

**ATTACHMENT A: FINDINGS AND CONCLUSIONS
FOR PROPOSED AMENDMENTS TO THE CITY OF SPOKANE
SHORELINE MASTER PROGRAM**

SMP Submittal – February 3, 2009

Ordinances C34326 Shoreline Regulations (located in the City of Spokane Municipal Code (SMC) 17E.060), C34327 (Land Use Application Procedures, SMC Chapter 17G.060), C34328 (Definitions, SMC 17A.020), C34329 (Land Use Violations, SMC Section 105.160), C34330 (SMP goals, policies and maps, City of Spokane Comprehensive Plan Chapter 14, Shorelines), C34331 (Shoreline Restoration Plan, a stand-alone document)

Prepared by Doug Pineo, on September 1, 2009, Updated January 26, 2010

Brief Description of Proposed Amendments:

The City of Spokane is proposing a **comprehensive update** of its Shoreline Master Program (SMP).

FINDINGS OF FACT

Need for Amendment: The proposed amendments are a comprehensive update of the original City of Spokane SMP, which was adopted by Ecology into the Statewide Shoreline Master Program in 1975. The proposed amendments will remedy inconsistencies among the SMP, the Spokane Municipal Ordinance and the comprehensive plan. The existing Shoreline Master Program is inconsistent with the city's current critical areas ordinance and zoning. The updated Shoreline Master Program will reconcile shoreline management on the Spokane River and Hangman Creek with the city's critical area management and other land use and environmental management provisions, and adopts standards in the 2003 Shoreline Master Program Guidelines (WAC 173-26).

The submitted proposed amendment reflects the result of completing the new comprehensive shoreline inventory and analysis, as required in RCW 90.58.100 and WAC 173-26201.

The shorelines of the Spokane River and Hangman Creek have been altered by hydroelectric development, major shoreline landfill, conversion for agricultural use, extensive transportation and utility infrastructure, and residential, industrial and commercial development. In conformance with the Shoreline Management Act, the updated SMP manages land uses to protect shoreline natural resources and ecological function, while fostering preferred uses in shorelines, and protecting private property rights and public access to the shorelines of City of Spokane and its incorporated municipalities.

SMP Provisions To Be Changed By The Amendment As Proposed: The submittal is a comprehensive SMP update designed to comply with the SMP Guidelines (WAC 173-26), and will replace the existing SMP.

Amendment History, Review Process: The City of Spokane began the proposed SMP update with a local planning process that began in 2005, with initiation of the shoreline inventory and characterization. The record shows that an extensive process to engage a range of stakeholders and the general public in the update process occurred between 2006 and 2009. This process included 26 Plan Commission workshop meetings, nine public open houses, floating and bus tours of the Spokane River and Hangman (Latah) Creek for members of the Plan Commission and City Council, numerous staff presentations by city staff to community organizations, creation and update of a dynamic page on the city's website, and mailed notices to over 3,000 owners of record of property along and near the shorelines of the Spokane River and Hangman (Latah) Creek within the city.

This process also included public hearings before the City of Spokane Plan Commission on September 10, 2008. Affidavits of publication provided by the City indicate notice of a public hearing was published in the Spokesman Review on August 27, 2008 and September 3, 2008. On September 24, 2008, the Plan Commission voted unanimously 6-0, to pass the updated SMP on for adoption by the Spokane City Council. Public hearing occurred before the Spokane City Council on October 27, 2008. At the request of several parties, the City Council adopted several changes to the updated SMP before adopting it in ordinance on December 1, 2008. On December 18, 2008, the Mayor of Spokane vetoed #C34330, citing one of the three changes made by the City Council to the SMP forwarded by the Plan Commission. The City Council subsequently denied the Mayor's veto on January 12, 2009.

After passage of Ordinances # C34326, #C34327, #C34328, #C34329, #C34330, and #C34331, on January 12, 2009, the City Council authorized staff, via Council Action Memorandum on January 22, 2009, to forward the proposed amendments to Ecology for approval. The proposed updated City of Spokane SMP update was received by Ecology for state review and verified as complete on February 3, 2009. Notice of the state comment period was distributed to state task force members and interested parties identified by the City, in compliance with the requirements of WAC 173-26-120, and as follows: The state comment period began on March 9, 2009 and continued through April 10, 2009.

