Andrew Deffobis

From: sejdrj@msn.com <donotreply@wordpress.com>
Sent: Monday, September 16, 2019 7:22 PM
To: SMP
Subject: Incoming SMP Comment

Categories: To Do Public Comment

Your Name (Optional):

Your email address: sejdrj@msn.com

Comment: I think the proposed guidelines are great. As a home owner I have always wanted to put money into structural items, like framing, good electrical and plumbing and the existing guidelines limit you on those because on the dollar amount limit. And if the former owner neglected those areas you can now bring it up to today standards. The former 50 percent rule really prevents doing the necessary upgrades. And may prevent people from making the houses able to last longer because that 50 percent limit makes you have to chose where that money goes, electrical or framing. Not both. And the value of the house is based on the past condition of the house but is being put onto today's cost, so older houses in bad condition can never "catch up". Those houses probably need the most done to them to make them safe.

Time: September 17, 2019 at 2:21 am
IP Address: 174.21.126.133
Contact Form URL: https://thurstoncomments.org/comment-on-the-proposed-shoreline-code-update/

Sent by an unverified visitor to your site.

From: Thurston County | Send Email [mailto:spout@co.thurston.wa.us]
Sent: Tuesday, March 19, 2019 11:11 AM
To: Brad Murphy <brad.murphy@co.thurston.wa.us>
Subject: Thurston County Shoreline update

This email was created by the County Internet web server from the email masking system. Someone from the Public has requested to contact you with the following information:

To: **Brad Murphy**

Subject: **Thurston County Shoreline update**

From: **John P Carpenter**

Email (if provided): jcarpenter373@comcast.net

Message:
Good morning, as the owner of two parcels on Lawrence Lake, I would like to register my support for the recommendations of the Thurston County Shoreline Stakeholder Coalition as submitted to the Planning Commission.. I believe the Commission should seriously consider the suggestions on piers and floats and dollar values to keep updated with inflation and State regulations. A high priority should be put upon protecting existing uses/structures. These are OUR homes we are talking about! Unfortunately due to illness I will not be able to attend tonight's meeting. Thank you-John

7600 Redstart Dr. SE
Olympia, WA 98513

April 17, 2019

Mr. Brad Murphy
Senior Planner, Shoreline Master Program (SMP)Review
Thurston County
2000 Lakeridge Dr. SW
Olympia, WA 98502

Re: SMP Review

Dear Mr. Murphy,

The South Sound Sierra Club Group is concerned about the County's trend of converting shorelines to favor industrial aquaculture.

In the draft SMP Chapter 19.300 General Goals and Policies, and section 19.300.120 Economic Development, B. Policy SH-23 "Water-oriented economic development, such as those aquaculture activities encouraged under the Washington Shellfish Initiative, should be **encouraged** and shall be carried out in such a way as to minimize adverse effects and mitigate unavoidable adverse impacts to achieve no net loss of shoreline ecological functions." The bolded word should be changed to **limited** due to the industry's harmful practices in bed preparation (scraping, removal of sand dollars, starfish and eelgrass), the use of heavy equipment on fragile beaches, plastic pollution with pvc pipes and netting, the spraying of pesticides and herbicides and hydraulic harvesting disrupting the substrate.

I urge a careful review of industry practices to limit expansion and more rigorous environmental protections in order to favor shoreline ecological function and public access and recreation of our **public** waters. Too much of Thurston County's shorelines has been diverted to a monoculture that is a significant risk to our forage fish habitat so important to salmon and Orca recovery.

We are not opposed to shellfish aquaculture, but advocate for environmentally responsible practices which should be specified in the SMP.

On behalf of the South Sound Sierra Club Group, representing over 2400 members, I urge you to incorporate these recommendations when finalizing the Thurston County Shoreline Master Plan.

Respectfully,

Phyllis Farrell, Chair,
South Sound Sierra Club Group

cc: Thurston County Commissioners
Thurston County Planning Commission

7600 Redstart Dr. SE
Olympia, Wa 98513

May 9, 2019

Brad Murphy
Senior Planner, Shoreline Master Program (SMP) Review
Thurston County
2000 Lakeridge Dr. SW
Olympia, WA 98502

Re: May 14 Planning Commission Meeting

Dear Brad,

I am unable to attend this meeting (vacation), but I have submitted previous testimony & written comments that shorelines (especially marine) need to be protected by buffers to ensure "no net loss" of ecological function and to protect forage fish habitat. With sea level rise, this is especially important to maintain, even increase the buffers.

In the Futurewise letter of March 6th, p.16 ***Shading forage fish spawning habitat can require 56-125 feet of marine riparian vegetation to maintain 80% of the shaded area. "Protecting Nearshore Habitat and Functions in Puget Sound" documents that protecting wildlife habitats requires buffers 240-902 feet wide.***

I urge marine buffers be maintained at a minimum, and be increased for new development.

Respectfully,

Phyllis Farrell

Greetings Commissioner Edwards.

Thank you for your service.

At the upcoming SMP, please advocate for limiting/regulating industrial aquaculture in our Thurston Co. shorelines. These practices are affecting forage fish & salmon/orca recovery. In particular, I am advocating a Phaseout of the use of plastics and recommend the use of bamboo, wood, stainless steel for PVC pipes and rope/hemp netting. Respectfully Phyllis Farrell

Dear Commissioner Morrison

Thank you for your service and environmental advocacy.

For the upcoming SMP, please advocate for limiting & regulating industrial aquaculture in our Thurston Shorelines & public waters. These practices are affecting forage fish habitat & salmon/orca recovery. I am advocating a phase out of the use of plastics in favor of bamboo, wood, stainless steel for PVC pipe & rope/hemp for netting.

Respectfully Phyllis Farrell

Andrew Deffobis

From: Ian Lefcourte
Sent: Thursday, September 19, 2019 2:22 PM
To: SMP
Subject: FW: SMP
Attachments: aquaculturepics.docx

Comment for PC

From: PlanningCommission <PlanningCommission@co.thurston.wa.us>
Sent: Thursday, September 19, 2019 11:47 AM
To: Andrew Deffobis <andrew.deffobis@co.thurston.wa.us>; Brad Murphy <brad.murphy@co.thurston.wa.us>
Cc: Ian Lefcourte <ian.lefcourte@co.thurston.wa.us>
Subject: FW: SMP

Comment for PC

From: Phyllis Farrell <phyllisfarrell681@hotmail.com>
Sent: Wednesday, September 18, 2019 2:09 PM
To: PlanningCommission <PlanningCommission@co.thurston.wa.us>
Cc: Anne Van Sweringen <avansw2@gmail.com>; Patrick Townsend <patrick.townsend@townsendsecurity.com>
Subject: SMP

Greetings Commissioners, thank you for your time and work on the County SMP review.

I want to reemphasize the need for language in this SMP that reflects the will of the County to design and regulate permissible shoreline
impacts. The language in this plan may guide practices for many years. It is my understanding that if specific language is not in the SMP, the Shorelines Hearings Boards have no jurisdiction over the permit process. So your words count!

I urge you to protect and maintain buffers, especially salt water shorelines threatened by sea level rise.

You should consider "Net Ecological Gain" over No Net Loss" if we are to further salmon recovery: Habitat loss and water quality degradation resulting from poorly regulated development has been documented to be a leading cause of the decline of the salmon populations the orcas rely on. This action has long been called for by Tribes, salmon recovery groups and a wide range of environmental partners. You can recommend this policy and permitting change!

Recommend phasing out the use of marine plastics polluting our waters and threatening sea life. Aquaculture should be able to substitute biodegradable materials for netting and tubes....hemp, bamboo, wooden tubes, stainless steel etc. I have attached pictures of the unsightly and dangerous plastic materials used in geoduck operations.

Insert language to restrict the use of hydraulic harvesting....how is it homeowners are required to have an hydraulic permit to work on stairs or bulkheads, but the aquaculture industry is allowed to "blow up" sensitive near shore environments?

Thank you for your service.

Phyllis Farrell

Sent from Outlook

Andrew Deffobis

From: Ian Lefcourte
Sent: Monday, October 14, 2019 1:07 PM
To: SMP
Subject: FW: VICTORY! Army Corps' shellfish aquaculture permit is unlawful in WA!
Attachments: 2019-10-10 Dkt 65 - ORDER Holding NWP 48 Unlawful.pdf

Categories: To Do Public Comment

See FWDed

From: Brad Murphy <brad.murphy@co.thurston.wa.us>
Sent: Monday, October 14, 2019 12:11 PM
To: Andrew Deffobis <andrew.deffobis@co.thurston.wa.us>; Ian Lefcourte <ian.lefcourte@co.thurston.wa.us>
Subject: FW: VICTORY! Army Corps' shellfish aquaculture permit is unlawful in WA!

FYI.. please include in comment matrix.

Thanks!

From: Phyllis Farrell <phyllisfarrell681@hotmail.com>
Sent: Friday, October 11, 2019 4:26 PM
To: Brad Murphy <brad.murphy@co.thurston.wa.us>; PlanningCommission <PlanningCommission@co.thurston.wa.us>
Subject: Fw: VICTORY! Army Corps' shellfish aquaculture permit is unlawful in WA!

FYI. Please note the comments on the use of plastics.... I am advocating the SMP Review include language phasing out aquaculture plastic PVC pipes and netting in favor of biodegradable materials such as hemp or bamboo.

Respectfully

Phyllis Farrell

Sent from Outlook

From: Darlene Schanfald <darlenes@olympus.net>
Sent: Friday, October 11, 2019 1:41:46 PM
Subject: Fwd: VICTORY! Army Corps' shellfish aquaculture permit is unlawful in WA!

Great News for the Protection of Puget Sound and Our Coastal Waters,

The Coalition is pleased the Federal judge agreed with us that the Army Corps shellfish aquaculture permit is unlawful in Washington State. We have said all along that the Army Corps should not have been issuing all these aquaculture permits without first doing more analysis to determine the potential impacts on the Sound and its inhabitants.

We are very grateful for all of the support we have received over these years as we brought attention to these adverse impacts. I have attached the judges order that we are evaluating. We will have more thoughts for you later.

Sincerely,
Laura Hendricks
Director, Coalition To Protect Puget Sound

From: Phyllis Farrell
To: ecyrefedpermits@ecy.wa.gov
Cc: Tye Menser; John Hutchings; Gary Edwards; Andrew Deffobis
Subject: Geoduck permit comments
Date: Wednesday, February 12, 2020 12:46:32 PM

- **Chelsea Farms** – Williams Geoduck Beach, Thurston County, 7133 Cooper Pt. Rd, Olympia, Wa-4 acres
- **Chelsea Farms** – Lewis Shellfish Beach, Thurston County, 7435 Cooper Pt. Rd., Olympia, WA-1 acre

I am submitting comments regarding the two sites above:

I am opposed to these permits and the expansion of industrial aquaculture in Thurston County and Puget Sound.

