

**City of Spokane Shoreline Master Program Update
 Department of Ecology Public Comment Responses
 June 9, 2009**

Written Comment		
	<i>Source of Comment</i>	<i>Response and Proposed Text Changes (shown in <u>underline</u> and striketrough)</i>
1.	Wesley L. McCart, Stevens County Farm Bureau	<p>1. Agriculture Activities. We believe the City’s proposal is consistent with RCW 90.58.065 (relating to agricultural activities within the shorelines) due to the exemption provided for agricultural activities in Section 17E.060.300(B)(5). But in order to remove any potential confusion or uncertainty, we propose to seek an amendment of the current proposal as follows:</p> <p style="text-align: center;">17E.060.090 Shoreline Overlay and Relationship to Other Regulations</p> <p>B. In addition to these regulations, other Washington State statutes that may be applicable to shoreline development or use include, but are not limited to:</p> <ol style="list-style-type: none"> 1. Camping Resorts Act, RCW 19.105; 2. Fish and Wildlife, RCW 77; 3. Flood Control Zone Act, RCW 86.16; 4. Forest Practices Act, RCW 76.09; 5. Growth Management Act, RCW 36.70A; 6. Land Subdivision Act, RCW 58.17; <u>7. Pesticide Act, RCW 15.57;</u> <u>8. Pesticide Application Act, RCW 17.21;</u> 9. State Environmental Policy Act (SEPA), RCW 43.21C; 10. State Hydraulic Code, RCW 77.55; 11. Surface Mining Act, RCW 78.44; 12. Washington Clean Air Act, RCW 70.94; 13. Water Pollution Control Act, RCW 90.48; 14. Water Resources Act of 1971, RCW 90.54.

		<p>17E.060.460 Agriculture</p> <p>D. Pesticide application, aerial spraying, manure spreading within the Shoreline Jurisdiction shall not be allowed.</p> <p><u>E. Farm management techniques, operation, and control methods should be utilized in accordance with the guidelines and standards of the Soil Conservation Service.</u></p> <p><u>F. Agricultural use currently within the Shoreline Jurisdiction shall not extend farther waterward of existing activities.</u></p> <p><u>G. This section shall not be construed or applied in a manner that requires modification of and/or limits agricultural activities on land designated as agriculture in the Comprehensive Plan as of the date of the adoption of this SMP.</u></p> <p><u>H. New agricultural activities on land designated as agriculture in the Comprehensive Plan but not presently used for agricultural purposes, conversion of agricultural lands to other uses, and development not meeting the definition of agricultural activities shall comply with the entire SMP.</u></p> <p>2. The City’s proposed shoreline update is the result of an exhaustive public notice and participation process that was fully consistent with the public notice and participation requirements of State law and the City’s own requirements. The Shoreline buffers were determined following the consideration of several factors, including existing land uses, platting patterns and lot size, road network, utility corridors, critical areas and buffers, and an inventory and analysis of the entire extent of the Spokane River and Latah Creek within the City limits. WAC 173-26-201(3)(c) addresses the requirements of a shoreline inventory conducted for an amended SMP. The analysis addressed shoreline areas of concern, including characterization of functions and ecosystem wide processes.</p>
<p>2.</p>	<p>John R. Pilcher</p>	<p>Mr. Pilcher’s comments relate to a parcel of land located along Latah Creek. The City’s existing Shoreline Master Program imposes a 100-foot buffer on this parcel. Based on scientific data collected by consultants working on the City’s behalf, the City’s Plan Commission recommended that the existing 100-foot buffer be increased to 200 feet. Based in part on testimony provided by the property owner during the public process, and in further part upon the scientific evidence submitted on the property owner’s behalf, the City Council concluded that the existing 100-foot buffer along portions of the subject parcel is adequate to achieve the goal of no net loss of shoreline ecological functions, as set forth in Chapter 173-26 of the Washington Administrative Code.</p>
<p>3.</p>	<p>Nathan Smith, Witherspoon, Kelley, Davenport & Toole, El Katif Shrine</p>	<p>1. Nonconforming Single-Family Residential Buildings. We believe that WAC 173-27-080 provides default standards for nonconforming uses in cases where a local shoreline master program and associated regulations do not include nonconforming development standards tailored to local needs. Single family residential uses are favored under the Act. This preference is recognized in the default nonconforming development standards which permit the enlargement and/or expansion of nonconforming single-family residences upon approval of a conditional use permit. Consistent with this flexibility, the City’s goal in drafting the nonconforming use provisions in its shoreline proposal was to protect owners’ investment in single family residential buildings and to encourage continued investment in such structures. The goal was to permit outright the maintenance, repair, and replacement of nonconforming single-family residential</p>