On March 24, 2009, Ecology held a public hearing in Spokane to seek input on the proposed amendments. Notice of the hearing, including a description of the proposed amendment and the authority under which the action is proposed, the times and locations of the hearing/s and the manner in which interested persons may obtain copies and present their views was provided in the March 8, 2009 edition of the Spokesman Review, the City's official newspaper of record. 30 individuals or organizations submitted comments on the proposed amendments. Ecology sent all oral

and written comments it received to the City on April 22, 2009. On June 9, 2009 the City 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 amendments have 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 City also provided evidence (see above) of its compliance with SMA procedural requirements for amending an SMP contained in RCW 90.58.090.

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 -020 definitions). This included review of a SMP Submittal Checklist, which was completed by the City.

Consistency with SEPA Requirements: The City submitted evidence of SEPA compliance in the form of a SEPA checklist, and issued a Determination of Non-Significance for the proposed SMP amendments on August 27, 2008; notice of the SEPA determination was published in the Spokesman Review on August 27, 2008. Ecology did not comment on the DNS.

Other Studies or Analyses supporting the SMP update: Ecology reviewed the following reports, studies, map portfolios and data prepared for the City and municipalities in support of the SMP update:

- 1) Shoreline Inventory and Characterization Report, prepared by URS (including the digital map portfolio);
- 2) Public Participation Plan;
- 3) GIS Data including existing and proposed environment designation data and Critical Areas GIS data.
- 4) Cumulative Impact Analysis, including Reasonably Foreseeable Future Development and Use of the Shoreline, and various appendices;

Summary of Issues Raised During The Public Review Process: The City of Spokane SMP update drafting and public review process was thorough and generally not contentious. The process began with several open house workshops held throughout the city as the centerpiece of the public participation plan. The city conducted open houses throughout the update process, and published invitations to attend them in a number of daily, weekly and bi-weekly newspapers and magazines.

Public hearings were also conducted by the Plan Commission and the City Council. Public comment centered on the following topics:

- Riparian, associated upland, and associated wetland buffers, and whether shoreline buffers in different environments were too wide or too narrow;
- Height restrictions on buildings in the urbanized shorelines of the city;
- Adequacy of buffers to protect upland wildlife habitat in shorelines, including the buffer's function as habitat supporting wildlife movement corridors;
- Adequacy of the use of science in designating shoreline environments and developing buffers and other use regulations.
- Adequacy of Best Available Science (BAS) as defined in the Growth Management Act (GMA) and relevant Washington Administrative Code, for assessing and characterizing ecological function in shorelines;
- Whether the city should reduce the buffer on a particular property on Hangman (Latah) Creek at the request of the property owner;
- Whether the city should allow replacement of older manufactured housing units located within the existing buffer of 100 feet, at an existing mobile home park where the proposed buffer is also 100 feet. Riparian vegetation has been removed from the shoreline area located waterward of the existing paved road, running parallel to the river at this location.
- Whether public access is adequate for disabled anglers and boaters, and anglers who fish from non-motorized drift boats and rafts launched from trailers.

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

1. Shoreline Buffers -- Proposed buffers recommended by the Spokane Plan Commission are based on good science, including a thorough shoreline inventory and characterization of ecological functions, existing land uses, and assessment of reasonably foreseeable uses and potential cumulative impacts. The City Council acceded to a request from a single property owner to reduce the buffer on a parcel by 50% within the channel migration zone of Hangman (Latah) Creek. A detailed review of the channel migration zone by Ecology's expert in fluvial geomorphology confirmed the channel migration zone and supports the originally proposed buffer.
2. Public Access in undeveloped shorelines of the Spokane River with high ecological integrity -- Public access provisions of the updated SMP which were recommended by the Spokane Plan Commission included many provisions for visual access, building bulk

and heights, trails, including appropriate shoreline environments, setbacks, and dimensional standards. The SMP as approved by the City Council included a provision to allow public trails in the Natural shoreline environment, if no feasible alternative was available and subject to mitigation of impacts. In Spokane, shorelines designated Natural in the updated SMP, and the buffers of Urban conservancy Shorelines, are usually steep, essentially vegetatively intact, supporting a high degree of integrity of ecological functions.

The updated Spokane SMP criteria for the Natural Shoreline Environment states at Section 16E.060.650.C:

b. Designation Criteria.

