasonable un-built areas between houses and other buildings. We recommend requiring a 2:1 length-to-width ratio in the Natural and Conservancy environments and at most a 3:1 ratio in the Shoreline Residential environment.</td>
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<td>Application of the Critical Area Ordinance and Flood Damage Protection Ordinance Section 8.4</td>
<td>21</td>
<td>Spokane County SMP Update</td>
<td>Proposed Section 8.4, Application of the Critical Area Ordinance and Flood Damage Protection Ordinance Regulations within the Shorelines of the State, on page 126 of Attachment B1 provides that critical areas within shoreline jurisdiction are managed exclusively by the SMP. While this is a fine approach, the SMP Update does not expand shoreline jurisdiction to include the buffers necessary to protect those critical areas which is a significant problem. For example, by exempting associated wetlands from the critical areas regulations, the Shoreline Master Program creates a gap in protection for associated wetlands and other habitats too. If the association wetland is, say ten or 20 feet from the edge of shoreline jurisdiction, the shoreline master program can only require a ten or 20 foot buffer, the master program and its required buffers do not apply outside shoreline jurisdiction. Since all wetlands require buffers wider than ten feet, the wetland will be inadequately protected. An associated wetland that is outside shoreline jurisdiction, but that has a hydraulic connection to a river has even less protection. In this example, only the association wetland itself is in shoreline jurisdiction, everything outside the wetland is outside shoreline jurisdiction. Here the shoreline master program cannot require any buffer at all. So we recommend either that shoreline jurisdiction be expanded to include the necessary buffers or that critical areas buffer apply to critical areas in shoreline jurisdiction whose buffers would extend outside shoreline jurisdiction.</td>
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<td>22</td>
<td>Application of the Critical Area Ordinance and Flood Damage Protection Ordinance Section 8.4</td>
<td>22</td>
<td>Spokane County SMP Update</td>
<td>Proposed 8.4.A.2 on page 126 of Attachment B1 adopts Section 11.20.060, Fish and Wildlife Habitat and Species Conservation Areas, of the Spokane County critical areas regulations. The Spokane County fish and wildlife habitat conservation area regulations protect habitats depicted as “points,” see Spokane County Code (SCC) 11.20.060(B) and (D). The Washington State Department of Fish and Wildlife priority species and habitats databases include habitats depicted as points, areas, and lines. The solution is to add a provision that provides that within shoreline jurisdiction, fish and wildlife habitats depicted as areas and lines are protected too. We recommend that the following language be added after proposed 8.4, Application of the Critical Area Ordinance and Flood Damage Protection.</td>
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Ordinance Regulations within the Shorelines of the State, subpart B.5 on page 128 of the Attachment B to resolve this problem:

6. Notwithstanding SCC 11.20.060(B) and (D), within shoreline jurisdiction the following regulations shall apply to habitats with which non-game priority species have a primary association whether that habitat is depicted as a point, line, or area in the PHS records.

A. The county shall restrict the regulated uses and activities shown in SCC Table 11.20.030A, or other use or activity determined by the Director to be subject to the purpose, intent, or goals of SCC 11.20.060, which lie within a priority habitat listed in SCC Table 11.20.060A, which is within a habitat with which a non-game priority species listed in SCC Table 11.20.060A has a primary association, or within one-quarter mile of a habitat with which a non-game priority species listed in SCC Table 11.20.060A has a primary association through the application of the performance standards contained in SCC 11.20.060.C except that the following provisions shall not apply within shoreline jurisdiction: SCC Subsection 11.20.060c.1.d, public trails, and SCC Subsection 11.20.060C.1.g, reference to WAC 222-16-031.

B. A habitat management plan shall be prepared for regulated uses or activities (refer to SCC Table 11.20.030A), or other use or activity determined by the Director to be subject to the purpose, intent, or goals of SCC 11.20.060, which lie within a priority habitat listed in SCC Table 11.20.060A, which is within a habitat with which a non-game priority species listed in SCC Table 11.20.060A has a primary association, or within one-quarter mile of a habitat with which a non-game priority species listed in SCC Table 11.20.060A has a primary association if it is determined by the director that the proposal is likely to have an adverse impact on the priority habitat or species. The habitat management plan shall comply with SCC 11.20.060D and E, except for the limitation on preparing habitat management plans for habitats that are not depicted as points in SCC 11.20.060D.

| Appendix II Shoreline Designations | Lands Council, Trout Unlimited, Spokane | We recommend that McKenzie Bay area of Liberty Lake be redesigned from Shoreline Residential to Natural. As the Google Maps image enclosed with Environment designations must be based on the characterization of shoreline ecological functions, shoreline use analysis and priorities, |
| 23 | Residential Section 5.3.8 | Center for Justice’s Spokane Riverkeeper program and Futurewise | Riverkeeper, Gonzaga Environmental Law Clinic, and Futurewise | Futurewise’s February 24, 2009 comment letter sent to Spokane County shows, the majority of McKenzie Bay is undeveloped with natural vegetation along the shoreline. The sub basin that includes McKenzie Bay is relatively undeveloped and these low densities are critical to the lake’s health. The last minute re-designation to Shoreline Residential weakened protection for these shorelines and will adversely affect the lake’s water quality. The Natural Shorelines Environment will maintain existing native vegetation and prevent intense uses on the lakeshore. This protects the lake’s shoreline functions, water quality, and fish habitat as the Shoreline Master Program Guidelines require. |

| 24 | | | Department of Ecology consulted with John Eliasson, Department of Health (DOH) regarding the Stan Miller’s analysis and the 10 vs. 3 foot vertical separation issue. DOH also provided information in previous correspondence on why increasing the vertical separation to 10 feet will not do much for nutrient control. DOH recommends Spokane Regional Health District continue to administer the current OSS regulations of the State Board of Health (WAC 246-272A) to address the issue of potential phosphorus loading from OSS. |

1. **Reduction of the Ten Foot Septic Separation.**

   The County’s proposed SMP significantly weakens the separation between a waste water treatment system and the water table along with other protections from 10 feet to 3 feet. The purpose of this requirement is to protect water quality which the Shoreline Management Act in RCW 90.58.020 calls on Ecology to protect, including specific impacts associated with the transport of phosphorus and other nutrients from the aquifer to the Spokane River. Onsite waste disposal systems often fail adding phosphorus and other nutrients into rivers, lakes, and streams. As the attached memo from Stan Miller indicates, “[c]hanging the locally imposed requirement for a 10 feet separation to the separation allowed by the state Department of Health (as little as 3 feet separation is allowed) will significantly alter the dynamics of phosphorus loading to the Spokane River and Lake Spokane.” Mr. Miller’s memo concludes, “[A] typical on-site disposal installation with a ten – foot separation between the bottom of the disposal area and the water table, will breakthrough in about 20 years. ... Reduce that separation to 3 feet and breakthrough will occur in about 6 years.”

   Ecology’s Findings and Conclusions state, “Spokane Regional Health District should consider whether additional treatment using more advanced technology is required to address phosphorus and nitrogen loading to the Spokane River and Lake Spokane. In addition, the calculations for phosphorus removal impact on the Spokane River and Lake Spokane resulting from the Septic Tank Elimination Program should consider how the approvals of new onsite septic systems affect those calculations.” Spokane Regional Health does not have the authority or expertise to address impacts of septic impacts to water quality and Clean Water Act compliance in existing land segregation patterns and the designation criteria found in the guidelines. The Liberty Lake, Mackenzie Bay designation as Shoreline Residential is retained as proposed by Spokane County Board of County Commissioners. The parcels along that stretch of shoreline have already been subdivided for residential development, and are served by an existing road, sewer and water and the road ends at that location. Increased densities for the underlying plat will not occur due to the low density provisions of the zoning designation (Rural Traditional with a maximum density of one home per 10 acres). Spokane County owns a parcel between the privately owned residential parcels to the north, and significant acreage owned by Zephyr Lodge to the south. The majority of the shoreline from the Zephyr Lodge property around the southern end of the lake and up the eastern shoreline of the lake is designated as Natural. The Shoreline Residential designation would allow the county to provide public access to the shoreline, provide a public dock for fishing and other public recreational uses as envisioned by the county.