buildings within the existing foot prints of such structures. The City's goal was also to permit enlargements and/or expansions of such single family residential structures upon approval of a shoreline conditional use permit.

Based on Mr. Smith's comments, it appears that we fell short of making the foregoing goals clear in drafting our proposed nonconforming use provisions. In order to more clearly codify the City's goals in this regard, we propose the following amendments to Section 17E.060.380(D) of our proposal:

17E.060.380 Nonconforming Uses and Structures

Definition: Nonconforming development is a shoreline use or structure that was lawfully constructed or established prior to the effective date of the Act, the SMP, or these Shoreline Regulations, or amendments thereto, but which does not conform to present regulations or standards of these Shoreline Regulations or the policies of the Act

A. In accordance with the requirements in this section, structures that were legally established prior to the SMP or these Shoreline Regulations, or amendments thereto, and are used for a conforming use but which are nonconforming with regard to setbacks, buffers or yards, area, bulk, height or density may be maintained and repaired and may be enlarged or expanded provided that said enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses.

B. A nonconforming structure which is moved any distance must be brought into conformance with the applicable Shoreline Regulations and the Act.

C. If a nonconforming structure is damaged to an extent not exceeding 75 percent of the replacement cost of the original structure, it may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, provided that application is made for the permits necessary to restore the structure within six months of the date the damage occurred, all permits are obtained, and the restoration is completed within two years of permit issuance, except that nonconforming single-family residences, manufactured homes, and mobile homes may be reconstructed regardless of the extent of damage so long as application is made within the times required by this subsection.

D. The replacement, expansion, or enlargement of nonconforming residential buildings (including single-family residences, manufactured homes, and mobile homes) shall achieve no net loss of shoreline ecological functions pursuant to SMC 17E.060.210 and adhere to the Mitigation Sequencing Requirements in SMC 17E.060.220.

E. Existing nonconforming residential buildings may be replaced within the existing footprint upon approval of a shoreline substantial development permit,

~~2. Single family residences shall be replaced within the same building footprint that existed prior to replacement.~~

~~F 3.~~ For the replacement of manufactured homes and mobile homes, a greater building footprint than existed prior to replacement may be allowed in order to accommodate the conversion of single-wide manufactured homes to double-wide manufactured homes, upon approval of a shoreline conditional use permit.

~~D. Uses and developments that were legally established and are nonconforming with regard to the use regulations of these Shoreline Regulations may continue as legal nonconforming uses. Such uses shall not be enlarged or expanded, except that:~~

~~G1.~~ Existing nonconforming single-family residences, ~~manufactured homes, and mobile homes~~ may be enlarged or expanded, ~~or replaced~~ in conformance with applicable bulk and dimensional standards upon approval of a shoreline conditional use permit and by conformance with the following requirements,:

~~a. The expansion, enlargement, or replacement shall achieve no net loss of shoreline ecological functions pursuant to SMC 17E.060.210, No Net Loss.~~

~~b. The expansion, enlargement, or replacement shall adhere to the Mitigation Sequencing Requirements in SMC 17E.060.220.~~

~~1e.~~ An expansion or enlargement to the main structure or the addition of a normal appurtenance as defined in WAC 173-27-040(2)(g) and chapter 17A.020 SMC, Definitions, to the main structure shall only be accomplished by:

~~a.~~ a. Addition of space above the main structure's building footprint; and/or

~~b.~~ b. Addition of space onto or behind that side of the main structure which is the farthest away from the ordinary high water mark.

