Spokane County Shoreline Master Program Update  
Comment on Public Responses to DOE  
November 23, 2009

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<td><strong>Source of Comment</strong></td>
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| 1. Hal and Robin Meenach, Spokane County Farm Bureau and farmer | Comment: The updated SMP fails to acknowledge that agricultural activities are not only protected by RCW 90.58.065, but they are not considered to be substantial developments nor should they be “exempted activity” to be essentially regulated as proposed in Sections 1.4, 3.2.2, 5.1.3(2)(b), 5.3.1(3)(a), 6.4.1 and 8.4C. These sections essentially de-exempt agricultural activities which is contrary to RCW 90.58.065. Post approval inspections and monitoring specified in Section 8.3 should specifically not apply to agricultural activities. Add language to the updated SMP that clarifies that agricultural activities are clearly exempt from all permitting and oversight administrative actions.  
Response: Language that attempts to clarify this matter is included in Section 5.3.1(2)(c) which references compliance with RCW 90.58.065, RCW 36.70A and RCW 36.70A.5601. Spokane County has no objection to adding additional clarifying language if DOE finds that such language will not conflict with any provisions of RCW 90.58 and WAC 173.26. Should language be added it should be repeated in several of the sections cited in the comment. It is suggested that the wording cited in Section 5.3.1(2)(c) be applicable wording.  
Comment: The reference to Sections 8.6 and 8.7 in Section 5.3.1 are erroneous.  
Response: This is a valid comment and the section references should be referred to as Sections 8.4 and 8.5. |
| 2. See commenter’s after each comment | Comment: 1) It is unlawful to allow Spokane County to promulgate a Shoreline Master Program which incorporates and relies upon its critical areas ordinance (CAO)( F.J. Dullanty, Jr., Witherspoon, Kelley, Davenport & Toole, Centennial Properties, Inc), 2) Clarify the interaction between the shoreline master program and the critical areas regulations. SMP language is attached which proposes a solution to this issue (Futurwise and numerous other individuals and organizations).  
Response: The relationship between the updated SMP and the CAO is adequately clarified in Sections 1.5(f), 5.1.3 (as corrected), 8.4 and 8.5. Also, refer to Appendix I. This issue was thoroughly reviewed by Spokane County legal counsel and is based on legal counsel’s interpretation of state statutes and court decisions pertaining to this issue. The issue was thoroughly vetted with Department of Ecology staff. By appending Spokane County’s GMA critical areas ordinance (refer to Appendix I), the shoreline update will provide protection for critical areas in shorelines at least equal to the protection provided under the Spokane County’s GMA critical areas ordinances. The operation of SMP Section 8.4 requires the County to apply the critical areas ordinances in a manner that is consistent with Chapter 90.58 RCW, satisfying the proviso that master programs must be consistent with the RCW 90.58.020. |
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| **3.** | Numerous individuals and organizations | Comment: Change the high quality areas overlay so that they result in meaningful protections, the high quality areas should be identified and they should be protected with policies and regulations that prohibit activities and development that would adversely impact the high quality areas and their shoreline functions.  
  
Response: The high quality areas are adequately illustrated on the shoreline designation map (Appendix II). The added protection measures in Sections 4.2 and 6.5 are sufficient to afford the extra protection as suggested in the comment. |
| **4.** | Numerous individuals and organizations | Comment: Improve public access provisions to protect the public’s existing access to rivers, streams and lakes and provide new public access for our growing population.  
  
Response: The comment is vague and does not give guidance as to how the updated SMP could be revised to facilitate additional public access. Subsections of Sections 2.2, 5.3.4, 5.3.10, 5.3.14, 5.3.8 provide for public access to the shoreline. The requirement for additional public access, above and beyond that proposed in the updated SMP would likely conflict with property rights policies in Section 2.10. Spokane County has been sensitive to protection of private property rights in the drafting of public access provisions in the updated SMP. Also, Spokane County was sensitive to shoreline protection as some shorelines are very environmentally sensitive to human incursion. |
| **5.** | Numerous individuals and organizations | Comment: Re-designate the four miles of the south shoreline of Lake Spokane to the Natural designation recommended by the Planning Commission. The Natural shoreline designation provides the best protection for existing high quality features of this stretch of shoreline.  
  