Industrial aquaculture operations are taking over our precious shorelines threatening forage fish habitat and salmon/orca recovery. Protecting our shorelines from overdevelopment and plastic contamination should be a priority over the expansion of aquaculture.

The tribes and environmental groups (including the Orca Task Force) have recommended a "net gain" standard instead of "no net loss". How would the applicants guarantee "no net loss"? How could they provide for "net gain"?

Prohibiting the use of plastics should be a provision in the permit....there are alternatives to plastic tubes and nets. Plastic pollution is jeopardizing our marine environment and restricting the use of aquaculture plastics is a step that local and state governments can and should take.

Respectfully,

Phyllis Farrell

From: Phyllis Farrell
To: Andrew Deffobis
Subject: Fw: Draft SMP comments
Date: Wednesday, May 6, 2020 5:29:55 PM
Attachments: SMPcomments5.6.20.docx

Here is the letter/comments to be included in the record.

Thank you!
Phyllis

Sent from Outlook

From: Phyllis Farrell <phyllisfarrell681@hotmail.com>
Sent: Wednesday, May 6, 2020 3:33 PM
To: Andrew Deffobis <andrew.deffobis@co.thurston.wa.us>
Subject: Re: Draft SMP

Thanks Andrew, I have developed some comments for tonight's meeting and a letter to you which I will finalize soon.

I really appreciate your patience with me and helpful responses.

My concerns re plastic are for both fishing and aquaculture operations. However, aquaculture regulation falls under the SMP and taking on fishing plastic would have to be in another process. So, I want to influence what I can during this SMP update. I know the regulations require maintenance of equipment, but with differing degrees of success. There are obvious lapses escaping into the marine environment and self regulating by the aquaculture appears inadequate while the County lacks staff and resources for adequate monitoring and enforcement.

I skimmed through Ch 19.400 re buffers, but I recall seeing some 2017 draft recommendations which seemed more stringent. How can 50' for marine Shoreline residential be adequate given sea level rise and flood risks?

I did skim through the Ch 19.500 link, but didn't see how it measured and addressed "no net loss" of ecological function. I just noticed permitting requirements re impervious surfaces, vegetation buffer requirements etc...all related to protecting shoreline function, but what of water quality, biodiversity etc. measures of ecological function?

I think I recall someone telling me the Public Hearing for the draft SMP is May 20th? Are public comments tonight wasted and should be saved?

Thanks for all you do...hoping you see this before tonight's meeting.

Regards,

Phyllis

Sent from Outlook

From: Andrew Deffobis <andrew.deffobis@co.thurston.wa.us>
Sent: Thursday, April 16, 2020 3:01 PM
To: Phyllis Farrell <phyllisfarrell681@hotmail.com>
Subject: RE: Draft SMP

Hi Phyllis,

Thanks for tuning in last night. There were other members of the public viewing the meeting. If you were using Zoom, you might have the option to see who else was there. As a meeting "panelist", I could see all the attendees (though some were just phone numbers, not named). Then again, staff and Planning Commissioners had a different link to the meeting than the public did.

We did not take verbal public testimony at the meeting. Staff asked the public to submit written comments to Polly Stoker (polly.stoker@co.thurston.wa.us) by noon the previous day, and the names of commenters were read during the meeting. Public comments were posted on the website.

Yes, there is an option for the public hearing to consider removing the requirement for applicants to demonstrate that a joint-use mooring structure is not feasible. This was a request by the Planning Commission at a previous meeting. Based on direction from the Planning Commission, I am also adding an option for the public to consider wider docks.

I realize I was scrolling pretty quickly through the document (and waiting for the Planning Commission to stop me when they had a comment or question based on their prior review of the document). I have attached a PDF of what I had on the screen for your review.

To briefly address the points you have raised:

Regarding buffers, there is an public hearing option in draft Chapter 19.400 to consider retaining the current buffers on marine shorelines.

The chapter does not specifically comment on phasing out marine plastics. Is this comment mainly directed at aquaculture practices? The SMP draft does require that materials used in aquaculture operations are of sound construction, and that gear is monitored and maintained. Operators are required to patrol for any gear that escapes and becomes debris. The SMP encourages flexibility in the technology used, which could include alternate materials.

Section 19.500.105(K) of the draft SMP contains information on the County's proposed methods of monitoring no net loss.

New development must be designed to avoid the need for shoreline stabilization. The draft SMP also requires applicants to demonstrate that "softer" methods of shoreline stabilization are infeasible prior to permitting a bulkhead.

I would encourage you to provide testimony on these items (and any others) when we get to public hearing. I can also include your email as part of the official comment record, if you would like.

Thanks for staying engaged in the process. Hopefully things will become more normal-ish soon. Stay healthy!

Regards,

Andrew Deffobis, Associate Planner
Thurston County Community Planning and Economic Development Department
2000 Lakeridge Drive SW
Olympia, WA 98502
Phone: (360) 786-5467
Fax: (360) 754-2939

From: Phyllis Farrell <phyllisfarrell681@hotmail.com>
Sent: Wednesday, April 15, 2020 8:08 PM
To: Andrew Deffobis <andrew.deffobis@co.thurston.wa.us>
Subject: Draft SMP

Greetings Andrew, I signed into the Planning Commission meeting tonight for your briefing. Thank you for your work!

I couldn't tell if there were other members of the public on as well, or if there was an opportunity for public comment.

I agree with Doug's question about differentiating between marine, lake and riparian shorelines.

I have questions about docks, piers & buoys...are you recommending removing language requiring applicant to consider multifamily buoys or docks? I thought this was a requirement and a preferred option to reduce shoreline armoring. Also, expanding dock widths from 4-6 feet, or even 8 feet, seems to contradict recommended practices.

The presentation scrolled through the document quickly, but it seemed to me few, if any, of our environmental recommendations got into the draft document....

We are opposed to reducing marine buffers, given climate change, sea level rise and water quality issues in Puget Sound.

Was there any language about phasing out the use of marine plastics?

Adopting the standard of "net gain" vs "no net loss" which is apparently not working well, given the decline of salmon and water quality. Are there measures included to ascertain cumulative effects in marine shoreline permits?

The Puget Sound Partnership is recommending reducing marine shoreline armoring by 25%...how will this be accomplished in the current SMP?

It's late, and all I can think of for now. Thank you for your work and service.

Regards,

Phyllis Farrell

7600 Redstart Dr. SE

Olympia, WA 98513

May 6, 2020

Andrew Deffobis - Associate Planner

Thurston County Planning

2000 Lakeridge Dr.

Olympia, WA 98502

Re: SMP Update Ch. 19.600

Dear Mr. Deffobis,

After reviewing the last Planning Commission meeting SMP draft document of Ch 19.600, I have the following comments:

I agree with Doug's recommendation of differentiating between marine, riparian and lake shorelines.

I have the following questions:

1) How is net loss being calculated? Are applicants, the County, or DOE required to keep data? Do they keep data, and is this reported? If net loss occurs, is the permit revoked? Given declining water quality in Puget Sound as well as declining salmon & Orca populations, "no net loss" is not being upheld or working. How is the draft SMP addressing this?
2) How are cumulative effects of a project measured and reported?
3) The Clean Water Act does not allow for water quality violations, therefore the SMP should not provide for mitigation. Projects should not violate the CWA.

Re last meeting's discussion re docks: WAC 173-26-231(2) requires reducing the adverse impacts of shoreline modifications and limit in number and extent… and to assure that modifications do not result in net loss of ecological function. I believe a requirement is to favor multi-use dock permitting, not individual new docks. The draft option to consider allowing docks in the Natural environment of marine and lake shorelines and to strike the requirement to consider alternative moorage prior to allowing piers and docks is contrary to the WAC requirement. And increasing dock widths would impact shoreline ecological function and should not be allowed except in documented cases requiring ADA accessibility.

Given the projections of sea level rise, flooding risks, water quality concerns, and no net loss requirements, marine buffers should favor the 2017 draft recommendations and not be reduced.

I did not see in the draft language any of the environmental organizations' recommendations of phasing out harmful marine plastics used in the aquaculture industry. This would require the industry to pursue innovative alternatives such as biodegradable materials including hemp, bamboo, organic netting etc. instead of plastic zip ties, pvc pipe, and plastic netting contributing to plastic pollution, harm to wildlife and loss of biodiversity.

Thank you very much for your work and assistance to me in this process. I appreciate your patience. I became involved in this process out of concern for Puget Sound water quality and salmon/Orca recovery. Our Thurston County shorelines are important in the recovery efforts. I am not a scientist and it has required a lot of time and effort to acquire a superficial understanding of the issues. Citizens rely on staff expertise and assistance for appropriate public participation. Your contributions have been really helpful and I thank you sincerely.

Respectfully,

Phyllis Farrell

From: Phyllis Farrell
To: Andrew Deffobis
Subject: Comments of PC 7.1.20 PC mtg
Date: Wednesday, July 1, 2020 5:13:17 PM
Attachments: SMP comments to Thurston Planning Commission July 1.docx

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Andrew, I have attached a draft of comments I plan on making tonight. Can you please forward to PC members so they have an electronic version or can make a hard copy?

Thanks

Phyllis

Sent from Outlook

7600 Redstart Dr. SE

Olympia, WA 98513

July 1, 2020

SMP comments to Thurston Planning Commission July 1, 2020

Greetings Commissioners,

As the SMP update process is nearing completion, I would like to emphasize the importance of the wording you recommend as this document will be in effect for many years and be the guiding document regarding the use of and protection of our shorelines. Your questions and recommendations have been reflected in the draft language, but much of the public comment and recommendations have not made it into the draft language. You can ask those be included in the draft plan.

I would like to refer you to two documents submitted by Anne Van Sweringen, representing 5 local environmental groups…the 30 pages of draft language suggestions dated July 15th, 2018 and 16 pages dated September 10, 2018. Anne is a retired environmental planner and the documents contain best available science recommendations.

Also, the Futurewise letter of March 6, 2019 has specific recommendations for areas in the draft SMP that do not meet the requirements of the SMA. Please request those recommendations be included in the draft language.

I would like you to ask how the County is addressing the "no net loss" standard required by the SMA? Between development, pollution and aquaculture, this standard is obviously not being met as evidenced by water quality issues and the decline of salmon and Orcas. Please consider asking for a "net gain" standard and the requirements to implement that….the tribes, Orca Task Force and the Puget Sound Partnership have the rationale to support such language in an SMP.