~~24.~~ If the requirements in SMC 17E.060.380(~~F~~)(1)(~~3e~~)(a) and (b) cannot be accomplished without causing significant harm to shoreline vegetation or other shoreline ecological functions, the director may require additional site analysis to determine if an alternative location for the expansion or enlargement, ~~or replacement~~ of the structure is feasible.

~~HE.~~ An Existing residential buildings single-family residence, ~~manufactured home park, or mobile home park~~ that has have a change in use to another legal, conforming use shall conform to the buffer and structure setback requirements and all other requirements of the entire SMP and title 17C SMC, Land Use Standards.

~~IF.~~ A use which is listed as a conditional use but which existed prior to adoption of these Shoreline Regulations or any amendment thereto, and for which a conditional use permit has not been obtained, shall be considered a nonconforming use.

~~IG.~~ A structure for which a variance has been issued shall be considered a legal nonconforming structure, and the requirements of this section shall apply as they apply to preexisting nonconformities.

		<p><u>K.H.</u> A structure which is being or has been used for a nonconforming use shall not be used for a different nonconforming use, except as provided below, and only upon the approval of a shoreline conditional use permit:</p> <ol style="list-style-type: none"> 1. No reasonable alternative conforming use is practical; 2. The proposed use will be is as consistent with the policies and provisions of the Act and these Shoreline Regulations and as compatible with the uses in the area as the preexisting use; and 3. In addition, such conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of these Shoreline Regulations and the policies in the Act and to assure that the use will not become a nuisance or a hazard. <p><u>L.I.</u> If a nonconforming use is discontinued for twelve consecutive months or for twelve months during any two-year period, the nonconforming rights shall expire and any subsequent use shall be conforming.</p> <p><u>M.J.</u> An undeveloped lot, tract, parcel, site, or division of land which was established in accordance with local and state subdivision requirements prior to the effective date of the Act or the applicable Shoreline Regulations but which does not conform to the present lot size standards may be developed if permitted by other land use regulations of the City so long as such development conforms to all other requirements of the applicable Shoreline Regulations and the Act.</p> <p>2. Buffers. There is ample evidence and science in the record to support the buffers proposed by Spokane’s City Council in the City’s proposed shoreline update. Based on this evidence and science, the City Council determined that the proposed buffers are necessary to achieve the goal of no net loss of shoreline ecological functions, as set forth in Chapter 173-26 of the Washington Administrative Code. The Shoreline buffers were determined following the consideration of several factors, including existing land uses, platting patterns and lot size, road network, utility corridors, critical areas and buffers, and an inventory and analysis of the entire extent of the Spokane River and Latah Creek within the City limits. WAC 173-26-201(3)(c) addresses the requirements of a shoreline inventory conducted for an amended SMP. The analysis addressed shoreline areas of concern, including characterization of functions and ecosystem wide processes.</p>
4.	F.J. Dullanty, Jr., Witherspoon, Kelley, Davenport & Toole, Centennial Properties, Inc	See response to comment no. 3 above relating to buffers.
5.	Edie Streicher, Spokane Home Builders Association	See response to comment no. 3 above relating to buffers.
6.	Department of Fish and Wildlife	Noted. Thank you for your comment.
7.	Hal Meenach, Spokane County Farm Bureau	1. Agricultural Activities. See response to comment no. 1 above relating to agricultural activities and exemption.