Response: Avista Company requested the Rural Conservancy designation because its FERC dam operation license requirees Avista to construct 10 boat-in-only campsites along its Lake Spokane Property which is the subject of this comment. The sites will require toilets and docks. Avista determine that the current proposed designation would better accommodate the campsites compared to a Natural designation. Additionally, the updated SMP designates the subject shoreline as a “high quality area” which prohibits degradation of identified unique environmental features. As a result of implementation of the “high quality area” protection measures, and taking into consideration Section 2.2 public access goal and policies, the current proposed rural conservancy designation is appropriate and consistent with the intent and spirit of goals and policies of the updated SMP. |
| **6.** | Numerous individuals and organizations | Comment: Re-designate the 1,000 linear feet on the northeast shoreline of Newman Lake from Rural Conservancy to Natural as the Planning Commission recommended. The Natural shoreline environment will help retain native vegetation and reduce the likelihood of significant increases in development intensities which can adversely affect the lake environment and water quality.  
  
Response: In consideration of the implementation of the of the no net-loss of ecological function provisions of the updated SMP, and in consideration of implementation of Rural Conservancy shoreline management/protection policies cited in Section 3.3 the Rural Conservancy designation is appropriate. |
| **7.** | Numerous individuals and organizations | Comment: Re-designate the McKenzie Bay area of Liberty Lake from Shoreline Residential to Natural. This would restore the Planning Commission’s recommendation. McKenzie Bay is relatively undeveloped and these low densities are critical to the lake’s health.  
  
Response: The Shoreline Residential Designation is appropriate for this shoreline due to the availability of community sewer |
and water and in consideration of a pre-existing vested plat dominating this particular shoreline, allowing for residential development. However, additional densities beyond that which is currently allowed by the underlying plat will not occur due to the low density provisions of the underlying zoning designation (Rural Traditional with a maximum density of one home per 10 acres). Additionally, any development that occurs under the Shoreline Residential Designation must also meet all other requirements of the updated SMP to protect the ecological function of the shoreline.

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8. Numerous individuals and organizations

Comment: Clarify the buffers applicable to rivers, streams, and lakes. The Shoreline Management Act requires that these buffers be at least as protective of shorelines as the county’s critical areas regulations. The county’s critical areas regulations require a 250 foot buffer for the shorelines of the state. The required 250 foot wide buffer should be clearly required.

Response: This is essentially a SMP/CAO relationship issue. Refer to response to comment 2.

9. Numerous individuals and organizations

Comment: In order for the Latah Creek Channel Meander Belt provisions, to be effective shoreline jurisdiction should be expanded to include the entire meander belt or critical areas regulations should be adopted to protect people and property from locating in the meander belt in most circumstances. All of the meander belts should be identified in the shoreline master program and protected.

Response: Appendix III of the updated SMP illustrates that the entire Latah Creek channel meander belt (CMB) is included within the SMA/SMP jurisdiction. Portions of the CMB outside of the traditional 200-foot jurisdiction are subject to the CMB provisions specified in Section 5.2.6. Section 5.2.6 provides adequate provisions to insure the long term integrity of the Latah Creek CMB. Other stream CMBs are not included due to the arrival of CMB documentation of their existence late in the SMP update process. The Spokane County Board of Commissioners stated that Spokane County will address those CMBs in a subsequent amendment to the SMP.

10. Numerous individuals and organizations

Comment: I support the new limits on individual docks included in the latest revisions. Furthermore, one of the important functions of a shoreline master program is to provide policies and regulations to effectively manage shoreline structures and water dependent uses. Please include more specific policies and regulations to manage these structures and uses such as better requirements for joint use docks.

Response: The comment is too vague on specifics. Current proposed restrictions on docks as specified in Section 5 of the updated SMP are sufficient to protect the shoreline ecological function. During the update process DOE offered to recommend dock size and design specifications however such information was not made available.