No change is required.
the Spokane River, see Chapter 70.05 RCW – this is an authority that rests with the Department of Ecology and Spokane County in adopting this SMP. Accordingly and regardless of any human health based arguments, the County must take action to protect the 10 foot separation to protect water quality in the Spokane River. This is consistent with the requirements for a SMP and the DO TMDL. Accordingly and regardless of any human health based arguments, the County must take action to protect the 10 foot separation to protect water quality in the Spokane River. This is consistent with the requirements for a SMP and the DO TMDL.

2. Consistency with the Spokane River DO TMDL

State Guidelines addressing water quality and quantity, WAC 173-26-22, provide:

- Prevent impacts to water quality and storm water quantity that would result in a net loss of shoreline ecological functions, or a significant impact to aesthetic qualities, or recreational opportunities.
- Ensure mutual consistency between shoreline management provisions and other regulations that address water quality and storm water quantity, including public health, storm water, and water discharge standards. The regulations that are most protective of ecological functions shall apply. Accordingly, Ecology must ensure that the SMP is consistent with and implements the nutrient reductions set forth in the DO TMDL. This includes measures to reduce impacts from septic systems (see septic offset discussion above), reduce runoff (i.e., buffers), and otherwise reduce impacts from nonpoint sources. This is particularly important in the Spokane River, where the TMDL calls for drastic (and arguably unrealistic) cuts in nonpoint source loading. Moreover, the TMDL itself calls for action, such as the SMP, to be consistent with its requirements. The TMDL states, “Land use planning activities must comply with this TMDL.” DO TMDL at 46. In fact, the TMDL states, “If the land use action under review is known to potentially impact dissolved oxygen ... then the project may have significant adverse environmental impacts.” Id. at 54. The SMP, by reducing protection and failing to address opportunity to protect the river, has significant environmental impacts. Likewise, the TMDL call for the elimination of septic tanks. DO TMDL at 52. Certainly, reducing protection from septic tanks (10 to 3 foot offset) is directly contrary to this.

- Installations of cesspools, seepage pits and deep drainfield installations are prohibited.
- Drainfield hydraulic loading rates are lower (larger drainfield areas are required). Lower loading rates will increase wastewater retention times in the soil. This results in increased nutrient treatment efficiencies.
- Gravity flow drainfields are not allowed in areas where the soil does not provide good treatment for them. Pressurized distribution drainfield designs are required instead in these areas. Pressure distribution optimizes the treatment capacity of the soil by controlled effluent dosing over the day, distributing effluent uniformly to the soil, and keeping the soil dispersal area shallow to maximize effluent contact with soil. Nutrients are applied directly to the root zone where they are taken up by the plants as well.

As previously stated, most of the phosphorus removal occurs in the aerobic zone within first few feet below the bottom of the drainfield. There are diminishing benefits beyond a vertical separation of 3 feet. Increased phosphorus transport is more likely in coarser texture soil where uniform distribution is not achieved and where effluent flow is rapid away from the drainfield. The minimum OSS rules address these risks by requiring timed dosed pressure distribution drainfield designs as well as by requiring proper vertical and horizontal separations.

DOH response to Stan Miller’s analysis:

The model that DOH reviewed (attached) is a 2009 update to the version of the Montana model that Mr. Miller referenced. It appears the updated version has some different input default values and assumptions, which if used will provide different phosphorus breakthrough results. Below are DOH responses to the comments specific to OSS and use of the model.

- Response to Comment #1. The minimum horizontal separation requirement from a drainfield to surface water is 100 feet. The local health officer has the authority to increase the separation distance where any condition indicates a greater potential for contamination or pollution. By maintaining or increasing the minimum horizontal separation, the Shoreline Master Plan standards would not be relaxed to allow drainfield installations closer to the river than what is currently allowed in rule. The horizontal distance will also delay surface water impact. Once phosphorus reaches the water table, migration velocities on the order of 1 m/yr are common in Ontario sand aquifers, and probably elsewhere.
• Response to Comment #2. I assume that the suggestion to impose a ban on the construction of new septic systems is based on phosphorus breakthrough calculations using the Montana model. Not enough information exists in the literature to determine the phosphorus soil retention based on soil type, mostly because phosphorus attenuation processes are not fully understood and hard to model. The soil capacity calculations presented to determine phosphorus breakthrough time does not consider soil precipitation, even though this process is known to be very important to phosphorus transport. It’s not just about modeling soil sorption (using sorption and vertical separation only delays the inevitable), but how the on-site system design optimizes the treatment capacity of the soil and what is growing in the soil that will make the difference.

• Response to Comment #3. I believe we reach the point of diminishing returns of phosphorus removal in the soil at vertical separations greater than 3 feet. I doubt that the additional separation will make much difference, especially if the soils are sandy. Phosphorus removal occurs in a “rapid transformation zone” immediately under the drainfield pipes. This zone tends to be very local (4 – 12 inches thick) and concentrations of total phosphorus in soil water decreases drastically 3 feet below the drainfield’s infiltrative surface.

Instead of increasing the vertical separation, there are other approaches for phosphorus attenuation that can be integrated in the drainfield design with 3 feet vertical separation to offset the phosphorus loading from on-site sewage systems. High hydraulic loading rates or uneven distribution of septic tank effluents contributes to phosphorus leaching from the soil as well as lack of a clogging zone across the infiltrative surface of drainfields. Shallow pressure distribution drainfield designs can be just as effective if not more as a 10 feet vertical separation requirement in increasing phosphorus breakthrough time and phosphorus removal.

• Response to Comment #4. I don’t believe there is “ample evidence” that this (10 feet vertical separation) will increase breakthrough time. The information presented does not accurately predict the point when no more phosphorous can be adsorbed. Removal and immobilization is dependent upon the availability of “sorption sites” to bind the phosphorus. While it is possible to exhaust these sites, most soils have a very high capacity for sorption of phosphorous. Sorption sites are provided by clay and organic fractions of the soil. Therefore, sandy soils typically have lower capacities than...
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<th>Page</th>
<th>Protecting Shoreline Ecology and Aesthetics Section 5.2.5.</th>
<th>Center for Justice’s Spokane Riverkeeper program and Futurewise</th>
<th>The draft SMP also allows the construction of new non-motorized trails in shoreline buffer areas. This is clearly inconsistent with the requirements to protect no net loss of ecological function of shoreline areas as required by the law. First, studies clearly indicate that trails should be discouraged from being placed in riparian areas. Many studies indicate that trail development in riparian areas can be adverse to water quality and habitat. These studies support that riparian corridors are critical areas for many ecological functions, which can be negatively impacted by recreational trails. To minimize impacts and maintenance issues, these studies suggest that trails be located outside of the riparian corridor.</th>
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<td>25</td>
<td>Protecting Shoreline Ecology and Aesthetics Section 5.2.5.</td>
<td>Center for Justice’s Spokane Riverkeeper program and Futurewise</td>
<td>See the response to comment #16.</td>
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<td>26</td>
<td>Protecting Shoreline Ecology and Aesthetics Section 5.2.5.</td>
<td>Center for Justice’s Spokane Riverkeeper program and Futurewise</td>
<td>WAC 173-26-020 Definitions (35) &quot;Should&quot; means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this chapter, against taking the action. The county includes the term encourage to demonstrate their support of using pervious materials, but does want the opportunity to address circumstances where the use of such materials may technologically infeasible or cost prohibitive compared to the benefit. Still, the standard of &quot;no net loss of environmental function&quot; must be achieved through proper design and construction and mitigation of impacts. A conditional use permit (CUP) is required for all public trails in shoreline jurisdiction, which Ecology must review and approve, and may condition. Cumulative impacts must be considered, and a public hearing is required. Ecology believes that the &quot;no net loss&quot; standard can be met with application of the Spokane County SMP regulations, and the safeguards provided by the CUP process. No change is required.</td>
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problems. The surface wears well. Porous asphalt retains its ability to handle rainwater for many years. One of the best-known porous parking lots, located at the Walden Pond State Reservation in Massachusetts, was constructed in 1977. While it has never been repaved, it is in good shape and still drains effectively. In a study of a porous pavement system constructed at the Centre County/Pennsylvania State Visitor center, researchers found that the system had maintained a consistent infiltration rate. During a 25-year precipitation event, there was no surface discharge from the stone beds. According to EPA, these materials are well suited to northern climates such as Spokane, resulting in increased lifespan for paved areas: Due to the well draining stone bed and deep structural support of porous asphalt pavements, they tend to develop fewer cracks and potholes than conventional asphalt pavement. When cracking and potholes do occur, a conventional patching mix can be used. Freeze/thaw cycling is a major cause of pavement breakdown, especially for parking lots in northern climates. The lifespan of a northern parking lot is typically 15 years for conventional pavements; porous asphalt parking lots can have a lifespan of more than 30 years because of the reduced freeze/thaw stress (Gunderson, 2008). Porous asphalt has been found to work well in cold climates as the rapid drainage of the surface reduces the occurrence of freezing puddles and black ice. Melting snow and ice infiltrates directly into the pavement facilitating faster melting (Gunderson, 2008). Cold weather and frost penetration do not negatively impact surface infiltration rates. Porous asphalt freezes as a porous medium rather than a solid block because permeable pavement systems are designed to be well-drained; infiltration capacity is preserved because of the open void spaces (Gunderson, 2008). Another study conducted by the University of Rhode Island found that these materials are cost effective, stating:

On a yard-by-yard basis, the cost of porous asphalt is about the same as the cost of conventional asphalt (i.e., $0.50-$1.00/ft2). The underlying stone bed is usually more expensive than a conventional compacted subbase, but is offset by the reduction in storm-water pipes and inlets, and elimination of detention basins. Generally, porous pavement installation does not require deep excavations, and there is less earth-work than for conventional asphalt. Moreover, these types of materials are readily available, including available locally at Central Premix (see http://www.centralpremix.com/sand276). For the reasons set forth in above and the comments submitted by Futurewise, we urge the County to amend its SMP as proposed and to take appropriate action to protect the Spokane River, public use of our water bodies and the ecological, environmental, and social benefits associated with strong shoreline protections.

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<th>Definitions</th>
<th>Bill Moser</th>
<th>After reviewing the proposed Shoreline Master Program we recommend the following additions.</th>
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<td>Section 11</td>
<td>Senior Planner</td>
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The requested change has been made for clarity and ease of implementation. See the December 11, 2012 BOCC approved alternative.
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<th>Spokane County Building and Planning Dept.</th>
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<td>28</td>
<td>Substantial Development Permits Section 6.4.2</td>
<td>Bill Moser Senior Planner Spokane County Building and Planning Dept.</td>
<td></td>
<td>The requested change has been made for clarity and ease of implementation. See the December 11, 2012 BOCC approved alternative language.</td>
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<td>29</td>
<td>Fill Section 5.3.15</td>
<td>Marianne Barrentine, PE Environmental Programs &amp; Special Projects Manager Spokane County</td>
<td>As Environmental Programs Manager for Spokane County Engineering and Roads I am responsible for environmental permitting of our road, bridge, and trail projects. Our staff has reviewed this proposed update of the County Shoreline Master Program (Attachment B1 dated Sept. 21, 2012) in light of our typical bridge, road and trail projects. I have some concerns with how this update would impact these projects. We are currently designing a project to reroute the Centennial Trail at Argonne Rd, under the Argonne Rd. Bridge. This project would improve public safety by eliminating a dangerous crossing of the busy Argonne arterial. However, going under the bridge will entail some minor fill below OHW (trail width is 10ft. and currently there is only 4ft. available on one side of the bridge.) With the current proposed language in 5.3.15 Fill, fill is prohibited below OHW for trails. Though there is an exception for bridges, it is prohibited for most other projects including public roads and trails.</td>
<td>Section 5.3.15 has been revised to address the concern. See the December 11, 2012 BOCC approved alternative language.</td>
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<td>30</td>
<td>Recreation Section 5.3.14</td>
<td>Marianne Barrentine, PE Environmental Programs &amp; Special Projects Manager Spokane County</td>
<td>Under 5.3.14 Recreation, we had concerns that trails could not be constructed if they would result in removal of standing trees. In many cases this would be difficult to construct new trails without tree and vegetation removal. This is inconsistent with the Section 5.2.5, Protecting Shoreline Ecology and Aesthetics which requires trails to be located to avoid to maximum extent possible removal of native vegetation including trees.</td>
<td>Section 5.3.14 has been revised to address the concern. See the December 11, 2012 BOCC approved alternative language.</td>
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<td>31</td>
<td>Utilities Section 5.3.9</td>
<td>Marianne Barrentine, PE Environmental Programs &amp; Special Projects Manager Spokane County</td>
<td>Using a recent bridge project as an example, we found that stormwater facilities associated with bridges and roads could not be located closer than 100ft. from OHW under 5.3.9 Utilities. In many cases this is not feasible. The new Little Spokane River Bridge has a swale servicing the adjacent to the road approach and bridge located less than 100ft. from OHW. More upland locations would not allow for proper drainage.</td>
<td>Section 5.3.9 has been revised to address the concern. See the December 11, 2012 BOCC approved alternative language.</td>
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<td>32</td>
<td>Protecting Channel Migration Zones Section 5.2.6</td>
<td>Marianne Barrentine, PE Environmental Programs &amp; Special Projects Manager Spokane County</td>
<td>Road maintenance and repair (e.g. washout repairs, protection of existing roads, trails and bridges) under the new channel migration zone regulations are also a concern. Although repair and maintenance is exempt from Shoreline Development Permits, under 5.2.6 Protecting Channel Migration Zones, all development including emergency actions require review and a report by an experienced fluvial geomorphologist. This would be problematic in emergency</td>
<td>Section 5.2.6 has been revised to address the concern. See the December 11, 2012 BOCC approved alternative language.</td>
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<td>Channel Modifications Section 5.2.7</td>
<td>Marianne Barrentine, PE Environmental Programs &amp; Special Projects Manager Spokane County</td>
<td>Similarly under 5.2.7 Channel Modifications, authorization of channel modifications for constructing and maintaining bridges, culverts and pipelines should be extended to other public facilities including roads and trails which may necessarily be within the shoreline area, e.g. Valley Chapel Rd along Latah Creek. I appreciate the opportunity to meet with you and Ms. Hunt from Ecology's Eastern Region Office, to discuss our concerns and review language that would allow flexibility for public infrastructure projects within shoreline areas and allowing for feasibility and public safety concerns to be taken into account. Preliminarily I concur with the language clarifications provided by Ms. Hunt in her email of November 7, 2012. However, I would still request that the record be kept open for at least one more week to allow additional time to review these language changes with Ecology and the Planning Division and insure all of these concerns are addressed and appropriate language clarifications have been made.</td>
<td>Section 5.2.7 has been revised to address the concern. See the December 11, 2012 BOCC approved alternative language.</td>
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| 33 | Protecting Channel Migration Zones Section 5.2.6 | Marianne Barrentine, PE Environmental Programs & Special Projects Manager Spokane County | This letter is to provide follow up to my letter of November 8, 2012 to Mr. Pederson providing comments to the proposed Spokane County Shoreline Master Program update and requesting additional flexibility for public infrastructure projects within shoreline areas by allowing feasibility and public safety concerns to be taken into account. We have reviewed Ms. Hunt’s proposed language changes emailed on November 7, 2012 to address our concerns and concur with them. However, there are a few additional changes and clarifications and one correction to Ms. Hunt’s comments [see attached] that we recommend be incorporated in the final Plan.  