		<p>2. Critical Areas. RCW 90.58.090(4) contemplates the incorporation into shoreline master programs of the critical area protections required by Chapter 36.70A RCW (“GMA”) provided the master programs are consistent with RCW 90.58.020 and further provided that the master programs provide a level of protection for critical areas at least equal to the protection provided under critical areas ordinances adopted under GMA. The City’s shoreline update satisfies both provisos. First, by incorporating the City’s GMA critical areas ordinances, the shoreline update will provide protection for critical areas in the shorelines at least equal to the protection provided under the City’s GMA critical areas ordinances. Second, SMC 17E.060.170(A)(2) requires the City 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.</p> <p>RCW 90.58.090(4): The department shall approve the segment of a master program relating to critical areas as defined by RCW 36.70A.030(5) provided the master program segment is consistent with RCW 90.58.020 and applicable shoreline guidelines, and if the segment provides a level of protection of critical areas at least equal to that provided by the local government's critical areas ordinances adopted and thereafter amended pursuant to RCW 36.70A.060(2).</p> <p>WAC 173-26-221(2): (a) Applicability. Pursuant to the provisions of RCW 90.58.090(4) as amended by chapter 321, Laws of 2003 (ESHB 1933), shoreline master programs must provide for management of critical areas designated as such pursuant to RCW 36.70A.170 (1)(d) and required to be protected pursuant to RCW 36.70A.060(2) that are located within the shorelines of the state with policies and regulations that:</p> <p style="padding-left: 40px;">(i) Are consistent with the specific provisions of this subsection (2) critical areas and subsection (3) of this section flood hazard reduction, and these guidelines; and</p> <p style="padding-left: 40px;">(ii) Provide a level of protection to critical areas within the shoreline area that is at least equal to that provided by the local government's critical area regulations adopted pursuant to the Growth Management Act for comparable areas other than shorelines.</p> <p>SMC 17E.060.170(B): The provisions of the City of Spokane Critical Areas Ordinances, title 17E SMC, shall apply to any use, modification or development within the Shoreline Jurisdiction whether or not a shoreline permit or letter of exemption is required. Unless otherwise stated, no development shall be constructed, located, extended, modified, converted, or altered, or land divided without full compliance with the Critical Areas Ordinances and the entire SMP.</p>
8.	Mae I. Bates	Noted. Thank you for your comment.
9.	Robbi Castleberry	Please see response to comment nos. 2 and 3 (relating to buffers). We have increased buffers where it was necessary to achieve the goals of the Shoreline Management Act (RCW 90.58), including no net loss of shoreline ecological functions.
10.	Tina Wynecoop	Please see response to comment nos. 2 and 3 (relating to buffers). We have increased buffers where it was necessary to achieve the goals of the Shoreline Management Act (RCW 90.58), including no net loss of shoreline ecological functions.

11.	Shawn Nikfar	Please see response to comment nos. 2 and 3 (relating to buffers). We have increased buffers where it was necessary to achieve the goals of the Shoreline Management Act (RCW 90.58), including no net loss of shoreline ecological functions.
12.	Kitty Klitzke, Futurewise	Please see response to comment nos. 2 and 3 (relating to buffers).
13.	Jeff Miller	Noted. Thank you for your comment.
14.	Sherry Davis	Noted. Thank you for your comment.
15.	Elvin "Speed" Fitzhugh, Avista Utilities	<p>The SMP regulations do not specifically address Avista's removal of bedrock material that may occur during periodic maintenance dredging. According to Mr. Fitzhugh of Avista Utilities, the removal of bedrock may be necessary to implement channel modifications in the north channel of the Upper Falls to accommodate aesthetic flows and to prevent trapping and standing fish. Therefore, Planning Services concurs with Avista that the definition of dredging and material disposal be modified as follows:</p> <p style="text-align: center;">17E.060.420 Dredging and Dredge Material Disposal</p> <p>Definition: The removal, displacement, and disposal of unconsolidated earth material such as silt, sand, gravel, or other submerged <u>or bedrock</u> material from the bottom of water bodies. Maintenance dredging and other support activities are included in this definition.</p>
16.	Craig Wiley	Noted. Thank you for your comment.
17.	Brad Stark	Noted. Thank you for your comment.
18.	Dave and Liz Wright	<ol style="list-style-type: none"> 1. Please see response to comment no. 3 relating to buffers. 2. We believe the updated Shoreline Master Program achieves the goals of the Shoreline Management Act (RCW 90.58), including no net loss of shoreline ecological functions while also providing adequate safeguards for private property rights (<i>see, e.g.,</i> SMC 17E.060.140 below). The decision makers were provided with the State of Washington Office of the Attorney General Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property (2006) prior to making their decision. <p style="text-align: center;">17E.060.140 Property Rights</p> <p>A. Decisions on shoreline substantial development permits and/or approvals shall recognize all relevant constitutional and other legal limitations on the regulation of private property. Findings shall assure that conditions imposed relate to the governmental authority and responsibility to protect the public health, safety, and welfare, are consistent with the purposes of the Act, and are roughly proportional to the expected impact.</p> <p>B. These Shoreline Regulations do not alter existing law on access to or trespass on private property and do not give the general public any right to enter private property without the owner's permission.</p> <p>C. City of Spokane staff shall observe all applicable federal and state laws regarding entry onto privately owned property.</p>