11. Numerous individuals and organizations

Comment: Please retain the existing ten foot minimum separation between a on-site waste water treatment system and the water table to protect water quality and drinking water sources and to help Spokane County Comply with its TMDL for dissolved Oxygen.

Response: Implementation of the language on this subject is specified in sections 5.3.8 and 5.3.9 are adequate to protect the shoreline environment. The 10-foot minimum separation requirement in the current Spokane County SMP is not based on any previous or current science and is therefore not justifiable. Spokane County believes that at a minimum, the proposed language in Sections 5.3.8 and 5.3.9 will provide protection equal to or exceeding the undocumented protection of the current 10-foot separation requirement. The wording in the cited sections was developed as a part of a collaborative process involving Spokane County, Department of Ecology and the Spokane Regional Health District. Spokane County would prefer that a scientific study be eventually undertaken on the subject and make adjustment to on-site sewage disposal regulations based on the findings and recommendations of such a study.
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| 12. | John Dullanty Jr. | Comment: Uniform buffers are not required by RCW 90.58 but if imposed must be based on studies, surveys and inventories that are pertinent to a certain shoreline.  

Response: RCW 90.58 or WAC 173.26 do not specifically require shoreline buffers but it has been determined that a 50-foot buffer is the minimum necessary to protect the shoreline ecology based on the findings contained in the Spokane County Inventory and Assessment of Lake Shorelines (2002), the Stream Inventory and Assessment (2005) and the Landau Associates Shoreline Analysis (2005). The shoreline areas designated as having a “High Quality Area” as illustrated in Appendix II of the updated SMP provide for extra protection based on findings of the Stream Inventory and Assessment. Section 6.5 provides that parcels shall be evaluated on a case-by-case basis as they are proposed for site alteration and specific mitigation measures be applied as recommended in the required detailed site evaluation report.  |
| 13. | Avista | Comment: Revise Section 5.2.5(6)(g) to have the exemption also apply to gas lines.  

Response: Gas lines are a utility that also have essentially the same maintenance requirements as electrical and gas distribution lines. A root system could penetrate a gas line and therefore preventative measures are necessary.  |
| 14. | Avista | Comment: Revise Section 5.3.9(1)(f) to replace the current proposed wording with the following wording: Electric transmission and associated telecommunications cable, where feasible and reasonable, shall use established overhead transmission or distribution corridors at stream beds as the crossing point for new or rebuilt/rerouted facilities. In addition, where reliability constraints allow, the electric transmission and associated telecommunications cable, shall be co-located on common structures with existing transmission or distribution facilities. In the event, through best efforts of the utility, the planned transmission facility cannot be routed to as established crossing corridor, or the established corridor is greater than 0.25 miles from the planned route, the electric transmission and associated telecommunications cable shall be installed overhead at a new crossing, using commonly accepted practices in minimizing impacts to the stream bed.  

Response: The wording proposed in Section 5.3.9(1)(f) is essentially exported from Spokane County’s current SMP. Spokane County does not object to allowing utilities to co-locate with existing facilities and that portion of the proposed revised wording would be acceptable. However new transmission and distribution lines requiring entirely new routes should be required to be underground as the current proposed SMP wording specifies. Should new above ground crossings be allowed, over a long period of time, the proliferation of overhead crossings would be unsightly and contrary to the intent of the updated SMP to maintain shoreline aesthetics (the maintenance of shoreline aesthetics is addressed directly or indirectly in numerous policies and requirements throughout updated SMP). The long term proliferation of overhead facilities, designed to be consistent with FAA requirements and having cleared corridors, would result in a substantial adverse impact on shoreline aesthetics.  |
| 15. | Avista | Comment: Revise Section 5.3.12 to add the following wording: Bridges that are being constructed, developed, or upgraded, shall be designed with appropriate plans for co-location of existing and future utilities, including electric and gas transmission and distribution lines.  