1. Under section 5.2.6 Protecting Channel Migration Zones, add public safety concerns as a reason to allow public development within channel migration zones as follows:
   
a. Add to paragraph 2, 4th bullet as follows:
   - Bridges, utility lines, and other public utility and transportation structures where no other feasible alternative exists or the alternative would result in unreasonable and disproportionate cost or public safety concerns.
   
b. Add to paragraph 6 as follows:
   
6. All new development and uses, including appropriate after-the-fact permits for emergency actions allowed under Section 6.4.2, proposed within the Channel Migration Zone shall be reviewed by a licensed geologist or licensed professional engineer with a demonstrated minimum of five year of field experience in fluvial geomorphology and evaluating channel response. | Section 5.2.6 has been revised to address the concern. See the December 11, 2012 BOCC approved alternative language. |
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| 35   | Channel Modifications Section 5.2.7 | 2. Under section **5.2.7 Channel Modifications** add to paragraphs 1 and 5 as follows to allow maintenance and protection of existing roads and trails:  
   1. Stream and river channel modifications will be authorized only for the purpose of construction or maintaining bridges, **existing roads and trails**, culverts and utility pipelines and cables, or to restore previously altered and degraded......  
   5. Channel modifications shall not introduce rocks or other materials into the channel bed which would alter channel hydraulics, channel profile or channel plan form, except where they are a component of a process-based design for natural stream restoration, or for scour protection at bridge pilings and abutments, and protection of existing roads and trails. |
| 36   | Roads, Railroads and Bridges Section 5.3.12 | 3. Under section **5.3.12 Roads, Railroads and Bridges**, modify paragraph 1.i for consistency with section 5.3.15 Fill.  
   1. All Environments  
      i. Fill shall not be placed below the OHWM to construct roads **except as allowed under 5.3.15 Fill**. |
| 37   | Recreation Section 5.3.14 | 4. Under section **5.3.14 Recreation**, add a subparagraph 1.e. for All Environments for consistency with paragraph 2.e. for Natural Environments.  
   1. All Environments  
      e. New constructed recreation trails shall be limited to 5 feet in width, shall only be located and constructed to provide access to the shoreline, and shall be constructed on natural grade only except as allowed under Section 5.2.5.5. |
| 38   | Use and Development Matrix, Table 5A Section 5.3.15 Fill | 5. In Table 5A, page 91, revise Ms. Hunt’s email comments moving “or project of overriding public interest” to the line above - “Fill for ecological restoration work” to more accurately reflect her proposed change to section **5.3.15 Fill**, subparagraph 1.a. |
| 39   | Utilities Section 5.3.9 | The Stevens P.U.D. has been planning for more than a year to install a water main to intertie two of our satellite water systems located in Spokane County. For the 5 previous years we searched for alternate wells on the same side of the River, with no positive results. The 46 homes served by our Chatteroy Springs West Water System need a new water source. The 2 existing wells have high levels of radium 228, iron bacteria, uranium, and fluoride, posing a health risk to our customers. The proposed intertie water main must cross the Little Spokane River in the |
Riverside area. Please see the attached map. In this area, there is very challenging terrain for this type of project, resulting in only 1 or 2 feasible routes. After much field investigation and meetings with property owners, we have now secured all of the necessary pipeline easements along the proposed route.

We have had two pre-application meetings at your office, as recently as August 1, 2012, to determine the applicable regulations and requirements. The project budget includes a $175,000 loan, or $3,800 per home, which will be in addition to the current base water rate of $59.35 per month.

It appears that the proposed intertie route is located in the proposed "Natural Environment" area, which has a multitude of new requirements and restrictions that could easily raise the cost to a point that makes this project not financially feasible.

The proposed intertie pipe will be bored under the River and will result in no permanent above-ground facilities. When the natural vegetation is restored there will be no obvious signs that the work was done.

If these regulations are adopted within the next 8 months, we hereby request that our project be grandfathered in to the current regulations. Specifically, we have the following comments on the proposed Shoreline Master Program regulations:

1. Page 10- Section 3.2.2.1:
   In the 6th line, add the word "reasonably" between "can" and "be".

2. Page 13 - Section 3.2.7:
   Add the words "above-ground" between "discouraging" and "development".

3. Page 74 - Section 5.3.9.1:
   In different sub-sections, the words "transmission line" and "such pipelines" are used. We recommend that "utility pipeline or cable" be used in each case because this term has a more clear meaning and is more inclusive of different utilities.

4. Page 74 - Sections 5.3.9.l.c and 5.3.9.l.h:
   In the case of buried utilities, it will be necessary to temporarily create a "clear corridor" through a wooded area, but shrubs and other plants will recover. However, it may be necessary to periodically remove larger trees.

5. Page 75 - Section 5.3.9.l.k:
   "electrical transmission lines" should be changed to "buried utility pipeline or cable" to be more clear and more inclusive of different utilities.

6. Page 75 - Section 5.3.9.2.a:
   There will occasionally be a utility project, such as the one described above, that should be allowed in a "Natural Environment" area. The door should remain open instead of being almost closed as this section is currently worded.

7. Page 75 - Section 5.3.9.2.c:
   "Electric transmission and communication cable" should be changed to "buried utility pipeline or cable" to be more clear and more inclusive of different utilities.
Nathan G. Smith
Witherspoon-Kelly
Attorneys and
Counselors
We are counsel for Inland Empire Paper Company ("IEP"). IEP provides this comment regarding the Spokane County draft Shoreline Master Program Update as the owner of property situated along Maringo Drive across the Spokane River from its paper mill within the municipal corporate limits of the City of Millwood. IEP actively participated in the City of Millwood Shoreline Master Program update process through participation in the Citizen’s Advisory Committee and providing comment to the City’s Planning Commission on the City’s draft master program. IEP’s predominant concern with the City of Millwood’s program relates to the requirement for public access as a condition of securing either a substantial development permit or a conditional use permit from the City. As the owner of property within the unincorporated limits of Spokane County, IEP has similar concerns. Spokane County’s plan, with the approval of Ecology, requires private property owners to provide public access as a condition of approval for the receipt of a discretionary permit from Spokane County.

As the County is aware, the State declared as part of the Shoreline Management Act that there is an order of preferential uses for shorelines of statewide significance. The fifth highest priority is limited only to the obligations of the public to provide public access to public property:

1. Increase public access to publicly owned areas of the shorelines; RCW 90.58.020(5). This use preference guides the Department of Ecology in its development of regulations and guidelines for local jurisdictions to follow for adopting updating new shoreline master programs. IEP believes that the guidelines adopted in the Washington Administrative Code and the SMP Handbook exceeds the authority conferred upon Department of Ecology under the Shoreline Management Act. See, e.g. Kitsap-Mason Dairymen’s Ass’n v. Washington State Tax Comm’n, 77 Wn.2d 812, 467 P.2d 312 (1970) (requiring rules to be consistent with the governing statutory framework).

A. SPOKANE COUNTY’S DRAFT SMP REQUIRES THE DEDICATION OF ON-SITE OR OFFSITE PUBLIC ACCESS IRRESPECTIVE OF THE IMPACTS OF DEVELOPMENT.

The Department of Ecology’s revisions to the Spokane County SMP provide the following guidance for requirement for public access:

Shoreline development by private entities should provide public access when the development would either generate a public demand for one or more forms of such physical or visual access, or would impair existing legal access opportunities or rights.

Draft SMP 5.2.8(2). 1 It should be noted that the WAC regulations define “should” as “that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this chapter, against taking the action.” WAC 173-26-020(35).

The “suggestion” that private development provide public access on-site is escalated under Draft SMP 5.2.8(8) to beyond the constitutional limitations.

