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Futurewise Comments		
Standards for docks, see SMP 12.26 – 12.32 in Chapter 2 page 15 of 18 and 21.50.430 Piers and docks in Chapter 4 pages 36 to 37 of 61.	We support the Department of Ecology recommendation to substitute the following for subsection, "9," to read as follows: "New residential development of two or more dwellings shall provide joint use or community dock facilities, when feasible, rather than allow individual docks for each residence." As Ecology pointed out, this is required by the Shoreline Master Program Guidelines in WAC 173-26-231(3)(b). It is also necessary to protect the river from the adverse impacts of a proliferation of docks and to protect the public's right to use the river.	The City has chosen a more refined approach related to docks that is based on its inventory and characterization report and has been analyzed in the cumulative impacts analysis. In short the City's regulations require joint use docks, when feasible, in in the Coyote Rock area. The City's approach in this area is premised on the lack of dock development in the area and the no net loss standard. The other area where dock development may occur is the Orchard Avenue area. By contrast to the Coyote Rocks area, the Orchard Avenue area is an established neighborhood and predominantly already built with many docks. Because of the existing dock development, a joint use requirement is not justified, nor would it be as capable of being implemented. Additionally, the Orchard Avenue area is considered a dead zone – with low flows and little oxygen - resulting in few impacts to fish.
Standards for docks, see SMP 12.26 – 12.32 in Chapter 2 page 15 of 18 and 21.50.430 Piers and docks in Chapter 4 pages 36 to 37 of 61.	We recommend adding a new requirement to include measures to reduce the impact associated with predation of native trout to read as follows: 10. All new docks shall include measures to reduce bass habitat including ambient light grids, white PVC sleeves for pilings, bright reflective aluminum, and bright white materials for flotation.	The Washington State Department of Fish and Wildlife imposes dock design requirements to address lighting impacts on fish species through the Hydraulics Permit Approval. Specifically, any work (such as a dock) that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state requires a HPA permit from the Washington State Department of Fish and Wildlife. Project applicants must show that construction will not adversely affect fish and their habitats. WDFW's HPA process specifically addresses lighting impacts of docks. The City's SMP does not seek to duplicate WDFW's regulatory authority.
Table 21.50-2: Shoreline Modification Activities	We recommend that bulkheads and other structural shoreline and slope stabilization measures not be allowed as a permitted use in the Urban Conservancy environment. Structural shoreline stabilization measures have significant	The City will provide "necessary review" of a proposal to develop shoreline stabilization measures through its shoreline substantial development permit process. Through that permit process the City will ensure compliance with the City's

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Chapter 4 page 19 of 61	adverse impacts on rivers. Given the high potential for adverse impacts and the purpose of the Urban Conservancy environment to protect important shoreline resources, if structure stabilization is allowed in this environment it should only be allowed as a conditional use to ensure that it is given necessary review.	regulations at 21.50.420, which include very specific development standards that limit when shoreline stabilization can be used. Accordingly, the CUP process is not necessary.
21.50.230 Shoreline buffers and building setbacks, in Chapter 4 pages 20 and 21 of 61, and Shoreline Master Program Draft Shoreline Buffers Map Appendix A-2..	1. To address temperature, 90 to 151 foot wide buffers are required. Maintaining wildlife habitat requires buffers from 100 feet to 600 feet wide. Removing pollutants can require buffers from 33 feet to 200 feet depending on the pollutant. Maintaining microclimate, the relatively cooler temperatures along the river and adjoining riparian areas that are aid fish and wildlife survival can require buffers 412 feet wide. While some of the buffers proposed in the shoreline master program are wide enough to perform some of these needed shoreline functions, others are not. The buffers along the river from East Trent Drive to Mirabeau Parkway extended on both sides of the river are along an undeveloped area, but are not wide enough to protect the river. As these areas develop, noise, light and glare, and pollutants will adversely impact the river. We recommend 200 foot wide buffers in these areas. When the river turns east, north of East Mansfield Drive on the south side of the river the buffers narrow until North Sullivan Road. Almost all of this area is undeveloped. As development occurs in this area, it will adversely impact the river. Again, we	1. The shoreline buffer protects existing riparian habitat areas with the ecological functions, consistent with the No Net Loss Standard. Areas beyond the shoreline buffer are occupied by existing urban land uses that typically provide little existing ecological functions. Shoreline buffers were initially established as the mapped vegetation conservation boundary prepared for the Inventory to protect the riparian area and the existing shoreline ecological functions. Where the vegetation conservation boundary is less than 75 feet, a minimum 75 foot buffer width was established. Some exceptions to the 75 foot minimum buffer width intended to protect the shoreline functions of water quality and the remaining vegetation are in the Orchard Avenue area, the River Rose Mobile Home Park, and the developed portion of Shelley Lake which currently have existing homes and development up to 50 foot from the ordinary high water mark. In a few areas the buffer area was increased on publicly-owned lands to either the edge of the Centennial Trail or to the outer boundary of State Park land to provide additional area for potential future restoration. <u>East Trent to Mirabeau Drive:</u> Buffers in the majority of this area follow site topography which is wider than the 75' base