The recent federal court decision invalidating the Army Corps of Engineers general NW48 aquaculture permits will require new individual aquaculture permits. The court found that shellfish bed preparation, spraying, the use of plastics and hydraulic harvesting all have impacts on the environment. Thurston County should heed that ruling and look closer at aquaculture processes. Recommend staff prepare appropriate regulations for aquaculture permits that will address these practices and ensure "no net loss".

Maintaining and increasing marine buffers, reducing marine armoring and requiring more public access will benefit the shorelines and public interests. Please make sure these recommendations are included in the draft SMP.

Thank you

Phyllis Farrell

From: Phyllis Farrell
To: Andrew Deffobis
Subject: Re: Thurston aquaculture permit comments #201500264 & 200900657
Date: Friday, July 10, 2020 3:33:23 PM

Thank you Andrew, it was my recollection public comments would be accepted until August 1st, so I am assuming these are pending applications...if you could please forward to County staff responsible for processing the permits, I would appreciate it.

Yes, please include these comments asking to limit and regulate the expansion of industrial aquaculture in Thurston County in SMP records.

Regards

Phyllis

Sent from my iPad

On Jul 10, 2020, at 2:26 PM, Andrew Deffobis <andrew.deffobis@co.thurston.wa.us> wrote:

> Hello Phyllis,
>
> Thank you for your comments. To your knowledge, are they related to pending applications? If so, I would want to route them to the planners who are leading those project reviews.
>
> Would you like these comments included in the SMP comment record?
>
> Regards,
>
> Andrew Deffobis, Associate Planner
> Thurston County Community Planning and Economic Development Department
> 2000 Lakeridge Drive SW
> Olympia, WA 98502
> Phone: (360) 786-5467
> Fax: (360) 754-2939
>
> ---
>
> **From:** Phyllis Farrell <phyllisfarrell681@hotmail.com>
> **Sent:** Thursday, July 9, 2020 2:31 PM
> **To:** ecyrefedpermits@ecy.wa.gov
> **Cc:** Andrew Deffobis <andrew.deffobis@co.thurston.wa.us>
> **Subject:** Thurston aquaculture permit comments #201500264 & 200900657

This is in regards to the #201500264 Dibble Property Geoduck Farm application for a geoduck permit in Totten Inlet in Thurston County. Totten Inlet is already over 80% farmed, reducing biodiversity and jeopardizing ecological function. With the recent Court decision declaring that the Army Corps of Engineers general permit violates the Clean Water Act, is this request under that permit? If so, wouldn't it be invalid? It is my understanding that individual permit requirements are being developed, so are not yet available. Industrial aquaculture has converted our shorelines into factory farms limiting public access, polluting our public waters with plastics and whose practices are disrupting the shoreline ecology. Please deny aquaculture permits until more protective guidelines are available.

Re: the #200900657 Taylor Shellfish Eld Inlet application expanding oyster/clam operations from 99 acres to 128 acres. Is this under the Army Corps of Engineers general permit disallowed by the recent Court decision? Such a large operation converting our public waters and shorelines to industrial purposes restricts public access and navigation with such a huge 200 foot dock.

Industry operations are jeopardizing ecological function, reducing biodiversity and polluting with plastics. Please deny permits and develop protective guidelines which guarantee no net loss.

Respectfully,

Phyllis Farrell

Julie Frick
P.O. Box 11773
Olympia WA 98508

Thurston County
Planning Commission
2000 Lakeridge Dr. SW
Olympia WA
98502

PLEASE ESTABLISH GUIDELINES
ABOUT USE of PLASTICS
IN OUR MARINE ENVIROMENT

THANK YOU

JULIE FRICK

Dee W. Hock
Founder and CEO Emeritus
Visa Inc.

October 5, 2019

John Hustings, Thurston County Commissioner.
Gary Edwards, Thurston County Commissioner.
Tye Menser, Thurston County Commissioner.
Joshua Cummings, Thurston County Director of Community Planning and Development.
Building One, room 269, 2000 Lakeridge Drive SW, Olympia WA 98502-1045.

cc Dusti Demarest, Editor, Olympian. 522 Franklin St. S.E. Olympia, WA 98501

Re: Notice of Caslin Geoduck project, TPN60710000400-- Case 201910102464

This letter is written to object to the above named Geoduck project in particular, and "Geoduck farms," in general. To begin with, I urge you to change your perspective which results in nomenclature such as "farm, agriculture, or aquiculture," when, in actuality, such ventures are nothing but biological manufacturing.

My objections to this project are numerous.

1. The tidelands, which are part of each waterfront owner's property, cannot be separated from the whole of Eld Inlet, and Eld Inlet cannot be separated from the whole of Puget Sound, nor the Sound separated from the Pacific Ocean, all of which are invaluable public commons. What is done with the tidelands in front of each waterfront property, is done to the whole of Eld Inlet, the Sound, and the ocean.

2. Such a commons as Eld Inlet cannot be separated from the millions of life forms which have evolved in common with it, and depend on it for their very existence.

3. Geoduck manufacturing requires driving vast quantities of plastic pipe side by side into the sand and gravel of the tide lands from high tide to, and into, shallow water at low tide. All such plastic steadily off gasses into the water with unknown effect.

4. Such a massive intrusion radically disturbs the reproduction of now existing native clams, oysters, crabs, and countless other forms of life.

5. A variety of gulls exist, feed on the smaller, natural clams, and can be seen doing so every hour of every day on, and around the subject property. The proposed project will destroy their ability to do so.

6. Small diving ducks by the thousands winter on these shallow tidelands and exist by repeatedly diving to feed on small marine creatures. and other marine growth. Hundreds can be observed every day in front of my property, as well as the remainder of the shoreline. They cannot do so when the tidelands become a compact forest of plastic, pipe tubes containing Geoducks.

6. The ability of small migratory fish that spawn on the tidelands will be materially damaged, as will the lives of tiny crabs and countless other small creatures that now freely roam, feed, and exist on the tidelands. The loss is not just to them, but to sea run cutthroat trout, salmon fry, and other fish that feed on them. Geoduck manufacturing savages an important link in that natural chain of life.

7. Currents in the inlet flow steadily north from an existing Geoduck manufacturing enterprise south of the proposed one, whether the tide is rising or receding. There has been a noticeable amount of debris since the first one was approved three or four years ago. It will obviously increase if this second project is approved. I have lived for twenty years on this waterfront property, and watched the steady decline of fish, waterfowl, seal, sea otters, the increasing pollution of the water, and accumulation of tidal debris, as have other property owners. We do not want to see more.

8. The presence of a Geoduck manufacturing plant destroys the aesthetic value of the inlet and its shoreline, as does the constant presence of operator boats and employees tromping through the shallows in boots, carrying pipes and working implements. One needs no more than a bit of imagination, and common sense, to realize how appalling the inlet would be were all its tidelands turned into biological manufacturing. That is precisely where we are heading if this project, or any more of the like, are permitted.

9. Geoduck clams are not a primary, or important food source. If my information is correct, most are sold in Asia as a luxury food for the wealthy.

10. The benefits arising from approving this project are modest pecuniary gain to the property owner, and to the clam manufacturer, and oral gratification of a few wealthy people. To legislate such limited benefit, to the detriment of all other people, the inlet, the sound, and all creatures that depend on it for their existence is criminal, whether or not it is legal.

11. The view of Eld Inlet is a substantial part of the value of all waterfront property owners, of which I am one, which is reflected in considerably higher taxes paid to Thurston county. The proposed biological manufacturing will destroy part of that view. We should not be forced to watch daily degradation of the inlet.

2721 62nd Ave NW, Olympia Washington, 98502 - - - _Tel 360 915 2541 - - - email deehock@comcast.net

At bottom, what is the logical difference between such dense plastic pens for manufacturing an aquatic life form in an owners tide lands, and a similar density of pens on the property above tide lands for the manufacture of goats, chickens or hogs?

Most of my 91 years on this planet have been spent working, writing, and lecturing to bring about new, more equitable forms of societal organization that are more in harmony with the humans spirit, and biosphere. To do so, always requires bringing about a local change of individual perspective. Twenty year ago in my book "One from Many" I wrote:

"we remain confined in our archaic, industrial age, societal organizations, isolated specialties, and ever narrowing perspectives, while in countless rational, but insular acts, we pour billions of tons of 70,000 man-made chemicals into the biosphere that it cannot recycle, punch holes in the ozone layer of the atmosphere, destroy species by the thousands, denude the land of tens of billions of acres of trees and plants essential for a healthy atmosphere, destroy topsoil at thousands of times the rate at which it can be replaced, massively pollute the oceans, vainly try to contain countless tons of virulent man made poisons, some with a half life of 24,000 years, and daily starve 16,000 children to death. Who could have imagined that such a wealth of information, science, technology, and planning, could have resulted in collective madness, but so it has."

I beg of you, enlarge your perspective. Do not contribute to this madness with another rational, but insular act. Begin with what is before you - - - denial of this permit for more Biological Manufacturing in Eld Inlet, then adopt an ordinance prohibiting it.

With all due recognition of the desire of each owner to do with their property as they wish, and the desire of the Biological manufacturers for use of the Eld Inlet commons for their personal profit.

Sincerely,

Dee W, Hock

2721 62nd Ave NW, Olympia Washington, 98502 - - - _Tel 360 915 2541 - - - email deehock@comcast.net

Andrew Deffobis

From: Andrew Deffobis
Sent: Thursday, June 6, 2019 10:23 AM
To: SMP
Subject: FW: Toxic Blue-Green Algae Blooms on Thurston County Lakes

FYI – staff response to citizen question. I will forward any additional response I receive from Environmental Health.

Regards,

Andrew Deffobis, Associate Planner
Thurston County Community Planning and Economic Development Department
2000 Lakeridge Drive SW
Olympia, WA 98502
Phone: (360) 786-5467
Fax: (360) 754-2939

NEW WEBSITE COMING SOON: The Community Planning department will soon finish moving its content to a new website. That means a new look, new menus and a new way to find things. Some pages, like the Comprehensive Plan and Shoreline Master Program are already on the new site, so there will be no change. Go to the new site for more details.

From: Andrew Deffobis
Sent: Thursday, June 06, 2019 10:22 AM
To: rvmijensen@hotmail.com
Subject: RE: Toxic Blue-Green Algae Blooms on Thurston County Lakes

Hello Bob,

I received your message regarding algae blooms on County lakes. The Shoreline Master Program (SMP) will establish how development and redevelopment can occur on Thurston County shorelines, including marine waters, lakes over 20 acres, and streams with a flow of greater than 20 cubic feet per second.

The SMP will establish buffers on the shoreline for new development. These buffers will control how close development (including septic systems) may occur to the shoreline. The intent is to preserve the function of the shoreline environment, protect shoreline water bodies, and protecting new development from flooding, landslides, and the need for shoreline stabilization by creating physical distance between development and the water. However, the SMP will not have any requirements for existing septic systems.