The Shoreline Management Act (SMA) reflects a legislative intent to protect public trust resources and designs a land use program that governs both state-owned and private lands under its jurisdiction. The Act emphasizes preservation of these waters for public access and water-related or water-dependent uses, and promotes environmental and aesthetic values. The SMA reflects public trust principles, in part, in its underlying policy of “protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the navigation and corollary rights incidental thereto.” [RCW 90.58.020].

The SMA also recognizes and protects the public interest in all associated shoreland areas. Under the SMA, in those limited instances where alterations of the shoreline are allowed, they must reflect a preference for “improvements facilitating public access to shorelines of the state, [including] industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state.” [Id]. As you noted, the SMA additionally expresses a priority for uses for shorelines of statewide significance in which public access to public shorelines is identified as a fifth priority, and recreational uses are identified as a sixth priority. [RCW 90.58.020(5)]. The Spokane River is a shoreline of statewide significance.

WAC 173-26-221(4)(d)(iii) requires that SMPs provide standards for the dedication and improvement of public access in developments for water-enjoyment, water-related, and non water-dependent uses and for the subdivision of land into more than four parcels. Ecology’s required changes include this provision in Section 5.3.8, with specific criteria for exceptions to protect private property rights and to address public health and safety concerns, impacts to the shoreline environment, and conflicts with incompatible uses. In determining the infeasibility, undesirability, or incompatibility of public access in a given situation, local governments shall also consider alternate methods of providing public access, such as offsite improvements, viewing platforms, separation of uses through site planning and design, and restricting hours of public access.

Mr. Dullanty of your firm provided a copy of the public access paper by Alexander "Sandy" Mackie of Perkins Coie LLP. Spokane County retained Mr. Mackie to assist them in the review of the SMP comprehensive update and Ecology’s required changes (September 21, 2012). Mr. Mackie participated in the discussion of the public access policy language which Spokane County and Ecology agreed upon, in
permitted under the United States or Washington constitution: Dedicated space for physical public access shall be incorporated into... all public and private commercial and industrial dues/developments... unless: c. The provision of public access for the proposed development is not consistent with all relevant constitutional and other legal limitations on regulation of private property and the principals of nexus and proportionality.

Draft SMP 5.2.8.8. The Draft SMP further states that if the constitutional limitations cannot be met, then the private property owner is obligated to provide off-site public access:

Draft SMP 5.2.8.11. IEP believes that the generalized requirement to provide on-site public access without any form of individualized determination violates its constitutional rights as an owner of property. Furthermore, IEP believes that the requirement off-site access be provided or improved violates its constitutional rights. In either instance, in order for any private property owner, IEP or otherwise, to provide for “public access,” Spokane County, not the owner, is required to justify the dedication of property.

B. THE CONSTITUTIONAL RIGHTS OF IEP AND OTHER PRIVATE PROPERTY OWNERS GUARANTEE THE RIGHT TO AN INDIVIDUALIZED DETERMINATION BEFORE THE DEDICATION OF PRIVATE PROPERTY FOR PUBLIC USE.

The United States Constitution and Washington State Constitution prohibit the “taking” of private property without the payment of just compensation. U.S. Const. AMEND. V, XIV; Wash. Const. ART. 1, § 6: However, the requirement to pay just compensation can be excused when the impacts of the development permit can be offset by the requirement that the applicant transfer property to the government. In order for such exercise to be valid, the onus lies with Spokane County and not the property owner to meet the burdens of Nollan and Dolan.

The United States Supreme Court developed a two prong analysis to determine whether such a taking of private property for use by the public without the payment of just compensation can be excused under Nollan v. California Coastal Commission and Dolan v. City of Tigard. In Nollan, the United States Supreme Court addressed whether the imposition of an easement for use by the public as a condition of the issuance of a coastal development permit constituted a taking for which just compensation must be paid. 483 U.S. 825 (1987). The Court determined that the condition of any permit must serve the same governmental purpose as any restriction on development. Id. at 837. If it does not serve the same purpose as the dedication is requested for it is “an out-and-out plan of extortion.” Id. (quoting J.E.D. Associates, Inc. v. Atkinson, 121 N.H. 581, 584, 432 A. 2d 12, 14-15 (1981)). The careful consideration of private property rights and the concepts of “nexus and proportionality”.

Ecology believes the policy language of Section 5.2.8 meets the requirements of the SMA and Guidelines and is consistent with constitutional principles. In issuing the findings of fact and director’s decisions for Shoreline Substantial Development Permits, Conditional Use Permits, or Variances, the Spokane County must evaluate these provisions of Section 5.2.8. As you mention, the property owner has the opportunity to challenge any proposed public access requirements under Section 5.2.8.8 and 5.2.8.9. Please note these requirements do not apply retroactively to existing development or permits.

Please see also the response to comment #18.

No change is required.
Court further stated that permanent use by the public (and specifically in the instance of *Nollan* for an easement) requires just compensation: Although such a requirement [the imposition of the easement], constituting a permanent grant of continuous access to the property, would have to be considered a taking if it were not attached to a development permit...

C. OFF-SITE IMPROVEMENTS CANNOT BE REQUIRED UNLESS THE DEVELOPMENT HAS PROPORTIONATE IMPACTS.

In the event that the on-site access is impracticable or cannot be required, then property owners are required to provide off-site improvements. Washington’s courts have ruled that the requirement to provide off-site improvements is unconstitutional unless such requirement is directly related to the impacts of the contemplated development. *Benchmark Land Co. v. City of Battle Ground*, 146 Wn.2d 685, 696, 49 P.3d 860 (2002). Before unilaterally requiring property owners to provide off-site public access, Spokane County must undertake the individualized determination required by *Nollan* and *Dolan*. Without such inquiry, Spokane County cannot require a property owner to improve or provide for off-site access.

While IEP’s contemplated uses for its properties along Maringo Drive are unknown at this time, in the event that the properties are development, it cannot be obligated to provide public access for any proposed development without Spokane County justifying the requirements for the need for public access. Nor, in the event that on-site public access cannot be justified, should IEP be “required to provide for off-site public access. IEP appreciates the opportunity to provide comment regarding Spokane County’s draft Shoreline Master Program.

We appreciate Centennial Properties, Inc. commitment to stewardship of the Spokane River and concern for public access to the river, a shoreline of statewide significance. Centennial Trail is a significant asset of Spokane County and central to the high quality of life the region offers, providing access to the river and a multitude of recreational activities. Maintenance of the Centennial Trail as an existing use within the proposed buffers is allowed under the Spokane County SMP comprehensive update (See Section 6 of the Spokane County SMP update and Ecology’s September 21, 2012 required changes). Recognizing the value of continuing the trail through the region, The Department of Ecology, Department of Fish and Wildlife, Department of Commerce, and Friends of Centennial Trails, worked closely with the Spokane County Departments of Building and Planning, Parks, Recreation and Golf, and the Division of Engineering and Roads, and others to develop policy language that would allow this public trail to be continued, as envisioned, and developed in adherence to...
Under the proposed SMP, all shorelines contain some type of buffer with the exception of those areas that provide direct access to the water such as boat launches public beaches. Under the proposed change, the buffers range in size from a minimum of 75 feet up to a maximum of 200 feet with the limited ability to incorporate buffer averaging. The term "buffers" does not appear in the SMA and only appears in the Washington Administrative Code ("WAC") regulations with respect to the adoption of specific shoreline plans. Buffers are not part of the SMA, but rather are a part of the Growth Management Act and the critical area requirements found in RCW 36.70A.172 (Fish and Wildlife Habitat Conservation Areas). Not every shoreline is a critical area unless it meets the requirements of RCW 36.70A.030(5) and WAC 365-190-080 (fish and wildlife conservation areas). The SMP is attempting to use the CAO buffer requirement without doing the appropriate studies to determine, in fact, whether a critical area exists. Critical areas description under the CAO requires the County to employ the use of "best available science" to determine the required buffer. It is inappropriate to classify every shoreline as a critical area. While it may be much easier to have a blanket "buffer" and "one size fits all" approach than it is to do the necessary studies as required by the CAO and RCW 36.70A.172, such a requirement violates the nexus and proportionality requirements found in Dolan v. City of Tigard, 512 U.S. 374, 114 S. Ct. 2309, 129 L. Ed. 2d 304 (1994); Noll an v. California Coastal Commission, 483 U.S. 825 (1987); Trimen Development Company v. King County, 124 Wash. 2d 261, 874, 877 P.2d 187 (1994); Isla Verde v. City of Camas, 146 Wn.2d 740, 49 P.3d 867 (2002). In the interest of brevity, and for purposes of putting into the public record, enclosed is a paper entitled The Interplay/Overlay of Shoreline Master Plans. Critical Area Ordinances. Floodplain Management and Wetlands or Whatever Happened to “All Appropriate Uses”? prepared by Alexander "Sandy" Mackie. This paper is enclosed with the permission of Mr. Mackie and covers in great detail the implications of requiring buffers without the necessary science to determine whether in fact they are indeed required.