19.	Lori Aluna	Please see response to comment no. 2.
20.	Travis Nichols, Friends of the Falls	Please see response to comment no. 2.
21.	Kevin Hennessey, Friends of the Centennial Trail	<ol style="list-style-type: none"> 1. See response to comment no. 3 above relating to buffers. 2. 17E.060.720 Shoreline Buffers F. The following development activities shall not be subject to shoreline buffer requirements provided that they are constructed and maintained in a manner that minimizes adverse impacts on shoreline ecological functions and comply with these Shoreline Regulations and all the applicable regulations for critical areas. 6. Pervious and/or elevated pathways and trails not exceeding a width of 10 feet which generally run parallel to the shoreline when no feasible alternative exists outside of the shoreline buffer, and only when accompanied by a Habitat Management Plan as outlined in 17E.020.090.
22.	Stan Miller, Inland Northwest Water Resources	Please see response to comment no. 2. City of Spokane staff, Plan Commission and City Council all concluded that the Shoreline buffers set forth in the proposed update are necessary to achieve the goals of the Shoreline Management Act (RCW 90.58), including no net loss of shoreline ecological functions.
23.	Nancy Martin	<ol style="list-style-type: none"> 1. The public participation for the SMP Update included the formation of both a technical advisory and policy committee, numerous presentations to community assembly, PCED and other interested parties, 2 stakeholder roundtable discussions, 9 open houses, over 26 Plan Commission workshops and 1 public hearing, 2 mass mailings to property owners within 350 feet of the ordinary high water mark, 12 City Council study sessions and 4 public hearings, print advertisements, website updates, and Channel 5 Building Blocks Education Programming. 2. An Environmental Checklist and Determination of Nonsignificance were issued by the City of Spokane Planning Services Department on August 27, 2008 followed by a 14-day public comment period. In addition, a 60-day agency review was issued by the City of Spokane Planning Services Department on August 22, 2008. 3. See response to comment no. 3 above relating to buffers.
Oral Testimony		
24.	Nathan Smith, El Katif Shrine and Centennial Properties	Please see response to comment nos. 2 and 3 (relating to buffers). We have increased buffers where it was necessary to achieve the goals of the Shoreline Management Act (RCW 90.58), including no net loss of shoreline ecological functions.
25.	Dale Hearn, El Katif Shrine	Noted. Thank you for your comment

26.	Kitty Klitzke, Futurewise	Please see response to comment nos. 2 and 3 (relating to buffers). We have increased buffers where it was necessary to achieve the goals of the Shoreline Management Act (RCW 90.58)
27.	Mike Peterson, The Lands Council	Please see response to comment nos. 2 and 3 (relating to buffers). We have increased buffers where it was necessary to achieve the goals of the Shoreline Management Act (RCW 90.58)
28.	Terry Cox	Noted. Thank you for your comment
29.	Nancy Martin	Please see response to comment nos. 23 relating to public participation.
30.	John Pilcher	Please see response to comment nos. 2 and 3 (relating to buffers). We have increased buffers where it was necessary to achieve the goals of the Shoreline Management Act (RCW 90.58), including no net loss of shoreline ecological functions.

END