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	recommend 200 feet buffers outside of the few already developed areas. North and south of East Indiana Avenue, the buffers become quite narrow on the east side of the river. This area is largely undeveloped and could accommodate a 200 feet wide buffer. East of North Barker Road and north of East River Walk Road on the south side of the Spokane River, the buffer again narrows. In this area the houses and even most yards are setback from the river. We recommend a wider buffer here, ending at the existing planted yards. 2. Our second concern is that the mapped buffer may be difficult to identify as changes occur over time. So we recommend that dimensions be added to map so the buffer width can be more readily identified.	buffer. Although the area along the Centennial Trail is disturbed by uncontrolled foot traffic the area has scattered ecologically intact areas likely protected by the steep slope. Above the slope the vegetation changes. Additional setbacks from the buffer apply to development. East Mansfield Drive to North Sullivan Drive: The buffer in this area acknowledges the Centennial Trail as the edge of the buffer. The area is sloped toward the water, and heavily disturbed by trail users. The vegetation on the south side of the trail in many areas especially on the west side of this stretch significantly changes to non-native vegetation and a break in riparian forest corridor. Additional setbacks will apply to the property from the edge of the buffer. North and South of Indiana: In this area the buffer width was increased to the edge of the Centennial Trail or edge of the State Park Property to provide additional areas for restoration. The area is heavily disturbed. Additional setbacks will apply to commercial or industrial development from the edge of the buffer. <u>East of North Barker Road and North of East Riverwalk:</u> The area East of North Barker Road is already developed and in some cases the buffer extends onto private property following the vegetation conservation boundary. The buffer extends into common area north of East Riverwalk and increasing the buffer beyond the vegetation conservation area identified provides no additional benefit since development cannot occur in this area. 2. With respect to concerns related to implementation, City has GIS mapping capabilities that will facilitate

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		location of buffers on existing lots to help identify location of the buffer and City review of development applications. While the buffer has been established relative to the vegetation conservation layer, the buffer does not move and therefore is easily identified by the City's GIS system. In most cases private property is separated from the water's edge by public property. If the buffer extends onto private property the buffer is measured from the property line landward. In the vast majority of the cases where the private residential property is contiguous to the water's edge, the buffer is a consistent width of 75', or adjusted as described above, from the OHWM, and as such easily identified on the ground.
21.50.250, Public Access, in Chapter 4 pages 21 to 23 of 61, Draft Public Access Plan, and Figure 5-1 Public Access Plan City Council Draft.	Please consider adding the East Indiana Takeout sites for future improvements in the Public Access Plan. Attached are two images of the site.	The City began its public access planning much earlier in the process and no comments were received proposing additional access at the identified site. At this stage, the City does not believe it necessary or appropriate to add specific locations that were not presented earlier in the process, after the completion of the cumulative impacts analysis. Proposals to add that site may be considered in future SMP updates or amendments.