The County, by adopting the "one size fits all" buffer, even with limited buffer averaging in essence runs the risk of creating a constitutional taking of private property. At a minimum it seems to violate one of the major tenets of the SMA: the protection of private property rights. Additionally, as it currently stands, a majority of the Centennial Trail is within the buffer areas. As such, the Centennial Trail becomes a non-conforming use whose existence must therefore be eventually eliminated. Based upon its purpose a "buffer" landward of the Centennial Trail makes very little sense.

performance standard to achieve “no net loss of environmental functions”. See Spokane County SMP Comprehensive Update with Ecology's September 21, 2012 required changes). Ecology and Spokane County also carefully reviewed policy language throughout the SMP, using the case study of relocating the Centennial Trail under the Argonne Bridge, to address public safety concerns. In response to that review, additional changes were made to other Sections of the SMP comprehensive update. See the response to comments #16, 17, and 29-38.

The Shoreline Master Program Guidelines [WAC 173-26] addresses shoreline buffers and setbacks and vegetation conservation in several sections – including steps in developing a master program (such as resource inventory and characterization), assigning environment designations, and developing policies for shoreline vegetation conservation and residential development.

The ecological functions of shoreline vegetation for streams are listed in WAC 173-26-201(3)(d)(i)(C) and in Section 201(3)(d)(viii), where local governments are directed to “Identify how existing shoreline vegetation provides ecological functions and determine methods to ensure protection of those functions. Identify important ecological functions that have been degraded through loss of vegetation. Consider the amount of vegetated shoreline area necessary to achieve ecological objectives.” The shoreline vegetation conservation section [WAC 173-26-221(5)] defines vegetation conservation as “activities to protect and restore vegetation along or near marine and freshwater shorelines that contribute to the ecological functions of shoreline areas.” These activities include “the prevention or restriction of plant clearing and earth grading, vegetation restoration, and the control of invasive weeds and nonnative species.” Vegetation conservation can protect ecological functions, plant and animal species and their habitats, as well as protect human safety and property, increase the stability of river banks and coastal bluffs, reduce the need for shoreline stabilization, improve visual and aesthetic qualities of the shoreline and enhance shoreline uses.

The Guidelines acknowledge the importance of vegetation in urban areas. “…The importance of this vegetation, in terms of the ecological functions it provides, is often as great as or even greater than in rural areas due to its scarcity.”

Spokane County, through the resource inventory and characterization,
and with the assistance of the Spokane County Conservation District and Ecology, identified the ecological processes and functions that are important to the local shoreline, both upland and aquatic, and conserve vegetation needed to maintain those functions. The Guidelines require master programs to include policies and regulations that address vegetation conservation and restoration. The SMP Guidelines require SMPs to include policies and regulations designed to achieve no net loss of shoreline ecological functions [WAC 173-26-186(8)(b)].

Measures may include clearing and grading regulations, setbacks and buffers, critical area regulations, conditional use requirements, mitigation requirements, incentives and nonregulatory programs. Ecology believes that the suite of buffers for the various environment designations with several options for flexibility to allow reasonable use and development of private and public property, are appropriate and essential to meet the policy and standards of the SMA and Guidelines, in concert with the SMP use regulations and restoration plan. (See Ecology's September 21, 2012 Findings and Conclusions and Required Changes).

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the county's SMP proposal, subject to and including Ecology's required changes (itemized in Attachment B1 and B2), is consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions). This includes a conclusion that the proposed SMP, subject to required changes, contains sufficient policies and regulations to assure that no net loss of shoreline ecological functions will result from implementation of the new master program amendments (WAC 173-26-201(2)(c).

No additional changes are required.

| 42 | Definitions | F.J. Dullanty, Jr. Witherspoon - Kelly, Attorneys and Counselors | p. 139 "Revegetative" - allows only the use of native vegetative. p. 140 "Significant" - refers only to native vegetation and not natural vegetation. Sec. 11 SMP. What is equally disconcerting is what uses can be made by a property owner within the buffer area. A large majority of the Spokane River Basin from the Washington/Idaho state line through Long Lake contains a mixture of agricultural, commercial, industrial, and residential development, with residential development constituting a large percentage of the uses. Within these areas, there is a variety of vegetative growth, which may be either native or natural, most of which can add viable protection to the ecological functions and values of the river. A majority of the built up environment along the | The Washington Native Plant Society (WNSP) has adopted the following definition of "native plant":

"Washington native plants are those species that occur or historically occurred within the state boundaries before European contact based upon the best available scientific and historical documentation."

The WSU Extension Service defines "Native" as a plant that occurs in a particular region as a result of natural forces and without known or suspected human cause or influence.

A simple internet search will reveal that there are a multitude of accepted definitions of "native plant". The definition adopted by |
Spokane River would be rendered non-conforming based upon the definitions of "native" found within the SMP.

First, the term "buffer" contains a phrase added by Ecology which states the buffer will normally exhibit the extant native plant community or rehabilitated (revegetated) native plant community ...

In addition, the following terms been have either added to the definition section (Sec 11) or revised to insure that only "native" vegetation is allowed.

SMP Sec 11 Definitions:

p. 132 "Bioengineered" - use only native plant materials.

p. 135 "Ecological interest shorelines" - requires native vegetation.

p. 137 "Native vegetation" - defines native to only mean early or pre 19th century vegetation.

p. 137 "Native plant community" - Ecology proposes substituting "native plant community" for "natural vegetation or planted vegetation." Second, in order to give meaning to "native" Ecology has proposed a new definition:

For purposes of this SMP, the term "native" is defined as a plant or animal species that naturally occurs in Spokane County, or occurred in Spokane County at the time of the early American exploration and settlement beginning in the early 19th century.

This definition prohibits most of the vegetation and landscaping that occurs in the shorelines of the lakes and Spokane River in those areas that have any type of development. A majority of landscaped areas become non-conforming, subject to the requirement to locate and identify plant species occurring in the early 19th century.

Finally, Ecology added the definition of native plant community to read Native plant communities are the aggregation of submerged and emergent aquatic wetland repairing and upland plants, including algae, vascular plants including grasses, forbes, shrubs and trees and for the purpose this SMP, fungi which are native to and co evolved in the diverse shoreline and shoreland ecosystems of Spokane County. What is interesting is that no experts or consultants in the field of vegetation had ever been contacted nor have studies been performed regarding the impact of the definition that "native" had on the ecosystem of the river and lakes. We specifically note there was no input whatsoever from the Washington Association of Landscape Professionals ("WALP"), American Society of Landscape Architects, or the nursery or horticultural industries within Spokane with respect to the type of vegetative buffers and landscaping that can be utilized on the shorelines. We believe that their input is critical in order to accomplish the goals and policies adopted by the County. We also believe these experts should be given specific notice as to the impacts the proposed SMP will have on the shorelines. A requirement for only "native vegetation" will have dire consequences as development occurs and these regulations are applied. There is

Eco...
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<th>Page 43</th>
<th>Public Access Section 5.2.8</th>
<th>F.J. Dullanty, Jr. Witherspoon - Kelly, Attorneys and Counselors</th>
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<tr>
<td>2. Public Access. Public Access under the SMA is regulated to primarily public areas and public property. It is not mandated on private property as a condition of the issuance of a permit.</td>
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In addition, visual access is promoted within the SMA. As stated in RCW 90.58.020. It is the policy of the State to provide for the management of the shorelines by the State of State by planning for and fostering all reasonable and appropriate uses. The policy is designed to ensure the development of these shorelines in a manner which will while allowing for limited reduction of rights to the public, in the navigable waters will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife and the waters of the State and the aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.