The update includes a Shoreline Restoration Plan. The draft plan includes a general recommendation that education and incentives, such as septic repair/replacement loan programs, be established as resources and funding permit.

I have reached out to one of our environmental health specialists for more information on septic systems and algae blooms, and will let you know what I hear. If you have questions in the meantime, please let me know.

Regards,

Andrew Deffobis, Associate Planner
Thurston County Community Planning and Economic Development Department
2000 Lakeridge Drive SW
Olympia, WA 98502
Phone: (360) 786-5467
Fax: (360) 754-2939

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From: Thurston County | Send Email [mailto:spout@co.thurston.wa.us]
Sent: Friday, May 31, 2019 6:03 PM
To: Andrew Deffobis <andrew.deffobis@co.thurston.wa.us>
Subject: Toxic Blue-Green Algae Blooms on Thurston County Lakes

This email was created by the County Internet web server from the email masking system. Someone from the Public has requested to contact you with the following information:

To: **Andrew Deffobis**

Subject: **Toxic Blue-Green Algae Blooms on Thurston County Lakes**

From: **Bob Jensen**

Email (if provided): rvmijensen@hotmail.com

Message:
Dear Andy,

My name is Bob Jensen. Until recently, my wife Maria and I were residents in Pattinson Lake Townhomes. We have moved to Panorama.

I have submitted comments suggesting the updated County Shoreline Master Program address the increasing presence of toxic blue-green blooms in the shoreline lakes in Thurston County We recently returned from living in Ecuador. Does the latest update of the program require regulations on septic systems that will combat this problem?

Blessings,
Bob Jensen

Revised 1/22/2017

From:	Bob Jensen
To:	Andrew Deffobis
Cc:	pmrlowe@comcast.net; mcbeehler@outlook.com
Subject:	Thurston County Shoreline Master Program Amendments -- Toxic Blue-Green Algae Blooms
Date:	Wednesday, June 3, 2020 9:45:31 PM

Dear Andrew,

I just watched on Zoom, the Thurston County Planning Commission discussion, and your presentation regarding proposed amendments to the County Shoreline Master Program (SMP). It was not open to public discussion. Therefore, subsequently, I left you a voicemail message on your office phone.

My name is Robert (Bob) Jensen. I am deeply concerned about the increasing occurrence of toxic blue-green algae blooms on Pattison and other shoreline lakes in the County.

I have an extensive history in the administration and adjudication of activities on the shorelines of the State. I believe I have detailed this to the County in previous written comments. Please advise me if you need elaboration of this.

The toxic algae blooms are primarily caused by leaking phosphorous into lakes. This accumulation is due to the continual of phosphorous into the lakes from septic systems. Absent requiring sewers, which is unlikely to happen any time soon; the only practical control currently available is the limitation of the outflow of phosphorous from residential septic systems into the lakes. For this reason, I advocate mandatory monitoring and maintenance of the existing systems. In addition, the problem is grave enough to consider a moratorium on new residential development on shoreline lakes; until the toxic blue-green algae blooms end on the lakes.

Unfortunately, the County Commission, approximately three years ago, rejected a proposed ordinance, which would have required a fee; which would have been used by the County Health Department, to regulate septic systems on lakes subject to increasing residential use.

As a result of this failure, and as a complement to the authority of the County Health Commission, the Shoreline Master Program must be the primary tool to control these toxic algae blooms.

I know how critical the placement of sewers is to controlling the blooms. I lived in Seattle, as a youth, when many beaches on Lake Washington were closed due to such blooms. Once the residential development around the lake was protected by sewers, the toxic blooms stopped. Once again, the beaches were open both to the public, and private use.

I later saw this same situation occur on Eastern Washington lakes in the mid 1970's. Studies then proved toxic blue green algae blooms were occurring due to the over-loading of phosphorous. In fact, in 1976, a major toxic algae bloom occurred during this time on Lake Spokane, below Spokane on the Spokane (Columbia) River. It caused a major fish kill, as well as adverse physical and psychological effects on many of the

residents of that lake. The source of the phosphorous loading in that incidence, was a temporary planned bypass of Spokane's sewage treatment plant, during the period when the upgraded plant was connected to the sewer, which discharged into the river.

Please advise me how and when I can present my proposal to the Planning Commission, prior to approval of the proposed amendments to the SMP.

My telephone number is: 360-259-2736; my email address is: rvmijensen@hotmail.com.
Thank you kindly for your attention.

Respectfully yours,
Bob Jensen

Ian Lefcourte

From: kanui1975@gmail.com <donotreply@wordpress.com>
Sent: Saturday, July 13, 2019 10:49 AM
To: SMP
Subject: Incoming SMP Comment

Your Name (Optional): Nicholas Kanui Worst

Your email address: kanui1975@gmail.com

Comment: Hello,
I recently purchased property on Pitman Lake with the intent of using the lake for swimming and fishing. Currently, it's zoned as Conservancy, meaning I can obtain a permit to create a gravel path to the lake through 1000-1500 feet of brush and hip deep marshland with an environmental mitigation plan. If it becomes zoned Natural, landfilling is not permitted at all, so a permanent path would be extremely difficult to create and maintain.
I can't use the lake if I can't get to it and that seems unfair that I own part of it and pay taxes on it. I don't want a lake house or water ski on the lake but it would be nice to go swimming or paddle a canoe around during the summer. Please let me know what options I have.
Thank you for your consideration,
Nicholas Kanui Worst

Time: July 13, 2019 at 5:48 pm
IP Address: 73.11.182.26
Contact Form URL: https://thurstoncomments.org/comment-on-the-proposed-shoreline-code-update/

Sent by an unverified visitor to your site.

From:	Annabel Kirschner
To:	Andrew Deffobis
Subject:	Planning Commission Meeting 7-1-2020
Date:	Wednesday, July 1, 2020 4:33:47 PM

Dear Planning Commission:

I am making a few written comments for the Planning Commission, because the speaker on my computer doesn't always work for ZOOM meetings.

First, like many others in Thurston County, I strongly think the Planning Commission must do all it can to preserve the natural environment (streams, lakes shorelines, forested areas, parks, etc) from the runaway development we see just north of here. Pierce, King and Snohomish counties have been destroyed by sprawl and development. The commission's job is to see that it doesn't happen here.

Yes, the county will grow substantially in the next few decades. That growth MUST be confined to the urban growth area, making these more compact. This will make public transportation more feasible and help reduce traffic congestion.

Developers will NOT LIKE THIS. They make easy money by by plowing up new land and creating sprawl. There is NO reason your office or Thurston County residents need to put up with this. If a developer doesn't like county regulations, he/she can go elsewhere. There are plenty of responsible developers.

Also, the agency must do much more to protect our shorelines. I have been told that geoduck operators do not need a permit to bulldoze and pressure wash tidelands. If this is really the case it is UNBELIEVABLE. Most geoducks are sold abroad so you are allowing commercial entities to destroy OUR environment for money. Is someone in your office getting kickbacks for this? All fishing and shellfishing must be strongly regulated to protect what we have left of a once thriving aquaculture and to try and bring some of this back.

Development along shorelines must also be strictly regulated with no relaxation on setbacks, bulkheads or docks. These regulations actually need to be made stricter and enforced whenever shoreline property is sold.

Without these and other efforts at regulation, the county's environment will deteriorate, traffic will become a nightmare, our waterways will become more polluted, air pollution will increase and our quality of living will go down while of cost of living increases. Please help the county avoid these problems.

Sincerely

Annabel Kirschner

1008 Loete Ct. SE

Tumwater, WA 98501

From: Esther Grace Kronenberg
To: Andrew Deffobis
Subject: Shoreline Master Plan
Date: Wednesday, July 15, 2020 12:31:39 PM

Dear Mr. Deffobis,
Please share these comments with the Planning Commission and include them in the public comments on the Shoreline Master Plan.

Dear Planning Commission,

I write as a private citizen who also is a member of the League of Women Voters of Thurston County's Water Study Team regarding the Shoreline Master Plan update.

The Water Study Team has learned that Thurston County faces serious issues around water quality. There is ample evidence of increasing degradation of our waters from Thurston County's own Water Resources and Environmental Health Departments, LOTT and other non-profits engaged in this work. In addition, climate change is already leading to rising sea levels around the country. In light of the increasing development pressures in our County and the current fragile state of our water resources, it is imperative that the Planning Commission act with foresight and determination to safeguard our water resources as its highest priority when considering the Shoreline Master Plan.

Among the suggestions made by Futurewise and the South Sound Sierra Club, I support the following measures to protect the water quality of our area.

- adoption of a "net gain" standard to quantify data
- maintenance of current marine buffers and an increase for new developments, especially important given current and projected sea level rise
- phasing out the use of aquaculture plastics to prevent further degradation of water quality and protection of sealife from microplastic pollution
- prohibiting destructive industry practices, such as the use of heavy equipment on fragile beaches and the spraying of herbicides and pesticides
- limiting armoring of docks and bulkheads, which can be done by requiring community rather than individual docks, especially important for the survival of our threatened orca population.

We are in the 21st century at a time where the common good needs to be protected over calls for individual property rights. We can no longer afford to continue on a path that values one person's "right" over the community and the ecosystem's sustainability lest we all suffer in the long run. A pragmatic policy that benefits the greater community and the generations to come is more important now than ever before as we face multiple crises that will challenge our ability to come together as a community for the greater good.

I urge you to weigh the health of our shared environment which we all rely on for material sustenance, economic prosperity, and recreational uses as the primary consideration in any changes to the Shoreline Master Plan.

Thank you.

Sincerely,
Esther Kronenberg

Andrew Deffobis

From: Andrew Deffobis
Sent: Monday, June 3, 2019 4:21 PM
To: SMP
Subject: FW: SMP? no use of WDFW Riparian Science & Mgt Recs document

Categories: To Do Public Comment

FYI

Andrew Deffobis, Associate Planner
Thurston County Community Planning and Economic Development Department
2000 Lakeridge Drive SW
Olympia, WA 98502
Phone: (360) 786-5467
Fax: (360) 754-2939

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From: Andrew Deffobis
Sent: Monday, June 03, 2019 3:54 PM
To: Elizabeth Rodrick <elizrodrick@gmail.com>
Cc: Brad Murphy <brad.murphy@co.thurston.wa.us>; Cynthia Wilson <cynthia.wilson@co.thurston.wa.us>
Subject: RE: SMP? no use of WDFW Riparian Science & Mgt Recs document

Note: The Planning Commission has been blind-copied on the response to this message at the request of the message author.