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21.50.280 **Archaeological and historic resources.**	We strongly support the provisions for protecting archaeological and historic resources. These provisions will help protect valuable cultural resources.	Comment noted.
21.50.470 Maps and inventories p. 36	While we recognize that the list of maps and inventories in proposed 21.50.470 is not an exclusive list, we suggest that a reference to the latest Department of Natural Resources (DNR) Natural Hazards map available at DNR's Washington State Geologic Information Portal. While the map does not show all geological hazards, it does include many.	Change is not necessary. Because the list is not exhaustive, additional resources may be used in permit review.
21.50.490 Critical area review and 21.50.500 Critical area report requirements for all critical areas in Chapter 4 pages 39 to 41 of 61.	Critical areas, especially natural hazards, have the ability to affect development well beyond 200 feet from the development site. Similarly, some fish and wildlife buffers extend beyond 200 feet. So we recommend that critical areas that can either adversely affect the proposed development or that the development may adversely affect be identified in the critical areas report. We recommend that 21.50.490(B) be modified to read as follows with our additions double underlined: B. Applicant shall identify in the application materials the presence of any known or suspected critical areas on or within 200 feet of the property line<u>, any critical area buffer that includes any part of the project area, or any critical area that has the potential to harm people or structures within the project area, whichever is farther</u>. We recommend that 21.50.500(D)(7) be modified to read as follows with our additions double underlined: 7. Identification and characterization of all critical	Based upon the shoreline inventory and characterization report, the City's technical consultant has indicated that 200 feet is a reasonable expectation for developers to look beyond their property for potential critical areas that may affect, or be affected by a proposed development or use; No significant shoreline critical area hazards or natural resources exist that would warrant a larger buffer.

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	areas, water bodies, and critical areas associated with buffers located on site, adjacent to, and within 200 feet of proposed project areas, any critical area buffer that includes any part of the project area, or any critical area that has the potential to harm people or structures within the project area, whichever is farther. If buffers for two contiguous critical areas overlap (such as buffers for a stream and a wetland), the wider buffer shall apply;	
21.50.520(C)(1) Wetlands - Shoreline Critical Area Regulations in Chapter 4 page 44 of 61.	WAC 173-26-221(2)(c)(i)(A) requires Shoreline Master Program regulations "to achieve, at a minimum, no net loss of wetland area and functions …." Wetlands provide important functions that benefit Spokane Valley residents, property owners, and businesses. These functions include removing pollutants, such as nitrogen, that would otherwise get into surface waters and ground water drinking water supplies and recharging ground water. The city must adopt wetland regulations that achieve no net loss of wetland area and function which the proposed wetland regulations fail to do because of a typographical error in proposed 21.50.520(C)(1). We very much appreciate that the propose shoreline master program update no longer excludes small wetlands from protection. We very much thank the City of Spokane Valley for that important change. However, implementing that important reform inadvertently excluded several important wetland types from protection. So we recommend that proposed 21.50.520(C)(1) on page 44 of 61 be modified with our recommended deletions are shown below with double strike throughs.	As a practical matter, there are a total of two wetlands identified within the shoreline zone in the COSV. One of these is small and immediately surrounded by an existing paved pathway, where maintenance activities of the pathway are expressly exempt. Because of the limited number of wetlands that exist with the SMP jurisdiction in the City of Spokane Valley these proposed changes are unlikely to substantially impact the City's efforts to assure no net loss. However, it is an error and 21.50.520(C)(1) (a) through (e) should be deleted, and the change as proposed should be made. Subsections a-e were tied to the text previously deleted, which identified Category III and Category IV wetlands. Without the exception for Category III and IV wetlands less than 1,000 square feet, the "exceptions to the exception" are irrelevant.