The "natural" environment designation is assigned to shoreline areas with any of the following characteristics:

- i. The shoreline is ecologically intact and therefore currently performing an important, irreplaceable function or ecosystem-wide process that would be damaged by human activity;

The shoreline inventory and analysis prepared for the SMP update demonstrates that no degraded but undeveloped shorelines with similar slope, aspect, soils and potential plant communities are available to mitigate impacts resulting from development of formal public recreational pathways. Such pathways frequently require minimum widths and grades to satisfy requirements of the Americans With Disabilities Act (ADA) and are subject to long term management for assuring public safety in environments where public use is encouraged. Most commonly this means removal of trees which are judged to be potential hazards. Large living trees and dead or dying snags are important habitat components of terrestrial shoreline environments, and are also essential for long term recruitment of woody debris into stream channels.

3. The standard for protecting ecological functions in shorelines of the state, including shorelines of statewide significance, includes all aquatic life. This includes aquatic wildlife like fish, shellfish, macroinvertebrates and native aquatic algae and macrophytes, amphibian and terrestrial wildlife for which aquatic environments are critical habitat components, in addition to priority species called out in RCW 77, the Washington Fish and Wildlife Code, and Critical Areas as required by RCW 36.70A, the Growth Management Act. Policies and regulations for Dredging and In-Stream Structures in the SMP as adopted and submitted by the City are not adequate to achieve optimal implementation of the policies and priorities of the SMA in shorelines of statewide significance, as required at RCW 90.58.090(4).

4. Some policies and use regulations, and some uses and activities in certain shoreline environments do not adequately reflect the policies and priorities set forth in RCW

90.58.020. The use tables allow uses and developments in some environments where replacing or mitigating lost shoreline resources and ecological functions is not possible, because the shoreline resources and ecological functions cannot be replaced or mitigated. Thus the requirement to achieve no net loss of ecological function in implementing the SMP would not be possible. Some approved uses are not consistent with the Shoreline Environment Criteria and Management Policies in the updated Spokane SMP.

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the City's SMP proposal, subject to and including Ecology's required changes (itemized in Attachment B), 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, subject to required changes, contains sufficient policies and regulations that should assure that no net loss of shoreline ecological functions will result from implementation of the new master program amendments (WAC 173-26-201(2)(c)).

Required changes to the SMP specified in Attachment B (Required Changes numbered 3 through 8) are necessary to address issues 3) and 4) above, in the Summary of Issues Identified by Ecology as Relevant To Its Decision, improve the standards for protecting aquatic life and terrestrial wildlife and their habitats, as mandated in RCW 90.58.020, and WAC 173-26-186(8), (a) through (d).

Ecology also concludes that a separate set of recommended changes to the submittal (identified during the review process and itemized in Attachment C) would be consistent with SMA policy and the guidelines and would be beneficial to SMP implementation. These changes are not required, but can, if accepted by the City, be included in Ecology's approved SMP amendments.

Consistent with RCW 90.58.090(4), Ecology concludes that those SMP segments relating to critical areas within Shoreline Management Act jurisdiction provide a level of protection at least equal to that provided by the City's existing critical areas ordinance, and those of the adopting municipalities.

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

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

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

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

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

Ecology concludes that the City'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.

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

Ecology concludes that City of Spokane has chosen not to exercise its option pursuant to RCW 90.58.030(2)(f)(ii) to increase shoreline jurisdiction to include buffer areas of all critical areas within shorelines of the state. Therefore, as required by RCW 36.70A.480(6), for those designated critical areas with buffers that extend beyond SMA jurisdiction, the critical area and its associated buffer shall continue to be regulated by the City's critical areas ordinances. In such cases, the updated SMP shall also continue to apply to the designated critical area, but not the portion of the buffer area that lies outside of SMA jurisdiction. All remaining designated critical areas (with buffers NOT extending beyond SMA jurisdiction) and their buffer areas shall be regulated solely by the SMP.

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendments are consistent with the policy of the Shoreline Management Act, the applicable guidelines and implementing rules, once required changes set forth in Attachment B are approved by the City. Ecology approval of the proposed amendments with required changes, is effective on the date at which Ecology receives written notice that the City has agreed to the required changes.

As provided in RCW 90.58.090(2)(e)(ii) the City may choose to submit an alternative to all or part of the changes required by Ecology. If Ecology determines that the alternative proposal is consistent with the purpose and intent of Ecology's original changes and with RCW 90.58, then the department shall approve the alternative proposal and that action shall be the final action on the amendment.

