

# Public Comment Summary: Whitman County Locally Adopted SMP

## Ecology Public Comment Period, June 1 – July 1, 2016

*Prepared by WA Dept. of Ecology, July 19, 2016*

*Local Government Response and Rationale Prepared by Alan Thompson, Planning Director and Clover Muters, The Watershed Company, August 1, 2016*

Note from Whitman County: We appreciate the opportunity to offer further clarification on the items questions were raised about. After a thorough review, the County feels that none of the questions or comments require changes to be in compliance with SMP Guidelines and we propose no changes to the draft SMP at this time. Please see additional clarification and rationale provided in the responses below.

Comment Number	Comment Topic and Section Number (Citation)	Commenter	Comment	Local Government Response and Rationale
1.	General	Larry Danielson and Dale Danielson	Comment concerned about public access on private property.	<p>The County is required to update its SMP per the Shoreline Management Act (SMA) and Ecology Guidelines. A tenant of the SMA is to promote public access and recreation opportunities. The SMA requires 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.</p> <p>While SMPs are required to provide opportunities for public access to shorelines (WAC 173-26-221(4)), the SMP does not authorize nor require infringement on private property rights.</p> <p>Furthermore, the SMP does not change the existing public access conditions on Rock Lake. Where the lake was open to the public will remain open and the SMP does not allow trespassing though your property to access it. By requiring opportunities to designate more legal and appropriate public access to</p>

				<p>shorelines, the SMP may help alleviate the trespassing issues you have reported.</p> <p>With or without an updated SMP there will always be those who disregard appropriate, safe and legal behavior as described in your letter. This behavior is certainly not something the SMP endorses and not something that it alone can control.</p> <p>The updated SMP is the best effort of the County to manage its shorelines for the benefit of the public. It is designed to protect ecological function while allowing for enjoyment of waterfront areas in line with the current best science and management practices.</p>
2.	<p>19.63.603 Environmental Protection</p> <p>B.3-6 (page 46-47)</p>	Avista Utilities	<p>How would Avista's Vegetation Management Program fit into the Mitigation Requirements for new and existing utility corridors?</p>	<p>As a general note- several of Avista's comments/questions are very specific and would need to be evaluated on a detailed project basis at the time of a specific permit submittal. However, the County recognizes the unique needs of utilities projects and the need for predictability particularly for ongoing maintenance of existing operations. Thus, a specific utilities section is included in the SMP which gives consideration to these unique needs. In general, the County feels that the SMP as written will work to adequately allow for essential utilities projects while protecting the shoreline environment and meeting the other tenants of the SMA and SMP Guidelines.</p> <p>Without having the details of Avista's Vegetation Management Program and the specific circumstances under which it would be applied, it is not possible to offer a comprehensive explanation of how it would</p>

				work with the mitigation requirements in every foreseeable situation. Again, project level details would be needed. However, generally, for new projects where mitigation was required mitigation could be designed in such a way as to be compatible with an existing vegetation management program (planting species that will only reach a certain height etc.). Existing, legal uses are allowed to continue under the updated SMP. Vegetation associated with existing structures, uses and developments may be maintained within shoreline jurisdiction without providing additional mitigation (19.63.904.B.1).
3.	19.63.603 Environmental Protection  B.3-6 (page 46-47)	Avista Utilities	Would we be exempt from the mitigation requirements due to “specific, objective standards” found in the Utilities section (19.63.812)	No, the standards in the Utilities section are discretionary rather than objective (no specific setbacks or dimensions are provided, rather language about minimizing and avoiding where feasible) therefore, mitigation sequencing would need to be applied to demonstrate how the project achieves no net loss of ecological function (19.63.812.B.1). SMPs are required to include regulations designed to achieve no net loss per WAC 173-26-186(8). In order to achieve the no net loss standard new uses and developments must not have an unmitigated adverse impact on shoreline functions.
4.	19.63.604 Shoreline Vegetation Conservation  B.1 (page 48)	Avista Utilities	Would this include existing Transmission, Distribution, and Gas Utility lines?	Yes, vegetation can be maintained for existing, legal uses in shoreline jurisdiction.
5.	19.63.604 Shoreline Vegetation Conservation	Avista Utilities	Would this section still apply if an Overhead Utility is replaced with an Underground Utility in the same corridor?	Yes, replacing an overhead utility with an underground utility could cause new impacts which would need to be evaluated and meet