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	1. Applicability. These buffer provisions apply to all wetlands~~ that:~~ ~~a. Are not associated with riparian areas or buffers;~~ ~~b. Do not contain habitat identified as essential for local populations of priority species identified by WDFW or Natural Heritage plant species identified by the WDNR;~~ ~~c. Are not a vernal pool;~~ ~~d. Are not an alkali wetland; and~~ ~~e. Do not contain aspen stands~~.	
21.50.540 Fish and wildlife habitat conservation areas - Shoreline critical area regulations in Chapter 4 page 53 of 61.	Proposed 21.50.540(C) provides that "[b]uffers shall not exceed 100 horizontal feet from the edge of the FWHCA." However, buffers wider than 100 feet are needed to protect fish and wildlife habitats. For example, in urban areas great blue heron rookeries may require buffers as wide as 197 feet. WAC 173-26-221(2)(a)(ii) requires that SMPs are to "[p]rovide a level of protection to critical areas within the shoreline area that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources." Limiting fish and wildlife buffers to 100 feet will not assure no net loss. So the 100 foot buffer limit must be deleted.	The shoreline buffer protects existing riparian habitat areas with the ecological functions, consistent with the No Net Loss Standard. Areas beyond the shoreline buffer are occupied by existing urban land uses that typically provide little existing ecological functions. The remaining focus of the buffers in the section 21.50.540 are for especially sensitive areas within the FWHCA, as described under SVMC 21.50.540(B) (2), which the City has determined would benefit from protections in addition to the shoreline buffer. The 100 foot limit only applies to the buffers specific to FWHCAs identified in 21.50.540(B) (2) and does not limit the width of the shoreline buffer that is the primary mechanism for protecting shoreline ecological functions of riparian habitat.
21.50.540(E)(2) Fish and wildlife habitat conservation areas - Shoreline	The Washington State Department of Fish and Wildlife priority species and habitats databases include habitats depicted as points, areas, and lines. The area habitats include, for example, the communal roost of the bald eagle, a Washington State sensitive species. The proposed regulations, however, limit protections for nearby	The City does not intend to make the proposed changes. No such habitats are currently mapped by PHS; roost sites within 1.320 feet of a locations may change frequently and do not provide a strong enough rationale for limiting land uses; "primary association" would need to be defined more clearly for this to be workable.

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critical area regulations in Chapter 4 page 55 of 61	developments to den and nest sites and point locations. This is inconsistent with WAC 173-26-221(2)(a)(ii) which requires shoreline master programs to "[p]rovide a level of protection to critical areas within the shoreline area [including fish and wildlife habitat conservation areas] that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources[.]" By failing to protect habitats depicted as lines and areas, the Spokane Valley SMP fails to meet this standard. Our suggested modifications to proposed 21.50.540(E)(2) to address this issue are shown below with our additions double underlined and our deletions double struck through. 2. Any proposal in a FWHCA or within 1,320 feet from a habitat with which priority species has a primary association ~~den or nest site~~ that the Director (in consultation with the WDFW) determines is likely to have an adverse impact on a FWHCA or associated species shall provide a Habitat Management Plan, including: …. viii. The location of priority habitat types or priority species habitats ~~point locations~~ within 1,320 feet of the proposal	The inventory and characterization study identified habitat areas that should be protected to ensure no net loss of shoreline ecological functions. These areas have been protected by incorporation into FWHCA critical areas with setbacks. This was done to be consistent with WAC 173-26-221 (2) (a) (ii). Under 2(viii) to left, the proposed text change removes the evaluation of point locations while priority habitat type locations are already specified earlier in the sentence before the proposed edits.
21.50.550 Geologically hazardous areas - Shoreline critical area regulations in	Geological hazards have the ability to affect development well beyond 50 feet from the development site. They may also reach well beyond the height of the slope or 50 feet. The slope responsible for the Oso tragedy had a slope height of about 600 feet tall but ran out for nearly a mile from the bottom of the slope. The 2013 Ledgewood-Bonair Landslide on Whidbey Island had an average slope height of 200 feet,	The commenter proposes 2 different edits: (1) an amendment to the trigger for additional review; and (2) an amendment to the buffer width once a project is determined to be in the critical areas. With respect to the first issues, the 50' mark in the draft is intended to quantify when the additional information is