Hello Elizabeth,

Thank you for your comments. We are aware that Volume 1 was published last year, and that a draft of Volume 2 is currently available for review, but unpublished. We will be discussing these documents with Ecology and WDFW with respect to the SMP update, and will bring information forward to the Planning Commission at a future meeting.

We have not begun our next CAO update, but that project will also involve an updated review of scientific literature. I expect the updated WDFW riparian guidance will also be part of that literature review.

Please feel free to check in with me as the SMP update moves forward.

Regards,

Andrew Deffobis, Associate Planner
Thurston County Community Planning and Economic Development Department
2000 Lakeridge Drive SW
Olympia, WA 98502

Phone: (360) 786-5467
Fax: (360) 754-2939

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From: Elizabeth Rodrick [mailto:elizrodrick@gmail.com]
Sent: Wednesday, May 15, 2019 2:49 PM
To: Andrew Deffobis <andrew.deffobis@co.thurston.wa.us>
Subject: Fwd: SMP? no use of WDFW Riparian Science & Mgt Recs document

Sorry, I had the wrong email address!
---------- Forwarded message ---------
From: **Elizabeth Rodrick** <elizrodrick@gmail.com>
Date: Wed, May 15, 2019 at 2:40 PM
Subject: SMP? no use of WDFW Riparian Science & Mgt Recs document
To: <andrew.deffobis@thurston.co.wa.gov>
Cc: Teresa Nation <teresa.nation@dfw.wa.gov>

Dear Andrew,
In reviewing your memo dated May 9, 2019 on SMP Buffers, I noticed that you did not cite the following publications which are the most recent science on riparian ecosystems science and management.
Riparian Ecosystems, Volume 1: Science synthesis and management implications. 2018. Timothy Quinn, George Wilhere and Kirk Krueger, (Managing Editors). A Priority Habitat and Species Document of the Washington Department of Fish and Wildlife, Olympia.
Riparian Ecosystems, Volume 2: Management Recommendations. 2018. Amy Windrope, Timothy Quinn, Keith Folkerts, and Terra Rentz. A Priority Habitat and Species Document of the Washington Department of Fish and Wildlife, Olympia.

I learned from WDFW that the Draft Volume 2 was released in May 2018 and is now in the final stages of review. I believe the draft was placed on the WDFW website for use because it had thorough advance peer review and they do not expect substantial revisions. The Washington Department of Ecology helped fund this study and I assume they will use it to update their guidance to local governments on the SMP and CAO.

My questions are:
1) Have reviewed these documents?
2) Have you consulted either WDFW or WDOE on the use of them to update the Thurston County SMP?
3) What advice did you receive?
4) Will you use these documents in your next update of the CAO?

I would appreciate a response to these questions and please copy the Planning Commission.

Thank you,
Elizabeth Rodrick, Vice President
Black Hills Audubon Society

THURSTON COUNTY
WASHINGTON
SINCE 1852

COUNTY COMMISSIONERS

John Hutchings
District One
Gary Edwards
District Two
Bud Blake
District Three

RESOURCE STEWARDSHIP DEPARTMENT

Creating Solutions for Our Future

Brent Butler
Director

May 19, 2017

CERTIFIED

Shorelands Permit Coordinator
Shorelands and Environmental Assistance Program
Department of Ecology - Southwest Regional Office
P.O. Box 47775
Olympia, WA 98504-7775

Washington State Attorney General
Ecology Division
1125 Washington Street SE
Olympia, WA 98504-0100

SUBJECT: **PROJECT No. 2014108800, ChangMook Sohn**

Dear Sir/Madam:

We are enclosing a Shoreline Management Permit recently issued by Thurston County. The permit is accompanied by relevant information from the case file.

Should you have any questions, please feel free to contact our office at (360) 786-5490.

Sincerely,

for

Tony Kantas
Associate Planner

\\Apollo\Apps\Track\Planning\Amanda Save File\JARPA - Shoreline Substantial Development XC\Shoreline Permit\2014108800.shorelinepermit.sohn.doc
Enclosures

cc/enc: ChangMook Sohn
Jesse DeNike, Plauche and Carr LLP
Chris Gourley, WDFW
cc: Mike Kain, Resource Stewardship

SHORELINE MANAGEMENT ACT OF 1971
PERMIT FOR SHORELINE MANAGEMENT SUBSTANTIAL DEVELOPMENT
THURSTON COUNTY

Date: May 19, 2017

Type of Action:	**Substantial Development Permit**
Project No.:	2014108800
Sequence No.:	14-129647 XC
Administering Agency:	Thurston County Resource Stewardship
Date Decision Received:	February 17, 2017
DECISION:	**APPROVED**

Pursuant to RCW 90.58, a Permit is hereby granted to: **ChangMook Sohn**

PROJECT: Approval of a shoreline substantial development permit to operate a commercial intertidal geoduck operation on 1.1 acres of private tidelands.

PROPERTY LOCATION: 930 – 76th Avenue N.W., Olympia, WA

The project will be within a shoreline of the state (RCW 90.58.030)(2)(c). The project will be located within a **Conservancy** shoreline designation. Development pursuant to this permit shall be undertaken pursuant to the following terms and conditions:

SEE ATTACHED

Construction or substantial progress toward construction of a project for which a permit has been granted pursuant to this program must be undertaken within two (2) years after the approval of the permit by the Legislative Body or the end of appeal processes, if such have been initiated, or the permit shall terminate.

No permit authorizing construction shall extend for a term of more than five (5) years. If a project for which a permit has been granted has not been completed within five (5) years after the approval of the permit by the local government, a single extension of up to one year may be authorized. A request for extension must be filed before the expiration of the five year permit period.

This Permit is granted pursuant to the Shoreline Management Act of 1971, and nothing in this Permit shall excuse the applicant from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project, but not inconsistent with the Shoreline Management Act (Chapter 90.58 RCW).

This Permit may be rescinded pursuant to RCW 90.58.140(7) in the event the permittee fails to comply with the terms or conditions hereof.

CONSTRUCTION PURSUANT TO THIS PERMIT WILL NOT BEGIN OR IS NOT AUTHORIZED UNTIL THIRTY (30) DAYS FROM THE DATE OF FILING THE FINAL ORDER OF THE LOCAL GOVERNMENT WITH THE REGIONAL OFFICE OF THE DEPARTMENT OF ECOLOGY AND THE ATTORNEY GENERAL, OR UNTIL ALL REVIEW PROCEEDINGS INITIATED WITHIN THIRTY (30) DAYS FROM THE DATE OF SUCH FILING HAVE TERMINATED.

5/19/17
Date

Signature of Authorized Local Government Official

ATTACHMENT

SHORELINE MANAGEMENT ACT OF 1971
PERMIT FOR SHORELINE SUBSTANTIAL DEVELOPMENT
THURSTON COUNTY

PROJECT NO. 2014108800
SEQUENCE NO. 14-129647 XC

1. The proposed project must be consistent with all applicable policies and other provisions of the Shoreline Management Act, its rules, and the Shoreline Master Program for the Thurston Region.

2. The Applicant shall comply with all conditions of the Mitigated Determination of Non-Significance, dated May 3, 2016.

3. Aquaculture preparation, planting, maintenance, and harvesting shall be in compliance with the most current version of the Washington State Geoduck Growers Environmental Codes of Practice for Pacific Coast Shellfish Aquaculture, except as otherwise conditioned or required by Thurston County Resource Stewardship or any other required government permits.

4. Bed preparation must commence within two years, and all tubes and netting must be installed within five years of the effective date of this permit. The effective date is the date of the last action required on the shoreline permit and all other government permits and approvals that authorize the development to proceed.

5. No physical work on the aquaculture beds shall be initiated until all required State and Federal permits and approvals have been granted.

6. The Applicant shall ensure that all anti-predator nets and tubes are secured in place to prevent them from escaping from the project area.

7. Physical activities on the beach pursuant to this permit shall not begin and are not authorized until 21 days from the date of filing of the Hearing Examiner's decision with the Department of Ecology, as required in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within 21 days from the date of filings have been terminated, except as provided in RCW 90.58.140(5)(a) and (b).

8. There shall be no removal of shrubbery or fallen trees located in the buffer of the toe of the marine bluff or on the beach during placement of the bed.

9. All activities related to the proposed geoduck bed shall be in substantial compliance with the site plan submitted and made part of the Staff Report, including modifications as required by this approval. Any expansion or alteration of this use will require approval of a new or amended Shoreline Substantial Development Permit.

10. If access to the beach for planting geoduck tubes, netting, pumps, or any other equipment will be over the upland portion of this property, it will need to be done so as to prevent any vehicle or equipment travel, or parking of any portion of the septic system or system components, near the well. Staging of equipment and materials for this project also should not be done on any portion of the septic system or system components.

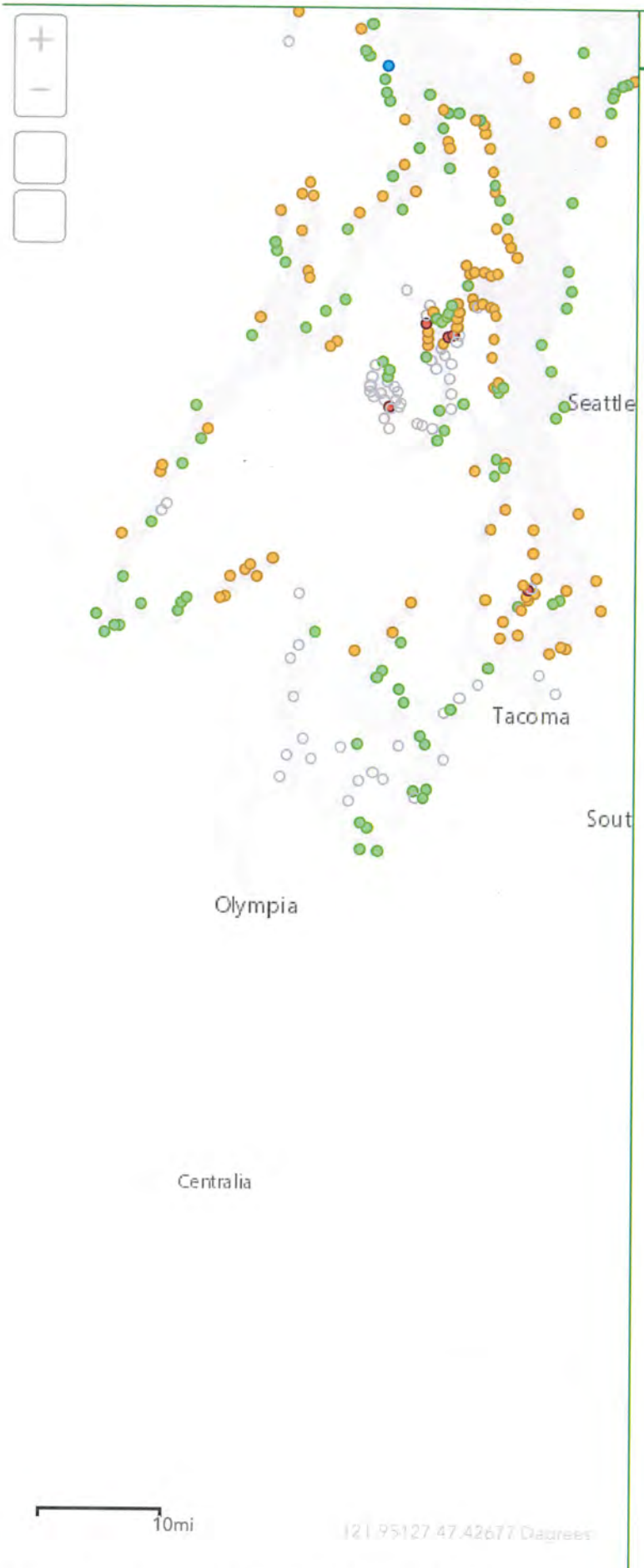
11. A Construction Stormwater Permit from the Washington State Department of Ecology may be required. Information about the permit and the application can be found at: http://www.ecy.wa.gov/programs/wq/stormwater/construction/permit.html. It is the Applicant's responsibility to obtain this permit if required.