	B.1 (page 48)			the standards of the SMP including applicable Vegetation Conservation provisions.
6.	19.63.604 Shoreline Vegetation Conservation  B.3 (page 48)	Avista Utilities	Would we be exempt from the mitigation requirements due to “specific, objective standards” found in the Utilities section (19.63.812)	No, the standards in the Utilities section are discretionary rather than objective (no specific setbacks or dimensions are provided, rather language about minimizing and avoiding where feasible) therefore, mitigation sequencing would need to be applied to demonstrate how the project achieves no net loss of ecological function (19.63.812.B.1). SMPs are required to include regulations designed to achieve no net loss per WAC 173-26-186(8). In order to achieve the no net loss standard new uses and developments must not have an unmitigated adverse impact on shoreline functions.
7.	19.63.604 Shoreline Vegetation Conservation  B.4 (page 48)	Avista Utilities	Avista Utilities recommends excluding our federally required vegetation management/clearing program from the required mitigation sequencing found in 16.63.603.B.4. This exclusion could be detailed on the Utilities section of the SMP.	Per SMP section 19.63.604.B.1, vegetation conservation standards do not apply retroactively to existing legally established uses and developments. Vegetation associated with existing structures, uses and developments may be maintained within shoreline jurisdiction. For proposed new utilities projects which must be located within shoreline jurisdiction, vegetation management/clearing could be allowed as a permitted component of the new project but mitigation sequencing would still be needed to ensure avoidance of critical areas (wetlands, shoreline buffers etc.) and that functional losses from such an activity would be mitigated with acceptable vegetation re-planting or off-site mitigation etc. Such sequencing is required to assure that new utilities projects result in no net loss of ecological function (WAC 173-26-186(8)).
8.	19.63.604 Shoreline	Avista Utilities	Avista Utilities is required by Federal and State laws to maintain a minimum vegetation clearance w/in our right	As noted above, per SMP Section 19.63.604.B.1, vegetation conservation

	<p>Vegetation Conservation</p> <p>B.7 (page 49)</p>		<p>of ways (easements) and also between vegetation and our conductors (wires). This requires removal (or other means) of certain native and non-native vegetation, the majority of them are large trees. Mitigation at a 1:1 of a similar tree is not feasible within Avista’s utility corridors.</p>	<p>standards do not apply retroactively to existing legally established uses and developments. Vegetation associated with existing structures, uses and developments, including existing utilities corridors, may be maintained within shoreline jurisdiction, and would not be subject to the tree removal mitigation standard.</p> <p>New utilities projects would be subject to the vegetation conservation standards and all other applicable SMP regulations including mitigation sequencing as described in the responses above. Development of utilities facilities that may require periodic maintenance which disrupt shoreline ecological functions are discouraged except where no other feasible alternative exists. Mitigation would be required for the initial impacts associated with unavoidable new utilities projects, including the removal of native vegetation, per the requirements of 19.63.603. However, the SMP would not require the replanting of tall trees within the new corridor. In order to maintain the required minimum vegetation clearance mitigation could be designed with specific species that would meet the standards (not get too tall), or mitigation could be provided outside of the corridor. Maintenance within the new utility corridor could also be allowed as a component of the shoreline permit, as long as it could be demonstrated that the project would result in no net loss of shoreline ecological function.</p>
<p>9.</p>	<p>19.63.604 Shoreline Vegetation Conservation</p>	<p>Avista Utilities</p>	<p>We recommend that Electrical and Gas Utilities be excluded from this requirement and have it specifically called out in the Utilities section.</p>	<p>Existing utilities are already exempt as vegetation conservation standards do not apply retroactively to existing legally established uses and developments.</p>

	B.7 (page 49)			Vegetation associated with existing structures, uses and developments, including existing utilities corridors, may be maintained. However, new utilities projects cannot be excluded entirely from the tree removal requirements of the vegetation conservation section as new projects are required to ensure no net loss of shoreline ecological function. Siting of new projects must take into effect the ecological impacts of tree removal and must provide mitigation for unavoidable impacts. See the response to Comment #8 above. This provision applies to the initial tree removal for development of a new utility project, not ongoing maintenance that may be required long term in the new utility corridor. Furthermore, provisions are provided allowing for the removal of a tree when it poses a safety hazard (see response to Comment #10 below).
10.	19.63.604 Shoreline Vegetation Conservation B.8 (page 49)	Avista Utilities	Would a “safety hazard” include disruption of utility services due to trees impacting power poles and conductors?	Yes. The County would interpret trees impacting power lines to be a safety hazard.
11.	19.63.604 Shoreline Vegetation Conservation B.8 (page 49)	Avista Utilities	Avista’s Vegetation Management Plan allows for a “girdling” technique on larger trees within riparian habitats. This technique will convert the tree to a wildlife snag.	Girdling could be allowed per 19.63.604.B.8.
12.	19.63.606 Flood Hazard Management	Avista Utilities	In certain situation, mitigation may not be required, but it appears this section doesn’t provide the option. Is it possible to add “...mitigation <b>may be necessary</b> to address...”.	The mitigation sequencing process and documentation required per 19.63.603 will be used to determine if compensatory mitigation is required. If mitigation sequencing