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Chapter 4 pages 57 and 58 of 61.	but global positioning system (GPS) measurements suggested that the toe of the slide extended approximately 300 feet. While we recognize that there are, no slopes in Spokane Valley this large, until there are scientific standards landslide hazard buffers should be determined on a case-by-case basis. We recommend that proposed 21.50.550(C)(1) and 21.50.550(D)(2) be modified to read as follows with our additions double underlined and our deletions double struck through: 1. Any development or uses proposed for an area that may be subject to damage from ~~within 50 feet of~~ a geologic hazard area shall prepare a critical areas report satisfying the general critical area report requirements in SVMC 21.50.500 and the additional standards for Geologic Hazard Areas in SVMC 21.50.550(E). …. 2. Buffers from all edges of Erosion or Landslide Hazard Areas. a. For landslide hazards, a Qualified Professional shall review the landslide hazard and determine buffers sufficient to protect proposed and existing development from the risk of damage. For erosion hazards t~~T~~he minimum buffer shall be equal to the height of the slope or 50 feet, whichever is greater. b. For erosion hazards, t~~T~~he buffer may be reduced to a minimum of 10 feet when a Qualified Professional demonstrates that the reduction will adequately protect the proposed development, adjacent developments and uses, and the subject critical area.	needed. A clear standard provides clear guidance to applicants and permit reviewers. By contrast the proposed edit (which indicates additional review is required for any development in "an area that t may be subject to damage from geologic hazards…"is vague and may be difficult to implement, and vulnerable to competing interpretations. Additionally, as noted by the commenter, steep slopes are not as significant an issue in Spokane Valley compared to other areas in Washington. There are very few landslide hazard areas in the shoreline zone. Based on the shoreline inventory and characterization prepared for Spokane Valley and in consultation with the City's consultant, 50 feet from the hazard area is an appropriate trigger for additional regulatory scrutiny and the City is not considering any changes. With respect to the second proposed amendment, the City regulations already provide flexibility to increase the minimum buffer based on information from the Qualified Expert.

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	c. The buffer may be increased where the Director determines a larger buffer is necessary to prevent risk of damage to proposed and existing development.	
Centennial Comments		
21.50.150(B)(5) Nonconforming Lots	Development Regulation Section 21.50.150(B)(5) purports to require development on lots legally established prior to the passage of the updated Shoreline Master Program to comply with its provisions. RCW 58.17.170 protects lots on subdivisions from subsequently enacted regulations. When a subdivision was approved after December 31, 2007, and before December 31, 2014, the subdivision is subject ot the regulations in effect at the time of approval for a period of seven years. When the subdivision is approved on or after January 1, 2015, the period is five years. Section 21.50.150(B)(5) subjects physical development within the shoreline jurisdiction to the new setback, height, and other construction requirements of the updated SMP…	No changes are required. Section 21.50.150(B)(5) addresses development on undeveloped lots that were legally established but that no longer meet lot size requirements. While this regulation generally addresses any previously established but undeveloped lot that is inconsistent with current lot size requirements, we understand that Centennial's concerns pertain to the subset of undeveloped lots created by previously approved preliminary plats that are still valid because they have not yet expired. Accordingly, Centennial's concerns pertain to plat applications filed since 2008. First, the City's approach is consistent with Ecology's regulations governing nonconforming lots. *See* WAC 173-27-080(10). Second, as a practical matter, Centennial's concerns related to vesting are based on a hypothetical scenario that does not exist in the City. Nothing in the SMP changes the City's lot size requirements. Those requirements are found in the general land use regulations in chapter 19.30 SVMC. The City has not changed its lot size requirements since the adoption of its Municipal Code in 2007. Accordingly, there are no preliminary plats that have been approved since 2007 that are inconsistent