12. Prior to installation of the Farm, the Applicant will deliver to Thurston County Resource Stewardship Department a copy of the lease agreement with the farm operator acknowledging that the Applicant and operator are each responsible for ensuring the Farm is managed in compliance with the Farm's application materials and conditions of approval.

13. Site visits shall be made to check and clean up any debris in the Farm vicinity. These will occur at least once every week and after major storm events. The permittee shall maintain a record with the following information, and the record shall be made available upon request to Thurston County Resource Stewardship Department: date of patrol, location of areas patrolled, description of the type and amount of retrieved debris, and other pertinent information.

14. The permittee shall maintain a record of Pacific herring spawn surveys, including the date and time of surveys; the area, materials, and equipment surveyed; results from the survey; etc. The record of Pacific herring spawn surveys shall be made available upon request to the Thurston County Resource Stewardship Department.

Puget Sound Eelgrass Monitoring



Legend

Seagrass Species

- Eelgrass
- Eelgrass and Z. japonica mix
- Eelgrass and Surfgrass mix
- Z. japonica
- Surfgrass
- No seagrass

Washington Governor - Jay Inslee

Gov. Inslee's Shellfish Initiative

The Washington Shellfish Initiative is a powerful partnership between state and federal government, Tribes, the shellfish aquaculture industry and non-government entities to promote critical clean-water commerce, elevate the role that shellfish play in keeping our marine waters healthy and create family wage jobs.

In 2011, following the launch of the National Shellfish Initiative - under former Governor Gregoire's leadership - Washington was the first state in the nation to establish a shellfish initiative to advance our shellfish goals.

Shellfish have an important place in Washington state's heritage. Tribes have harvested shellfish for generations, feeding their communities from Puget Sound and coastal shores.

Shellfish farming is also a foundation for rural Western Washington economies. We lead the nation in farmed shellfish production with 10,616 metric tons of oysters, clams, and mussels in 2013. Washington shellfish growers directly and indirectly employed over 2,700 people and provided an estimated total economic contribution of $184 million in 2010.

Looking Ahead – Shellfish Initiative Phase II

Since the 2011 Washington Shellfish Initiative, we've made important progress, but more work remains. The Shellfish Initiative's Phase II renews our commitment to Puget Sound and coastal communities in all aspects of commercial, recreational and tribal based shellfish harvest. This phase of the Shellfish Initiative aims to:

1. **Ensure clean water.** Prevent and fix pollution problems and re-open shellfish beds.
2. **Embrace strategies to address ocean acidification's impact on shellfish.** Implement strategies through the Marine Resource Advisory Council, the Washington Ocean Acidification Center, and other collaborative efforts.
3. **Advance shellfish research topics.** Study diverse topics from harmful algal blooms to economic impacts and ecosystems services.
4. **Improve permitting processes to maintain and increase sustainable aquaculture.** Increase predictability and timeliness in aquaculture permitting.
5. **Restore native shellfish.** Grow and plant baby Olympia oysters and Pinto abalone in native habitat.
6. **Enhance recreational shellfish harvest.** Connect people with shellfish and harvest experiences, protecting shoreline environments and restoring water quality around Puget Sound, Willapa Bay, Grays Harbor, and the outer coast.
7. **Educate the next generation about shellfish.** Engage students and the public in understanding local shellfish resources, ecosystems services and water quality.

Key Successes

- **Reopened shellfish beds.** By solving water quality pollution problems, 2,429 acres of shellfish beds have been opened in Oakland Bay, Quartermaster Harbor, Hood Canal/Belfair, Kingston and Dungeness Bay, since 2012. More from WA Dept. of Health **here** (http://www.doh.wa.gov/CommunityandEnvironment/Shellfish/GrowingAreaRestoration).
- **Native shellfish restoration hatchery.** NOAA and the Puget Sound Restoration Fund opened a **native shellfish restoration hatchery** (http://www.nwfsc.noaa.gov/news/features/hatchery/) to grow baby Olympia oysters and Pinto abalone. This hatchery sets the stage for future larger-scale restoration of native species. See a video to learn more.
- **Streamlined permit process.** The Shellfish Interagency Permitting team developed key tools for assisting applicants and permit reviewers in navigating the **shellfish aquaculture permitting process**.
- **Community engagement.** **Washington State Parks and other partners** have organized six Shellfest events, connecting local communities with their shorelines, since the Washington Shellfish Initiative was announced in December 2011.
- **Pollution reduction.** Helping to prevent sewage from polluting our waters, the **Clean Vessel Program** (http://parks.state.wa.us/466/Clean-Vessel-Program) installed and replaced sewage pump-outs for boaters at 31 locations around Puget Sound and on the coast.
- **Tackling ocean acidification.** The Washington State Blue Ribbon Panel on Ocean Acidification created a comprehensive strategy for addressing **ocean acidification** in Washington's marine waters. Washington became a leader in the nation by demonstrating what a state can do to address ocean acidification.

Contact

Jennifer Hennessey
Shellfish Policy Advisor, Governor's Office
360.902.7311
Jennifer.Hennessey@gov.wa.gov

Resources

Washington Shellfish Initiative (WSI)

- WSI Phase II Policy Brief (http://www.governor.wa.gov/sites/default/files/shellfishoverview.pdf)
- WSI Phase II Work Plan (http://www.governor.wa.gov/sites/default/files/ShellfishWorkPlan.pdf)
- WSI Phase II NOAA Fact Sheet (http://www.governor.wa.gov/sites/default/files/WSI%20factsheet.pdf)
- WSI 2011 White Paper

Related Websites

Partners:

- NOAA National Shellfish Initiative (http://www.nmfs.noaa.gov/aquaculture/policy/shellfish_initiative_homepage.html)
- WA Dept. of Health (http://www.doh.wa.gov/CommunityandEnvironment/Shellfish)
- WA Dept. of Ecology
- WA Dept. of Fish & Wildlife (http://wdfw.wa.gov/fishing/shellfish/)
- The Northwest Association of Networked Ocean Observing Systems (NANOOS) ocean acidification monitoring (http://nvs.nanoos.org/ShellfishGrowers)
- University of Washington Ocean Acidification Center
- Puget Sound Restoration Fund (http://www.restorationfund.org/)
- Pacific Coast Shellfish Growers Association (PCSGA) (http://pcsga.org/)
- Washington Sea Grant (http://wsg.washington.edu/aquaculture/index.html)
- Pacific Shellfish Institute (http://www.pacshell.org/)
- The Nature Conservancy (http://www.washingtonnature.org/oysters/chelseafarms)
- Washington Shellfish Week Calendar
- The Razor Clam Society

Other:

- Map: Shellfish Safety Information (WA Dept. of Health)
- Results Washington: Sustainable Energy & A Clean Environment (http://www.results.wa.gov/goals-progress/goals/sustainable-energy-clean-environment/goal-map)

WASHINGTON SHELLFISH INITIATIVE

January 2016

Washingtonians make hundreds of thousands of trips each year to the coast to harvest razor clams. Tribes have harvested shellfish for generations upon generations, feeding their communities with healthy protein from Puget Sound and coastal shores. The shellfish industry is a foundation of Western Washington's rural economy and an integral part of our state's heritage.

Indeed, Washington leads the nation in farmed shellfish production, with approximately 10,500 metric tons of oysters, clams and mussels harvested in 2013. In recent years, this yield contributed $184 million in economic benefits. Washington shellfish growers employed more than 1,900 employees and created 810 indirect and induced jobs across the state.

Our shellfish — a well-deserved source of pride for local growers — are sought by consumers around the world. Shellfish are also a key part of our marine ecosystems, providing habitat and helping filter and cleanse water. For all these reasons, shellfish are an extraordinary state resource.

The Washington Shellfish Initiative

Thousands of acres of shellfish beds that are closed due to pollution need to be cleaned up, and at least two native shellfish species that are either significantly diminished (Olympia oysters) or imperiled (pinto abalone) need to be restored.

To accomplish these actions, Washington must renew its protection, restoration and enhancement work as well as expand public education on the importance of our shellfish resources. These efforts will pay off in more recreation opportunities, additional clean water jobs, and healthier coastal marine waters and Puget Sound.

The Washington Shellfish Initiative is an innovative partnership among state government, federal government, tribes, the shellfish industry and nonprofit organizations to promote clean water commerce, create family-wage jobs and elevate the role that shellfish play in keeping our marine waters healthy.

Launched originally in 2011 following the National Oceanic and Atmospheric Administration's National Shellfish Initiative, Governor Jay Inslee is launching the second phase of the initiative in January 2016.

Jay Inslee
Governor

A history of accomplishments

Through solving water pollution problems, 2,429 acres of commercial shellfish beds have been opened in Oakland Bay (Mason County), Quartermaster Harbor (King County), Belfair (Mason County), Kingston (Kitsap County) and Dungeness Bay (Clallam County) in just the past four years.

In May 2014, NOAA and the Puget Sound Restoration Fund opened a native shellfish restoration hatchery to grow baby Olympia oysters and pinto abalone. This hatchery sets the stage for larger-scale restoration of native species.

The Washington State Blue Ribbon Panel on Ocean Acidification created a comprehensive strategy for addressing ocean acidification in Washington's marine waters.

