

**ATTACHMENT A: FINDINGS AND CONCLUSIONS
FOR PROPOSED LIMITED AMENDMENT TO THE SPOKANE COUNTY
SHORELINE MASTER PROGRAM**

SMP Submittal accepted August 6, 2014, Resolutions No. 14-0605A and B
Prepared by Sara Hunt on October 8, 2014

Brief Description of Proposed Amendment:

Spokane County has submitted a limited Shoreline Master Program (SMP) amendment to comply with Shoreline Management Act (SMA) and SMP Guidelines requirements. The limited amendment addresses residential onsite wastewater treatment systems (OWTS) in the County's shorelines. The amendment is in response to an appeal filed by the Center for Justice on behalf of Futurewise, Spokane Riverkeeper, The Lands Council, and Trout Unlimited on March 25, 2013 and a Final Decision and Order under Eastern Washington Region Growth Management Hearings Board (GMHB) case number 13-1-003c. The appellants, Spokane County and the Department of Ecology have agreed to the proposed OWTS regulations which address the issues raised in the appeal.

Supporting information and analysis was included in the submittal, as noted below.

FINDINGS OF FACT

Need for amendment. The proposed limited amendment updates the January 22, 2013 Spokane County Shoreline Master Program pursuant to planning and procedural requirements of the SMP Guidelines contained in WAC 173-26 and 27.¹ The amended SMP incorporates changes to the SMP OWTS regulations as a result of Final Decision and Order under Eastern Washington Region Growth Management Hearings Board (GMHB) case number 13-1-0003c. The proposed changes revise and provide specific design, operation, and performance and maintenance standards for residential OWTS.

The recently amended Spokane County SMP included regulations governing residential onsite wastewater treatment systems, with the overarching goal to achieve no net loss of environmental functions. While the Spokane County SMP deferred in part to the Spokane Regional Health District regulations for residential onsite wastewater treatment systems, Spokane County health regulations do not specifically address phosphorus exports.

There is a long history of phosphorus exports from onsite residential sewage systems in the Spokane River watershed. A key strategy of the Spokane River water quality cleanup plan (known as a Total Maximum Daily Load, or TMDL) is to reduce phosphorus inputs to the Spokane River system. Under these circumstances, the GMHB found that the Shoreline Management Act and Ecology's regulations require the SMP to contain specific regulations and standards for onsite sewage systems that assure no net loss of ecological functions and prevent impacts to water quality, in particular those impacts related to phosphorus. Therefore, the GMHB remanded the matter regarding OWTS to the Department of Ecology and Spokane County to comply with the Shoreline Management Act and Guidelines consistent with the Final Decision and Order. Accordingly, the amended County SMP will:

¹ Including WAC 173-26-201(1) (Process to prepare or amend shoreline master programs).

- Prohibit location of new septic drainfields for new OWTS within shoreline jurisdiction except under limited conditions;
- For those OWTS that are allowed, establish specific criteria for the design, operation, maintenance, and performance of residential OWTS in order to significantly limit the discharge of phosphorus to the groundwater and surface water; and
- Require the replacement of existing OWTS for new development or certain redevelopment on existing lots with septic drainfields if the OWTS does not meet the specification of the OWTS regulations.

SMP provisions to be changed by the amendment as proposed: The following sections of the existing County SMP are proposed for change:

- Section 5.3.8

Amendment History, Review Process: The amendment is in response to an appeal filed by the Center for Justice on behalf of Futurewise, Spokane Riverkeeper, The Lands Council, and Trout Unlimited on March 25, 2013 and a Final Decision and Order under Eastern Washington Region Growth Management Hearings Board (GMHB) case number 13-1-003c. The record shows that a public hearing before the Spokane County Council was held on July 8, 2014. Affidavits of publication provided by the County indicate notice of the hearing was published on May 20th and June 23rd, 2014 in the Spokesman Review. With passage of Resolutions 14-0605A and B, on July 22, 2014, the County authorized staff to forward the proposed amendment to Ecology for approval.