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		with minimum lot size requirements in the code. Thus, the regulation only applies to undeveloped lots that were legally created but whose development rights created under the plat approval have expired. For those lots, the regulation in question provides flexibility to develop within the shoreline subject to restrictions despite the fact that the lot no longer meets minimum lot size requirements.
Section 21.50.070 – General Authority to Impose Conditions	Section 21.50.070 of the Development Regulations identifies the Director's authority to impose conditions of approval on development or use. Section C appears to impose an obligation on property owners to address preexisting conditions that are not the responsibility of the property owner. The Washington State Supreme Court has stated that property owners are not required to address or repair preexisting deficiencies. *Benchmark Land Co. v. City of Battle Ground*, 146 Wn.2d 685, 695, 49 P.3d 860 (2002). In addition, Section D appears to provide the director with unfettered discretion to make decisions to protect the shoreline "from damaging and incompatible development." There are no limitations on the authority of the director and it appears that these provisions are void for vagueness since they are subject to multiple interpretations. *Anderson v. City of Issaquah*, 70 W. 64, 75, 851 P.2d 744 (1993). The void for vagueness doctrine is rooted in constitutional principle to protect property owners and provide for objective standards to follow. Id. At 78. Centennial suggests that there be some identification of what could be considered "incompatible development" and that Section C be limited to those identifiable impacts associated with the project application being reviewed by the City.	Section 21.50.070 sets forth the general grounds on which the City can impose conditions of approval. The section sets forth general categories of conditions that are further informed by the detailed development regulations that follow. The general requirement allowing restoration is designed to recognize the City's authority to require a property owner to restore shoreline degradation within the limits of the law. Consistent with general rules of statutory construction, a regulation will be interpreted in a constitutional manner, and courts will not strain to read constitutional deficiencies into regulations. Thus, the City's generally written authority to require restoration as a condition of approval will be interpreted and implemented consistent with the applicable legal framework. Similarly, Centennial's concern over section D related to the general authority to include conditions protecting from "damaging and incompatible development" must be informed by the entirety of the regulations, not the sentence out of context. No change is required.
21.50.370 – Title Notice and Property Marking	Section 21.50.370 requires property owners to delineate the buffer and shoreline jurisdiction on the face of the plat. It also requires property owners to provide for the physical marking of buffers on the property. The Shoreline Management Act and guidelines do not impose this requirement and local regulations	No changes are required to address Centennial's concerns about regulations that require new subdivisions to depict the shoreline buffer on the plat or their concerns about notice on title. Requirements to include notice on title and to depict development restrictions like a buffer on the face of a plat are

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	are required to be consistent with the Shoreline Management Act. *May v. Robertson*, 153 Wn.App 57, 74, 218 P.3d 211 (2009); RCW 90.58.080(1). Nothing within the SMA provides for the recording of a title notice or the marking of property. In addition, the recording of a title notice or delineation on a plat potentially clouds title for a period beyond the time that the property may be subject to its restrictions. In practical application, if buffer regulations were to be reduced on a given property, there would be no corresponding amendment to the plat or title notice. In addition, the requirement to mark buffers poses continuous repetitive maintenance obligations on property owners and unsightly signage impairing views both to and from the shoreline.	common techniques to ensure that the development restrictions are understood by subsequent purchasers, thereby improving compliance. They are reasonable and within the City's police power. There is nothing in the SMA or general law that prohibits this approach.
21.50.510(C) – Financial Guarantees for Mitigation	Section 21.50.510 requires property owners to post security with the City to guarantee the successful completion of mitigation by a property owner. This is not contemplated under the SMA. Depending upon the size and scope of development, the potential surety will be significant and increase the potential costs of development within the City. Ecology should consider whether such sureties can be legally required and whether the surety requirement imposes additional unnecessary conditions on development.	Centennial expresses concern about the requirement to post security guaranteeing that mitigation projects will be completed. No changes are required to address their concerns. This is an important element of the City's mitigation strategy and its efforts to assure no net loss of shoreline ecological functions. When presented with a development proposal that will create a net loss of shoreline ecological functions the City can only approve the project if there is adequate mitigation to address those project impacts. In those situations, the City must ensure that mitigation is capable of being accomplished. *See, e.g.,* RCW 43.21C.060. Without this tool, the City risks approving projects that create a net loss of ecological functions because the applicant fails to fund or complete the required mitigation necessary to mitigate the loss. Applicants concerned with security or bonding requirements can always avoid that by proposing a revised or different development project that eliminates the impact(s) that triggered mitigation and bonding requirements.