Response: Spokane County has no objections to this revision if the word “shall” is replaced with the word “should.” Such a design consideration could necessitate substantial additional bridge design and construction expenses for improvements that may never be utilized. The project proponent should be encouraged to design the bridge for a transmission line co-location capability but shouldn’t be mandated to do so.  |
|   |   | Comment: Replace the wording in Section 5.3.9(3)(e) with the following wording:
Electric distribution and associated telecommunication cables, except electric transmission lines, shall be co-located on public bridges, designed for, or capable of accommodating the inclusion of pipelines and conduit apparatus as necessary to accommodate said facilities. Bridges shall be within 0.25 miles of the proposed crossing point. If a public roadway bridge is either outside the 0.25 mile radius or is determined by the (bridge) owner not capable of supporting the proposed facilities, electric distribution and associated telecommunication cables, except electric transmission lines, shall be co-located on existing electric distribution facilities. Existing facilities shall be within 0.5 miles from the proposed crossing point. Applicant proposals outside of the 0.5 mile radius shall be evaluated for under streambed installation. If the incremental cost of the under streambed option exceeds twice the estimate for an equivalent overhead option, the overhead option shall be the preferred method of installation.

Response: Response: The wording proposed in Section 5.3.9(1)(f) of the proposed updated SMP was essentially exported from Spokane County’s current SMP. Spokane County prefers utilities co-locate with existing facilities and therefore that portion of the proposed revised wording would be acceptable. However new transmission and distribution lines requiring entirely new routes should be required to be underground as the current proposed SMP wording specifies. Should new above ground crossings be allowed, over a long period of time the proliferation of overhead crossings would be unsightly and contrary to the intent of the updated SMP to maintain shoreline aesthetics and especially the aesthetics of shorelines of state-wide significance. The long term proliferation of overhead facilities, designed to be consistent with FAA requirements and having cleared corridors, would result in a substantial adverse impact on shoreline aesthetics.

|   |   | Comment: Add the following wording to Section 5.3.9:
Routine operation and maintenance to facilities, which includes vegetation management, is allowed for utilities and utility rights of way within the 50-foot buffer required in Section 5.2.5(6).

Response: This language merely repeats and affirms the exemption to the 50-foot vegetation buffer requirement granted in Section 5.2.5(6). There is no objection to including the proposed wording in Section 5.3.9.

|   |   | Comment: The wording in Section 8.4(A) 2nd sentence beginning with the word “when” and ending with the word “regulations” is ambiguous in its meaning.

Response: The clarity of the sentence could be improved by revising the sentence as follows:
When a critical area as described in the Critical Area Ordinance, other than an associated wetland, overlaps into the shorelines of the state or is partly within and partly outside of the shoreline, the buffer and/or setback from the portion of the critical area that is outside of the shoreline jurisdiction is subject to the Critical Areas Ordinance, but and not subject Shoreline Master Program regulations.

|   |   | Comment: “no-net loss of ecological function” mitigation is mentioned often in the proposed SMP and it is a term of art and not of science or regulation. The term’s definition in Section 10 should be more precisely defined so that it is not so wide open to discretion.