Governor Inslee and the Legislature created the Marine Resource Advisory Council and the Washington Ocean Acidification Center to advance this strategy. Washington is leading the nation — and garnering international attention — in addressing ocean acidification.

The Shellfish Interagency Permitting team developed

instructions for permit applications and mapped out the permitting steps to assist applicants and permit reviewers in navigating the permitting process.

The Clean Vessel Program paid for the replacement and installation of sewage pumpouts for boaters at 31 locations around Puget Sound and on the coast, which prevents sewage from polluting our waters.

Washington State Parks, along with a number of community partners, hosted six ShellFest events, which connected communities with the unique shellfish resources on their shorelines.

Phase II goals

The Washington Shellfish Initiative advances our goals of healthy, abundant shellfish resources for a thriving shellfish aquaculture industry, tribal ceremonial and subsistence harvest, and recreational harvest. By cleaning our waters, improving permitting processes and restoring native shellfish, we strengthen local economies and create more resilient, healthier coastal communities. Among the initiative's goals are:

- Ensuring clean water.
- Embracing strategies to address ocean acidification's effects on shellfish.
- Advancing shellfish research topics.
- Improving the permitting process to maintain and grow sustainable aquaculture.
- Restoring native shellfish.
- Enhancing recreational shellfish harvest.
- Educating the next generation about shellfish.

Working together through this initiative, we can grow nutritious food, clean up Puget Sound and promote this irreplaceable resource to local communities and world markets.

The Washington State Shellfish Initiative, led by Governor Jay Inslee, is a convergence of the National Oceanic and Atmospheric Administration's National Shellfish Initiative and the state's interest in promoting the environmental, economic and cultural importance of shellfish.

For more information visit, http://bit.ly/WAshellfishinitiative.

Washington Shellfish Initiative – Phase II Work Plan

Washingtonians make hundreds of thousands of trips each year to harvest razor clams on the coast. Tribal governments and their people have harvested shellfish for generations upon generations, feeding their communities with healthy protein from Puget Sound and coastal shores. The shellfish industry is a foundation of Western Washington's rural economy and an important part of our state's heritage. Washington leads the nation in farmed shellfish production with approximately 10,500 metric tons of oysters, clams and mussels in 2013, which generated approximately $184 million in total economic contribution, of which almost $92 million was direct revenue from the industry. Washington shellfish growers also directly employed more than 1,900 employees and created more than 810 indirect and induced jobs across the state. Our shellfish are sought by consumers around the world and are a well-deserved source of pride for local growers. Shellfish are also a key part of our marine ecosystems, providing habitat and helping filter and cleanse water. For all of these reasons, shellfish are an extraordinary resource to Washington state.

The Washington Shellfish Initiative began in late 2011. The first state initiative in the nation, it was launched on the heels of the National Oceanic and Atmospheric Administration's National Shellfish Initiative. This effort supports the long-term goal of enhancing shellfish resources in coastal waters. Much has been accomplished through the Washington Shellfish Initiative, including water quality improvements to support recreational, tribal ceremonial, subsistence, commercial and nontribal commercial harvest, a new native shellfish restoration hatchery, cutting-edge science to monitor ocean acidification and an assessment of the state aquaculture permitting process.

The goals laid out in the Washington Shellfish Initiative from 2011 are ambitious and vital to the long-term and sustained health of shellfish resources and the marine ecosystem. While important steps have been taken in the past four years, we need to continue advancing these goals to ensure clean water; address ocean acidification; establish predictable, timely and protective permitting processes; restore native shellfish to the nearshore habitat; and educate and engage communities about shellfish resources and protecting water quality.

The following work plan describes the next steps in advancing toward these Washington Shellfish Initiative goals. It outlines plans, partners and timelines to map our future.

GOAL 1: ENSURE CLEAN WATER TO PROTECT AND RESTORE SHELLFISH GROWING AREAS IN PUGET SOUND AND ON THE COAST[1].

1.1 Support sustainable local nonpoint source pollution control programs and strategies. (DOH, ECY, WSCC, WSDA)

Protect shellfish beds in counties with significant shellfish resources. Recognize the extensive economic and tribal cultural importance of the state's shellfish harvest and that it is more cost effective to protect healthy resources than to restore them once they are polluted.

Restore shellfish beds where there is a significant number of shellfish acres that have been downgraded due to pollution originating in contributing watersheds and that need to be recovered for commercial, ceremonial, subsistence and recreational purposes. (DOH National Estuary Program Pathogen Grant Implementation Strategy provides a framework for protecting and restoring shellfish growing areas. See Page 38 for a table of restoration efforts by growing area. Note that growing areas downgraded after 2012, such as Portage Bay, are not listed.) Advance the goals of protecting and restoring shellfish growing areas through the Results Washington[2] goals and processes, in addition to a broad range of local, state, federal, tribal, nonprofit and citizen-based efforts.

[1] Throughout this document, the term "coast," in the context of locations, refers to Willapa Bay, Grays Harbor and the outer coast –Washington's Pacific shoreline.

a) Support comprehensive, sustainable pollution identification and correction (PIC) programs in the 14 counties[3] that have shellfish growing areas. Evaluate PIC programs by identifying what it takes for effective coordination, identifying best practices for source identification, correcting the pollution problems identified as necessary to meet water quality standards, including National Shellfish Sanitation Program (NSSP)[4] standards over shellfish growing areas, identifying sources of sustainable and supplemental grant funding, and addressing barriers that reduce the effectiveness of local and multi-agency efforts. (DOH)

b) Develop and implement effective total maximum daily load water cleanup plans (TMDLs) or a straight to implementation (STI) plans for fecal coliform bacteria in watersheds with shellfish growing areas. (ECY)
   - Identify and implement strategies to address outer coast beach bacterial sources along North Beach in Grays Harbor County, including: 1) outreach and education to improve understanding of water quality problems; 2) increase capacity of local jurisdiction to address wastewater infrastructure improvements; and 3) implement appropriate best management practices.
   - Revisit TMDLs in the watersheds such as the Lower Nooksack River and Samish and update implementation plans based on new information and data.

c) Support the development of strong sustainable, on-site sewage management programs in Puget Sound and on the coast by implementing the Puget Sound Septic Financing Advisory Committee's recommendations to:
   - Pursue agency request legislation to provide a sustainable funding source for local on-site sewage management programs, which may include PIC work for the Puget Sound. (DOH)
   - DOH, Ecology and local health jurisdictions will work together to create a regional, low-interest loan program to help system owners repair and replace failing systems for the Puget Sound and the coast through Ecology's water quality combined funding program. (DOH, ECY)
   - Pursue other recommendations of the advisory committee when alternative approaches are needed.

d) Implement agricultural land use pollution reduction strategies to maximize implementation and maintenance of best management practices (BMPs) to meet water quality standards, including National Shellfish Sanitation Program (NSSP) standards at shellfish growing areas. (WSCC, WSDA, ECY, DOH) Use the Results Washington process to open shellfish acreage by conducting analyses of current efforts and addressing barriers to develop strategic, effective approaches that result in meeting water quality standards, including the achievement of NSSP standards in shellfish growing areas.

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[2] Results Washington is Governor Inslee's data-driven continuous improvement system for state government. Using Lean tools, Results Washington works to make government more efficient, effective and transparent. The Shellfish Coordination Group was formed as part of the Sustainable Energy & Clean Environment goal. This group focuses on the Governor's goal of restoring and protecting approved shellfish growing areas by 1) assessing what's truly going on; 2) identifying barriers towards progress; and 3) bringing state agencies together to address those barriers.

[3] Counties with shellfish growing areas are Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Mason, Pacific, Pierce, San Juan Skagit, Snohomish, Thurston and Whatcom.

[4] The National Shellfish Sanitation Program (NSSP) is the federal/state cooperative program recognized by the U. S. Food and Drug Administration and the Interstate Shellfish Sanitation Conference for the sanitary control of shellfish produced and sold for human consumption. The NSSP water quality standard for approved shellfish growing waters is a fecal coliform geometric mean not greater than 14 organisms/100 mL with an estimated 90th percentile not greater than 43 organisms/100 mL.

- Each agency providing funding to implement agriculture BMPs to protect water quality affecting shellfish beds will, consistent with Results Washington process outcomes, a) report on the BMPs implemented and funds spent in Puget Sound and coastal communities, and b) collaborate to maximize landowner participation in programs to gain broad compliance with water quality standards including NSSP standards in shellfish growing areas.
- Seek funding for additional technical assistance and implementation costs.
- Evaluate current and past pollution reduction strategies and funding programs to determine what is effective, what is not effective and why. Coordinate across federal, tribal, state and local partners. Use results to inform future strategies.
  - › Efforts will focus initially on the Samish and Nooksack watersheds as long-term water quality efforts have not resulted in sufficient and sustained water quality improvements.
- Identify an agreed-upon approach to develop PIC guidance on nonpoint source BMPs that prevent pollution, achieve water quality standards and maximize landowner participation. Washington needs agreed-upon agricultural BMPs that are designed and implemented to achieve compliance with the state water quality standards. Since 2009, state agencies and stakeholders have worked to reach agreement on a set of BMPS that will meet state water quality standards and ensure that NSSP standards are achieved in shellfish growing areas. It is important for those dependent on shellfish resources in this state that the state's natural resource agencies, in coordination with stakeholders, resolve this issue.
- Ecology is starting a process to develop guidance that identifies BMPs and combinations of BMPs that, if implemented by an agricultural producer and operated and maintained correctly, can provide certainty that it is protecting water quality and meeting the state's water quality standards. (ECY)
- Conduct a detailed survey on the coast to identify where agricultural activities are occurring, evaluate resource impacts, assess where nonpoint source pollution programs are working effectively and where not, and then develop and implement outreach. (WSCC)
- Implement the Voluntary Stewardship Program (VSP) in the opt-in counties of Grays Harbor, Mason, Pacific, San Juan, Skagit and Thurston and encourage counties to address nonpoint sources of pollution while addressing critical areas under VSP to assist with shellfish/water quality protection. (WSCC)
- Seek input from Ecology's Agriculture Water Quality Committee on strategies developed under this section.