The proposed SMP amendments were received by Ecology for state review and verified as complete on August 6, 2014. Notice of the state comment period was distributed to state interested parties identified by the County on August 11, 2014, in compliance with the requirements of WAC 173-26-120. The state comment period began on August 18, 2014 and continued through September 17, 2014. No public hearing was held. Ecology sent all written comments it received to Spokane County on September 19, 2014. On October 8, 2014, the County submitted to Ecology its responses to issues raised during the state comment period. Ecology's own responses to issues raised during the comment period are available as part of the SMP amendment process record.

Consistency with Chapter 90.58 RCW: The proposed amendment has been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3), (4) and (5). The County has also provided evidence of its compliance with SMA procedural requirements for amending their SMP contained in RCW 90.58.090(1) and (2).

Consistency with “applicable guidelines” (Chapter 173-26 WAC, Part III): The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program Guidelines (WAC 173-26-171 through 251 and 173-26-020 definitions).

Consistency with SEPA Requirements: The County submitted evidence of SEPA compliance in the form of a SEPA Checklist and threshold determination of non significance for the proposed SMP amendments on August 6, 2014. Notice of the SEPA determination was published in the Spokesman Review on June 30, 2014. Ecology did not comment on the SEPA threshold determination.

Other Studies or Analyses supporting the SMP update: Ecology also reviewed the following report prepared for the County in support of the SMP amendment:

Miller, Eric C., and Wright, Wayne S., GeoEngineers, Inc.; April 9, 2014; *Spokane County Shoreline Management Plan (SMP); Proposed Elements of a Phosphorus Management Standard*. File No. 0188-163-01.

Summary of Issues Raised During The Public Review Process:

Spokane County Local Process

Comments were received in support of the amendment from the Center for Justice and from Futurewise.

Ecology Public Comment Period: Three individuals submitted comments.

Kevin Gibson:

Comment: Empathetic towards the goals of the regulations and the challenges of implementation.

County Response: The regulation changes will improve conditions.

Ecology concurs. No changes are necessary.

Ellen Picken

Comment: Supports the regulations, and is concerned about water quality.

County Response: The regulation changes will improve conditions.

Ecology concurs. No changes are necessary.

Kottayam V. Natarajan Jr.

Comment: Believes any new residential development should connect to public sewer system, regardless of location of urban growth area boundary.

County Response: In Rural areas sewers are not always available. The new regulations apply where access to public sewers is not feasible and is designed to assure water quality is protected.

Ecology concurs. No changes are necessary.

Summary of Issues Identified by Ecology as Relevant To Its Decision:

Issues were addressed during discussions with the County and Appellants, and technical experts as the County worked through the limited amendment. All parties are in agreement with the proposed use regulations and the methodology for measuring compliance with the regulations.

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the County's proposed SMP limited amendment 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 amendment contains sufficient policies and regulations to assure that no net loss of shoreline ecological functions will result from implementation of the new updated master program (WAC 173-26-201(2)(c)).

Ecology concludes that those SMP segments relating to shorelines of statewide significance provide for the optimum implementation of Shoreline Management Act policy (RCW 90.58.090(5)).

Ecology concludes that Spokane County has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that the County has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 regarding public and agency involvement in the SMP update and amendment process.

Ecology concludes that the County has complied with the purpose and intent of the local amendment process requirements contained in WAC 173-26-100, including conducting public hearings, notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.

Ecology concludes that the County has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the County's SMP amendment submittal to Ecology was complete pursuant to the requirements of WAC 173-26-110 and WAC 173-26-201(3) (a) and (h) requiring a SMP Submittal Checklist, which was submitted with the recently approved SMP comprehensive update (in effect January 22, 2013).

Ecology concludes that it has complied with the procedural requirements for state review and approval of shoreline master program amendments as set forth in RCW 90.58.090 and WAC 173-26-120.

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendment updating the SMP is consistent with Shoreline Management Act policy, the applicable guidelines and implementing rules. Ecology approval of the proposed amendments is effective 14 days from Ecology's final action approving the amendment.