Response: Following SMP adoption, the term should be further refined through an administrative policy process in collaboration with the Department of Ecology and other agencies with natural resource expertise.
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| **20.** | John Gross | Comment: Sections 6.3.3 and 6.4.4, mitigation sequencing steps 2 and 6 are inappropriate and should be deleted as they will not result in no net-loss of ecological function.  
Response: The mitigation sequencing steps were lifted verbatim from WAC 173-26-201(2)(e). It is assume that a combination of sequencing steps will likely be utilized in implementing mitigation and that they will be effectively used in concert when effectuating a mitigation strategy. |
| **21.** | John Gross and other respondents | Comment: Appendix III does not accurately illustrate the Latah Creek Meander Belt and as a result the SMP does not protect all areas in the channel meander belt:  
Response: The map in Appendix III was prepared by Spokane County Division of GIS and is based on the Latah Creek Meander Belt maps in the adopted Latah Creek Comprehensive Flood Hazard Management Plan dated June 2000. The channel meander belt illustrated in Appendix III includes its full extent to include the portion of the meander belt that exceeds 200 feet from the ordinary high water mark. |
| **22.** | John Gross | Comment: Remove section 6.3.7 providing a process to revise a substantial development permit. The process may be used to allow inappropriate expansion of development.  
Response: Section 6.3.7 is necessary has project proponents may experience unanticipated conditions that necessitate design and location adjustments to enable the project to be successfully completed. The section includes criteria that assure the permit adjustment is consistent with the purpose and intent of the updated SMP. |
| **23.** | Dept of Fish and Wildlife | Comment: Designate selected undeveloped lake shorelines as “High Quality Areas” in order to maintain important ecological elements and functions. Some of the high quality areas should extend back 250 feet from the ordinary high water mark since riparian areas are essential to supporting critical upland habitats.  
Response: Spokane County determined that additional studies of lake shoreline ecosystems is necessary to pinpoint lake shorelines that require the higher level of ecological protection afforded by the “high quality” overlay designation. The Department of Ecology recommended extensive lake shorelines that should be included in a 100-200-foot buffer however the recommendation was submitted late in the SMP update process and as a result was not publically vetted. Additional, buffering may be necessary and based on the findings and recommendation of additional lake shoreline ecological study. The findings and recommendation of the study should be the basis for extending the “high quality areas” overlay to lake shorelines. |
| **24.** | Dept. of Fish and Wildlife | Comment: Section 5.2.6 should be amended to require temporary fencing at the 50-foot buffer line during site development. Also, add a provision that all equipment be set back 25 feet from the ordinary high water mark.  
Response: Spokane County has no objection to amending the cited Section accordingly however the 50-foot buffer boundary should be marked with stakes rather than fencing. Equipment should not be allowed to be temporarily stored within 50 feet of the OHWM with the exception that equipment need to be temporarily stored if it is being used to alter a shoreline buffer to develop an exempt activity as specified in Section 5.2.5.6. |
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<td>25.</td>
<td>Dept. of Fish and Wildlife and other respondents</td>
<td>The Spokane River shoreline opposite of the mouth of the Little Spokane River should be redesignated as a “high quality area” as recommended by the Shoreline Advisory Committee.</td>
<td>The subject area is predominately in 5 to 7 acre parcels with many of the parcels developed as single family homes. The 2005 Spokane County Stream Inventory and Assessment identifies sensitive environmental features in the area.</td>
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<td>26.</td>
<td>Futurewise</td>
<td>We recommend that Section 2.10 Policy 2 be amended to add the following wording: The County shall carry out its duty to implement the public trust doctrine to protect public rights of navigation and fishing, as well as incidental rights and purposes, and the county shall recognize that the fulfillment of this duty complies with the constitutional and legal imitations on the regulation of private property and does not result in a regulatory taking under the Washington State or the United States Constitution.</td>
<td>It is suggested that this language constitute policy 3 in the same section and that it not include a reference to the US Constitution due to the lack of court case citations. Additionally, policy three should be worded as follows: In the implementation of Policies 1 and 2 herein Spokane County must respect the “public trust” doctrine, promulgated by the Washington Supreme Court, which specifies in essence that it will protect public rights of navigation and fishing, as well as incidental rights and purposes, and the county shall recognize that the fulfillment of this duty complies with the constitutional and legal imitations on the regulation of private property and does not result in a regulatory taking under Washington State law.</td>
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<td>27.</td>
<td>Futurewise</td>
<td>Revise Section 3.3.3, Policy 3 as follows (new wording underlined): Residential development standards shall ensure no net loss of shoreline ecological functions and should preserve the existing character of the shoreline consistent with the purpose of the environment. As a general matter, meeting this provision will require density limits, lot coverage limits, vegetation conservation and other provisions.</td>
<td>There is no objection to the inclusion of this wording.</td>