While the proposed SMP states Section 5.2.8 Public Access. "Efforts to implement the public access provision of this section shall be consistent with all relevant constitutional and other legal limitations on regulation of private property and the principal of nexus and proportionality," SMP 5.2.8(4). The clear intent and subsequent language would indicate that this is nothing more than a mere recitation of Nollan and Dolan without truly implementing its principles. When read as a whole, the SMP adds extensive restrictions on private property and the ability to use private property within the shorelines. For example, view corridors and view access is limited only to view a corridor of a certain size and nature through private property to the waters of the state.

See the response to comment #40.

No change is required.
Nothing in the Act would suggest that “view access” is to be narrowly limited as suggested by Ecology. Private property owners who develop shorelines involving more than four residential properties are treated substantially different from similar property owners outside the jurisdiction of the Shoreline Act. They are required to provide public access through private property simply by virtue of the fact that they are developing four or more parcels of residential properties. Such a restriction clearly violates Nollan, Dolan and RCW 82.02.020. While private property rights are to be protected, the proposed regulations indicate that is not the case. Private property is being taken for public use simply by virtue of the fact that it is developed.

We have attached hereto is a second paper by Alexander "Sandy" Mackie of Perkins Coie LLP, which deals directly with the issue of public access. The paper is entitled Limitations on "Furthering Substantial Governmental Purpose" When Considering Public Access Requirements for Washington State Shorelines Under the Shoreline Management Act. The paper is a critique of common practices of the Shoreline Management Act and Public Access. This paper was prepared February 23, 2011, and is submitted with the permission of its author. We ask the Board of County Commissioners carefully review this paper and then ask the necessary questions of both Ecology and the staff as to whether these limitations are truly impacted by Ecology's proposed changes.

Public Access can and should be a major component of the SMP, but it should not be structured in such a way that the burden is on the property owner to meet the necessary exemptions with respect to the requirement of public access. In Dolan v. City of Tigard, 512 U.S. 374, 114 S. Ct. 2309, 129 L. Ed. 2d 304 (1994), the United States Supreme Court said that any requirements dealing with public access should be roughly proportionate to the demand that is created by the proposed development. What is equally important is that the Supreme Court stated that the government, not the property owner, must make an individualized assessment as to the degree of the proportionality. Yet, the SMP under 5.2.8, now puts the burden on the applicant or property owner to meet the exemption or come within the exceptions of public access. Clearly, this is contrary to the Supreme Court’s decision in Dolan.

It is impossible to go through the SMP in its entirely and comment on each and every aspect. However, the SMP may very well subject the County to liability for taking and equal protection claims for treating property owners within the SMP different from those outside the SMP. There is no question that a certain degree of regulation within the SMP is needed and necessary to accomplish the tasks outlined in the SMA. The problem is that the requirements will not foster that protection. Indeed, the cost of enforcement, the inability to adequately maintain and take care of one’s property based upon the regulatory environment will result in a shoreline that does not accomplish any of the SMA’s goals.

Protection Shoreline

Connie and Mike Thank you so much for the hard work you put in on the master plan. You have

Comment acknowledged. The Shoreline Management Act (SMA) passed
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<td>44</td>
<td>Ecology and Aesthetics Section 5.2.5.</td>
<td>CooperSmith</td>
<td>done much to protect the private property rights. The Dept of Ecology mission statement is that of the UN. Our legislature needs to address this. Although they say no, it is obvious their desire is to negate private property rights. Fish and wildlife should not have more rights than man. No one but God really knows where water is going to go or how high it will go i.e. Noah and the flood. The nature of water is to flow through the least resistance. Many things can cause water flow to change. Some can be predicted but not all. I surmise their best science is actually best guess. All river property owners should have the right to a dock. If ecology dept deprives them of that right, ecology dept should have to make monetary restitution to the landowner for loss of that right. If the ecology laws do not apply to the tribes, they should not apply to private property owners. There is no proof that a 50ft buffer does any more than a 30ft buffer. Ecology's scientists are predisposed with their results. Rather than ecology scientists making the decisions, the decisions should be made by external nonbiased scientists. Having been a professional for many years, I can tell you 5 years experience is not what makes one better. What makes one better depends on individual gifts and talents. Often a new person has a fresh more common sense attitude.</td>
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<td>45</td>
<td>Residential Section 5.3.8</td>
<td>Connie and Mike CooperSmith</td>
<td>Is there breakthrough on the active septic tanks above the Spokane Valley/Rathdrum Prairie? If so, show us the results. Septic tanks have come a long way since the early days. You would expect to see the contamination. If there is contamination, ecology should be able to say where it is coming from. This seems like a lot of calling wolf.</td>
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<td>46</td>
<td>Natural Environment Section 3.2.2</td>
<td>Connie and Mike CooperSmith</td>
<td>Not being able to harvest trees next to the shoreline does not seem responsible. Often trees become bug infested or need to be removed for good forestry management. under 3.2.2 Management Policies it says logging operations shall be prohibited. This is unreasonable. Not allowing planting of newer varieties of plants that might protect the shoreline better does not make sense. Native plants we see now were not always the native plants we find now. Wildlife often polute shorelines. Are we seeking to make the water more pure than it was originally? What are the set water standards? Who sets those standards? If it is the dept of Ecology, then we need an outside opinion as well. Rule by bureacrats does not serve the public good.</td>
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<td>47</td>
<td>Mining Section 5.3.6</td>
<td>Connie and Mike CooperSmith</td>
<td>Under 5/3/6 Mining: it says mining is prohibited waterward of the ordinary high water mark, including mining within bar forms and active channels of streams and rivers. Does this include panning for gold?</td>
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<td>48</td>
<td>General Comment</td>
<td>Connie and Mike CooperSmith</td>
<td>Unlike other state mandated planning processes, the state law requires that Shoreline Master Programs must be approved by the DOE before they go into effects. The DOE should not have the final approval on an county SMP. The DOE should have to present quantifiable results before demanding any changes.</td>
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Dear Commissioners;

I generally agree with the updates required by the Department of Ecology for the Spokane County SMP. I urge all commissioners to adopt the required updates in their entirety as specified in Attachment A, dated September 21, 2012. I also urge you to balance the public access section on page 25 with an additional statement that indicates streams designated as non-navigable and bordered by private property are not required to allow public access. (For example; the Little Spokane River, Washington State Supreme Court ruling Dec. 3rd, 1900, Griffith et ux. V. Holman.