	B.3.d (page 51)			documents that a project allowed per 19.63.606.B.3.d does not result in ecological impacts, compensatory mitigation may not be required. The County does not feel a revision is necessary as this intent is addressed in the applicable mitigation sections of the SMP. Furthermore, any new development within a floodway, which the section in question is addressing, would very likely require mitigation.
13.	19.63.702 General Regulations  E.3.b (page 63)	Avista Utilities	Suggest adding access roads to the definition of operations and maintenance.	<p>A <i>new</i> access road would not meet the intention of the operation, maintenance, or repair exemption defined in 19.63.702.E.3.b.</p> <p>Operation, maintenance, or repair of existing utilities is allowed in critical areas without critical area documentation, if the activity does not further alter or increase the impact to, or encroach further within, the critical area or buffer. A new road would necessarily further alter or increase the impact to the critical area or buffer and is therefore not an activity allowed outright without critical area documentation. A new access road within a critical area or critical area buffer would need to meet the standards of 19.63.700 as well as any other applicable standards of the SMP including mitigation sequencing.</p>
14.	19.63.702 General Regulations  E.3.d.ii (page 63)	Avista Utilities	Recommend adding “unless the vegetation will interfere with the normal operations and maintenance of the utility, in which case removal is authorized.”	Regulation 19.63.702.E.3.d.ii states retention and replanting of native vegetation shall occur <i>wherever possible</i> along the right-of-way improvement and resulting disturbance. This is an important provision which helps to ensure vegetation function will be maintained even without requiring full critical areas documentation. If it can be documented that retention or replanting is not possible because

				of interference with operations or maintenance of the approved activity, the qualifying statement “whenever possible” would allow that requirement to be waived. Therefore, the County feels no changes are needed as the intent of the regulation already addressed the comment.
15.	19.63.702 General Regulations  E.3.e.ii (page 63)	Avista Utilities	Does “Utility Pole” include the associated guy lines?	Yes. The County would interpret “utility pole” to include associated required elements such as guy lines.
16.	19.63.702 General Regulations  E.3.e.iii (page 63)	Avista Utilities	Does this maximum disturbance threshold pertain to a pole installation in the wetland buffer?	Yes. This is the maximum disturbance which may be authorized without a Critical Areas Report.
17.	19.63.703 Wetlands  D.2.d (page 74)  And  E.7.f (page 79)	Avista Utilities	Avista appreciates the exemption from requiring a Critical Areas Report for boring under wetlands. Although, the requirement for a hydrologist study would be a significant increase in costs and time delays for the development. This could lead to constructing more Overhead lines spanning these wetlands, but potentially impacting the riparian vegetation for clearance.  Although the US Army Corps of Engineers cautions the utility provider that fracking is a possibility, the activity does not require authorization under NWP 12 or other Corps permits.  Avista recommends that this sentence be removed as a requirement.	Boring without a hydrologist study could result in significant impacts to shoreline wetlands which could lead to a net loss of ecological function. A study is needed to ensure groundwater connection to the wetland is not interrupted. Without such a study inadvertent wetland impacts could occur. Section 19.63.703.D.2 allows certain activities in wetlands without the submission of a critical area report, <i>except where such activities result in a loss of the functions and values of a wetland or wetland buffer</i> . In the case of boring under a wetland, a hydrologist study would be necessary to ensure there is no functional loss. No changes are proposed at this time.
18.	19.63.812 Utilities	Avista Utilities	Avista recommends adding the following elements (or a similar version) under Section B:	The County feels that the intent of this statement is already covered in other sections of the draft SMP as written. Mitigation

			Where utility systems must be located in shoreline jurisdiction areas, clearing necessary for installation or maintenance shall be kept to the minimum width necessary to prevent interference by trees and other vegetation with proposed transmission facilities. Impacts associated with removal of vegetation or clearing shall be mitigated on the property with native plants suitable for the operations and maintenance of utility corridors.	sequencing requires minimization of impacts and compensatory mitigation when necessary. No changes are proposed.
19.	19.63.812 Utilities	Avista Utilities	Avista recommends adding the following elements (or a similar version) under Section B: Avista Utilities is willing to submit a Vegetation Management Plan and initiate annual meetings with Whitman County officials to discuss past and upcoming projects.	The County appreciates this sentiment. The suggested plan and meetings are actions which would already be permitted under the proposed SMP as it is currently written. Therefore the County feels that the intent of this statement is already covered by other regulations in the draft SMP. No changes are proposed at this time.