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<td>28.</td>
<td>Futurewise</td>
<td>The following wording should be added to Section 5.1.2 to assure the updated SMP purpose section aligns with the purpose of the Shoreline Management Act as stated in RCW 90.58.020: Allowed uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public’s use of the water.</td>
<td>The wording is essentially regulatory in nature and is not structured as a “purpose” statement. We would have no objection to inclusion of the purpose statement in the cited section if it is worded as follows: Allow uses in the shorelines of the state which are designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public’s use of the water. Additional Response: If the wording in the comment response is added to Section 5.1.2 it should also be added to Section 1.3 for consistency.</td>
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<td>Futurewise</td>
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| 29. | Comment: There is inadequate requirement for public access in new development. Public access is required as a condition of approval of new development by WAC 173-26-221(4)(d). The updated SMP needs to be revised to be consistent with the cited WAC.  
Response: Spokane County determined that further requirements for public access in new development beyond that proposed in the updated SMP would conflict with the property rights goal and policy in Section 2.10. Section 2.10 is based on input received from the public during the SMP update process. |
| 30. | Comment: WAC 173-26-221(2)(c)(iv)(B)(II) provides that uses and development within channel migration zones are to be regulated “as necessary to assure no net loss of ecological functions associated with the river or stream corridors, including the associated hyporheic zone, results from new development.” The construction of dike within a channel migration zone would result in a serious net loss of ecological functions. We recommend that 5.3.18.1.h be revised as follows to prohibit diking within channel meander belts:  
h. Diking for flood protection shall be set back landward of the ordinary high water mark and the channel meander belt.  
Response: Section 5.2.6 adequately addresses this issue and affords sufficient protection of the Latah Creek Channel Meander Belt. The language in Section 5.2.6 including the reference to compliance with the Latah Creek Comprehensive Flood Management Plan is in compliance with the cited WAC. |
| 31. | Comment: By exempting associated wetlands from the critical areas regulations, the Shoreline Master Program creates a gap in protection for associated wetlands. For example, 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 associated 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 the exclusion for associated wetlands be deleted. We also recommend that the language be clarified as follows:  
A. The provisions of the Spokane County Critical Areas Ordinance and Shoreline Master Program do not extend Shoreline Jurisdiction beyond the geographical limits specified in the Shoreline Master Program as specified in Section 10 and illustrated in Appendix II. When a critical area as described in the Critical Areas Ordinance, other than an associated wetland, overlaps into the shorelines of the state or is partly within and partly outside of the shorelines or some or all of the buffer and/or setback from the portion of the critical area that is outside of the shoreline jurisdiction, then the critical area, buffer, and setback is subject to the Critical Areas Ordinance, but not to the other provisions of these Shoreline Regulations. If there are any conflicts between these Shoreline Regulations and the Critical Areas Ordinance within shorelines of the state, the most restrictive regulations shall apply. The critical areas are specified in the following sections of the Spokane County Critical Areas Ordinance:  
Response: We do not concur with this interpretation of Section 8.4A. The shoreline associated wetlands are an integral part of the shorelines jurisdiction and the exception noted in Section 8.4A is intended to clarify that the shoreline jurisdiction
extends beyond 200 feet from the ordinary high water mark in the case of wetlands associated with a shoreline. The clarification language does not diminish in the least the application of the CAO buffer requirements or any of the applicable shoreline management policies and regulations. Perhaps the paragraph’s clarity would improve if it is revised to be worded as follows:

The provisions of the Spokane County Critical Areas Ordinance and Shoreline Master Program do not extend shoreline jurisdiction beyond the geographical limits specified in the Shoreline Master Program as specified in Section 10 and illustrated in Appendix II. When a critical area as described in the Critical Areas Ordinance, other than an associated wetlands, overlaps into the shorelines of the state or is partly within and partly outside of the shorelines or some or all of the buffer and/or setback from the portion of the critical area that is outside of the shoreline jurisdiction, then the critical area, buffer, and the portion outside of the shoreline area is not subject to the Shoreline Master Program, setback is subject to the Critical Areas Ordinance, but not to the other provisions of these Shoreline Regulations. If there are any conflicts between these Shoreline Regulations and the Critical Areas Ordinance within shorelines of the state, the most restrictive regulations shall apply. The critical areas are specified in the following sections of the Spokane County Critical Areas Ordinance:

| Comment: Several revisions to the Critical Area Ordinance Appendix II are recommended. Further updates of the CAO should occur separate from the completion of the updated SMP.|
| Response: Amendment of the CAO is not subject to amendment in the SMP update process. Futurewise has the option of communicating with the Spokane County Board of Commissioners its desire to amend the CAO to include the specific revisions contained in its comments. |