The reason for my request is every year I am confronted by persons trespassing on my property to access the LSR. They always indicate the river is public water and they have a right to fish, bath, float, etc. One man and his family were moving rocks to impound the water to increase the depth since the summer flow is too shallow. I informed him of the destruction they were causing to the macro invertebrate and decapod habitats and they would have to stop. The gentleman retrieved his cell phone, called the county sheriff and tried to convince the deputy that I was harassing them. Others have been caught tossing out the native freshwater mussels because they hurt their feet. One lady was bathing her baby after throwing the dirty-diaper on the riparian vegetation. Fishermen leave their bait cans, and midnight drinking partners leave beer cans and broken bottles in -and along the banks of the river. When die DOE requires you to emphasize the public's right to access the state's water in the counties SMP the burden to police my property and keep it in pristine condition is increased. Statements to inform the public about non-navigable streams and private property rights in the SMP would help alleviate some of the future problems.
| 50 | Application of the Critical Area Ordinance and Flood Damage Protection Ordinance Section 8.4 | Dale C. Gill | Another issue I would like you to address is the Flood Damage Protection Ordinance that DOE requires it to be a part of the updated SMP. The enclosed map was prepared by your county engineers using data from FEMA. My property is to the east of Elk/Camden Rd. (parcels 9045.9105 & legal claim to 49044.9095). In the spring of 2009 I was issued a permit for a pole barn, which passed inspection by the county. The purpose for the barn was to store building material and equipment from another barn on property I am trying to sell. My future home would then be built on an elevated rock mound next to the barn. This year I began investigating requirements for obtaining a building permit only to find that a new special flood hazard zone was established completely around & over the barn.

My driveway is off of Elk/Camden Rd. in the lower left of the map. My bridge crosses the LSR at 1892 ft. elevation and is six feet above the river level. The rock mound to the right (east) of the barn shows a contour elevation of 1920 ft. with Flood Zone A covering both. This indicates that the LSR will flood to a height of 34 ft. above the current water level. If this is true then Flood Zone A should extend to the other 1920 ft. contour lines to the west, north, & east. Therefore, the flood waters should cover Elk/Camden Rd., Boundary Rd., and the new house being built on the southwest corner of the intersection of Boundary Rd. & Elk/Camden Rd. The foundation of this new house is approximately the same elevation as Elk/Camden Rd. This means that the 28ft. vertical wall of water that now covers my access bridge and somehow stops at Elk/Camden Rd. may just seek a uniform level and completely cover my neighbor’s new house. I fully understand the purpose of the Flood Damage Protection Ordinance. Marianne Barrentine, P.E, who administers the Flood Damage Protection Ordinance for Spokane County, is working with Mr. Gill to determine whether a flood study should be completed and an amendment submitted to FEMA to revise the FEMA maps, if appropriate. Until that process is completed the property is subject to the Flood Damage Protection Ordinance.

No change is required. |
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<td>Protection Ordinance is to protect my and the publics health and safety. I am thankful to now have this information before I built my new home, but it is too late for the barn. However, I can't understand that no one was concerned about the health and safety of my good neighbors by permitting them to build in a channel migration zone and in flood zone A.</td>
<td>See the response to comment #47.</td>
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<td>51</td>
<td>Substantial Development Permits</td>
<td>I reviewed the proposed Shoreline Program update that the Department of Ecology proposes for Spokane County. The plan is not compatible with our US or WA State Constitution. In our state constitution, Article 1, Declaration of Rights, Section 1 states that &quot;All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.&quot; This plan does not protect individual rights of Spokane County citizens. Additionally, Article 1 Section 2 of our WA State Constitution says, &quot;The Constitution of the United States is the supreme law of the land.&quot; You three county commissioners took an oath to protect and preserve the US and WA State Constitutions, not the Earth Charter which the DOE states on their website as &quot;a new charter to guide the transition to sustainable development ..., which is used internationally as a reference document in government processes. When changes are required by the DOE that conflict with our WA State or US Constitutions, then the higher authority of our constitutions must take precedence over the international form of governance that the DOE promotes via an international Earth Charter. Specifically, the little words in this big shoreline plan have big problems for the small but significant individual private property owner. The proposed plan fails to protect and maintain individual rights that are guaranteed by our constitution. For example, on p 108 Shoreline Substantial Development Permit states under 6.3.2, that &quot;The Director (of DOE) 'may' approve an application for a SPD if 7 items are met. Item 4, states &quot;The proposed use or development is consistent with all applicable Spokane County development regulations.&quot; But, the DOE Director shall approve or deny the application even after the 6 items of criteria are met by the individual private property owner. Thus the word 'may' get a permit is a small word with a big implication in this big top down plan that usurps our Spokane County Building and Planning Department and their authority and integrity. The private property owner is not guaranteed that he will get a permit, but that he 'may' get a permit if the DOE approves his plan.</td>
<td>See the response to comment #47.</td>
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<td>52</td>
<td>Protecting Shoreline Ecology and Aesthetics</td>
<td>Another problem I have with the DOE is that they suggest that 50 feet is not an adequate buffer setback and that 150 feet is better. But is the DOE using sound science with their increased buffer suggestions? An article titled, Major Factors Influencing the Efficacy of Vegetated Buffers on</td>
<td>See the response to comment #4.</td>
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<td>Sediment Trapping: A Review and Analysis was published in 2008 by the American Society of Agronomy, Crop Science Society and Soil Science Society of America. The article states, &quot;Regardless of the area ratio of buffer to agricultural field, a 10m buffer (or 33 feet) and a 9% slope optimized the sediment trapping capability of vegetated buffers.&quot; If a 33 foot buffer is adequate to protect water quality next to agricultural land, then why would the DOE insist that Spokane County increase a setback to 150 feet if a home is built next to a waterway? In conclusion, please consider your responsibility to uphold your oath to the US and WA State Constitutions to protect and maintain individual rights of citizens of Spokane County. You need to take back your authority to properly govern by adhering to the Constitution, and not to an international Earth Charter that The DOE adheres to.</td>
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| 53 | General comment | K Russell | like hungering for corn to save seed for the spring i would like to see common sense prevail drastically reducing paper milling toxins and whatever else is dumped into our river and other waters business and commerce need a heavy handed blow to the head |

| 54 | Protecting Shoreline Ecology and Aesthetics Section 5.2.5. | Lunell Haught, Ph.D. | There are a multitude of issues related to shorelines, but the one I want to stress with you is the importance of adequate buffers. Simply put, without them there is no way to protect fish, wildlife and the critical areas important for storm water and biological systems that ultimately save us money and improve our health. I have lived on the Marshall Creek for decades and those who have cut close to or down to the shore have made our wildlife and fish quite vulnerable. People move near water without any idea of its importance as a community asset. It used to be a trout-filled juvenile stream, now people have cut back so much the water temperature has risen and the (EWU data) and we no longer have the quality of fish, beaver or otter we used to have. The buffer is a part of a system, it also provides for flood control. Allowing our water bodies to evolve in their own way makes sense economically, aesthetically and for fish and wildlife (particularly including birds). These water systems are as important as our build road infrastructure and should not be whittled away. Thank you for your work. |

| 55 | Use and Development Regulations Section 5.2 | Vincent Barthels Biologist JUB Engineers Inc. | Please allow this email to act as a comment to the proposed Spokane County Shoreline Master Program (SMP) Update Process. I have read through the Attachment B1 (dated September 21, 2012 and prepared by Sara Hunt) provided on the DOE’s & County’s websites. I realize that this document does not represent the “final” SMP deliverable; however, I wanted to note that from a practitioner’s perspective this document is challenging to use. It lacks a flow chart and diagrams. It would be conducive to the functionality of the SMP if Section 5 (i.e. Use Regulations) had a definitive flow and sequence. Case in point, if I was evaluating a project (e.g. a new public trail project), would I first |

Comment acknowledged. Spokane County and Department of Ecology intend to prepare a user’s guide to facilitate implementation of the SMP. |

Comment acknowledged. See the response to comment #4. No change is required. |

Comment acknowledged. No change is required.
| review Table 5A (The Use and Development Matrix); then, review the Use Standards under Section 5.2.1; or, Protecting Shoreline Ecology and Aesthetics Section, specifically Section 5.2.5.5.h associated with trails; or, review the Public Access Section (5.2.8) or Recreation Section (5.3.14)???. Where would exemptions enter into the equation? Clearly, Section 5 appears to be all over the board. Not knowing how to effectively work or maneuver through this document presents its challenges. Within the final deliverable, it would be beneficial to incorporate more tables, charts, pictures and diagrams as well as a preamble that explains the intended sequence of certain Sections within the Ordinance. |