1.2 Advance efforts to ensure manure land-application practices do not negatively impact water quality. (WSDA, WSCC, ECY, EPA)

a) Develop and advance options to eliminate unplanned and improper application of manure to agricultural lands. (WSDA, WSCC, ECY)

b) Develop more economic opportunities for dairies and other livestock owners to manage manure as a commodity. (WSDA)

c) Issue an updated concentrated animal feeding operation permit in 2016 to meet water quality standards and expedite the permit process. (ECY)

d) Coordinate state agency efforts to enhance the ability of operators and applicators to get real-time weather information. (WSCC, CDs)

e) Develop a targeted, coordinated education and outreach program for small-acreage livestock property owners. (WSCC, ECY, WSDA)

f) Develop an education and certification program for all land applicators of manure (operators and third-party applicators) and provide incentives for operators to become certified and/or to only use certified applicators. (WSDA)

g) Deploy advance technologies that can continuously detect and measure bacteria in flowing surface waters in watersheds where shellfish beds are impacted by water quality. (EPA)

h) Collaborate with local watershed partnerships to monitor water quality and identify manure land application practices that threaten surface water. Follow up with land applicators to provide education and technical assistance and, when necessary, take appropriate enforcement actions. (WSDA)

1.3 Develop a proactive approach to limit preventable pollution sources from vessels and recreational activities. (ECY, Parks)

a) Evaluate the appropriateness and feasibility of establishing a no discharge zone in all parts of Puget Sound to protect water quality and public health. (ECY)

b) Develop a strategy for commercial vessels and install more commercial pump-out facilities. (ECY)

c) Develop an implementation/outreach strategy for the no discharge zone designation. (ECY)

d) Continue clean vessel program focused in shellfish growing areas. (Parks)

e) Assess, prioritize, install and maintain toilet facilities in key areas to protect shellfish resources. (WDFW, Parks, other partners depending on location)

1.4 Support strategies to reduce sewer and stormwater outfalls to waters of the state. (DNR)

DNR, in collaboration with ECY, DOH and PSP, will implement an outfall and effluent reduction strategy to reduce impacts to state-owned aquatic lands and associated resources from sewer and stormwater discharges. The strategy will focus on greater participation in the National Pollutant Discharge Elimination System process by DNR; identification and prioritization of impacts to sediments and natural resources such as aquatic vegetation and shellfish; and alternatives to discharging wastewater and stormwater to improve water quality.

1.5 Coordinate and convene workshop(s) focused on contaminants in shellfish with agencies, researchers, tribal governments and stakeholders. (WDFW)

a) Identify available data and information relating to contaminants in shellfish.

b) Identify data gaps and prioritize needed information, including geographic areas where information is lacking.

c) Identify potential resources, collaborative opportunities and funding sources to support further information and data gathering.

1.6 Ensure that oil spill planning and preparedness protect Puget Sound and coast shellfish resources through better coordination and collaboration among agencies, tribal governments and industry. (ECY, NOAA, PSI, WSG, DOH, WDFW)

a) Improve the identification of shellfish areas in the resources at risk sections of geographic response plans (GRPs) and in other relevant mapping tools such as ERMA®– (Environmental Response Management Application) and the state's coastal atlas by developing standardized language for shellfish for inclusion in GRPs and links to appropriate GIS layers for shellfish growing and harvest areas and for culturally significant areas to the tribal governments. (ECY)

b) Generate and distribute a "how to" guide to increase registration of shellfish growers and tribal fishers/enforcement personnel in the vessels of opportunity program. (ECY)

c) Encourage participation by shellfish growers and tribal governments in northwest area contingency planning processes so area plans address shellfish-specific responses. (ECY)

d) Increase the availability of HAZWOPER (Hazardous Waste Operations and Emergency Response) and incident command system training for shellfish growers and tribal governments to improve knowledge of spill response fundamentals (funding dependent). (PSI, WSG, ECY)

e) Include tribal governments and shellfish growers in oil spill response drills as appropriate. Conduct at least one oil spill response drill within a geographic area including one or more shellfish beds by 2017. (ECY)

f) Establish a plan for baseline monitoring of shellfish in vicinity of a spill, including early notification to area shellfish harvesters by agency staff to collect samples before contaminated by oil. (DOH, WDFW, ECY)

g) Determine training options for local sensory panel experts for post-spill testing hosted by NOAA's Office of International Affairs and Seafood Inspection. (NOAA)

h) Clarify the protocol to request support from sensory experts and share sensory panel results from federal to state agencies in a timely manner. (NOAA)

GOAL 2: EMBRACE STRATEGIES TO ADDRESS OCEAN ACIDIFICATION'S IMPACT ON SHELLFISH.

Strategies to address ocean acidification – Implement key early action recommendations from the Blue Ribbon Panel (ECY)

In 2012, the Washington State Blue Ribbon Panel on Ocean Acidification recommended 42 actions that established a comprehensive strategy for addressing ocean acidification in Washington. The Marine Resources Advisory Council (MRAC) was created to advance these recommended actions, and works in collaboration with the Washington Ocean Acidification Center at the University of Washington and others to support ocean acidification research. MRAC will ensure on-the-ground implementation of the panel's comprehensive strategy by evaluating, coordinating, advocating and communicating about actions being done in Washington. MRAC will work with stakeholders, policymakers and tribal governments, many of whom are already working to address ocean acidification impacts to their communities and way of life. Over the next few years, MRAC will:

2.1 Monitor and investigate ocean acidification impacts in Washington:

a) Continue monitoring of ocean acidification conditions, helping to inform hatchery conditions and management of growing areas (related to Blue Ribbon Panel actions 6.2.1; 7.1.1; 7.2.1; 7.3.2; 7.4.1).

b) Conduct biological experiments to understand the effects of ocean acidification on marine species (related to Blue Ribbon Panel actions 7.1.1; 7.2.1; 7.3.2; 7.4.1).
c) Develop and refine forecast models of ocean acidification (related to Blue Ribbon Panel actions 7.1.1; 7.2.1; 7.3.2; 7.4.1).
d) Continue support for the Washington Ocean Acidification Center at the University of Washington to provide leadership on ocean acidification research (related to Blue Ribbon Panel actions 9.1.1; 9.1.2).
e) Develop a local source attribution model to understand how local sources of nutrients and carbon impact ocean acidification (related to Blue Ribbon Panel action 7.2.1).

2.2 Understand how local, land-based contributions affect ocean acidification by:

a) Providing support to water quality programs that reduce nutrient and organic carbon loading (related to Blue Ribbon Panel actions 5.1.1; 5.1.2).
b) When modeling tools are complete, evaluate programs and activities that can minimize impacts of local contributions to ocean acidification (related to Blue Ribbon Panel actions 5.2.1; 5.2.2).

2.3 Coordinate implementation and evaluation of adaptation and remediation strategies by supporting efforts to:

a) Implement a test seaweed cultivation and collection program (related to Blue Ribbon Panel action 6.1.1).
b) Restore native oyster populations that may improve resilience to ocean acidification (related to Blue Ribbon Panel actions 6.3.3; 6.3.4).
c) Apply multiple remediation strategies in specific locations or test areas to evaluate effectiveness of strategies in addressing ocean acidification impacts (related to Blue Ribbon Panel action 6.3.2).
d) Research the capacity for genetic adaptation to ocean acidification in important marine species (related to Blue Ribbon Panel action 6.3.5).

2.4 Increase the visibility and understanding of ocean acidification across Washington through outreach and education by supporting efforts to:

a) Incorporate ocean acidification science curriculum into the Next Generation Science Standards (related to Blue Ribbon Panel actions 8.2.1; 8.2.2).
b) Organize and support events and conferences focused on ocean acidification and its impacts (related to Blue Ribbon Panel action 8.1.2).
c) Target use of outreach and social marketing to increase understanding of ocean acidification impacts and strengthen Washington's capacity for adapting, reducing harm locally and engaging partners to develop solutions (related to Blue Ribbon Panel actions 8.1.2; 8.1.3; 8.1.4; 8.2.2).

Recommendations from the Olympic Coast National Marine Sanctuary, which formed a joint Intergovernmental Policy Council and Sanctuary Advisory Council Ocean Acidification Working Group in 2013, identified the following key early actions (KEAs) from the Blue Ribbon Panel as coastal tier 1 priorities: Actions 7.1.1; 7.3.2; 7.3.3; 8.1.2 and 9.1.2. This KEA prioritization is accompanied in its report by the following recommendations:

- Advance ocean acidification monitoring for the outer coast.
- Adequate representation of the outer coast on the Washington Ocean Acidification Center scientific advisory team.

- Conduct laboratory and field studies related to ocean acidification impacts on the outer coast.

For the full report, visit: http://olympiccoast.noaa.gov/involved/sac/sac_actions.html.

GOAL 3: ADVANCE VITAL SHELLFISH RESEARCH.

3.1 Washington Sea Grant shellfish research projects (WSG)

Over the next four years, the National and Washington Sea Grant (WSG) programs have committed funding for 10 research grants totaling more than $2.4 million to examine critical issues for shellfish aquaculture such as ocean acidification, warning systems for hypoxia and harmful algal blooms, and geoduck management. Projects will look at precautionary guidelines for culture of native rock scallops, an innovative technology to support the recovery of the Olympia oyster and studies to reduce early mortality.

Target dates:

- *New projects initiated: January 2015 and 2016*
- *Interim reports: April 2016 and 2017*
- *Final reports: April 2018*

3.2 Federal Shellfish Research Program (NOAA)

In collaboration with other federal agencies, NOAA Fisheries will create a federal shellfish biologist position to develop and oversee a future shellfish research program at the Kenneth K. Chew Center for Shellfish Research and Restoration in Manchester, Washington.

Target date: October 2017

3.3 Study the effects of Washington shellfish aquaculture operations. (WSG)

WSG was funded by the Legislature to commission research examining possible negative and positive effects, including cumulative and economic impacts of evolving Washington shellfish aquaculture practices. The research team is using modeling approaches and available data to complete pilot studies for Willapa Bay and central Puget Sound composed of several components: spatial analysis, Puget Sound circulation and ecosystem models, qualitative food web analyses and an economic synthesis.

Target dates

- *Interim report to Legislature: December 2014*
- *Final report: December 2015*

3.4 Create a prioritized list of shellfish research needs. (Pacific Shellfish Institute [PSI])

Target dates:

- *Engage the shellfish cultivation and restoration community, including tribal governments, to update the report West Coast Research and Information Needs and Priorities*
  - *September 2015 and March 2016*
- *Finalize the document: June 2016*

3.5 Assess the potential effects of sea level rise on native and farmed shellfish beds in Willapa Bay and Grays Harbor estuaries. (TNC)

SLR will deepen these estuaries and could impair shellfish farming as well as juvenile fish habitat. The Nature Conservancy (TNC) will conduct a risk assessment based on SLR inundation scenarios using the Sea Level Affecting Marshes Model and analyze shoreline characteristics and uses that would impede or support migration to new spaces. Apply the results to the current round of shoreline master program (SMP) updates in Pacific and Grays Harbor counties so adaptation strategies can be considered.

Target dates:

- *Work with Ecology staff and county planners and consultants to develop the concept and its role in SMPs for Southwest Washington: December 2014*
- *Draft risk assessments with presentation slides and maps go to technical peers for initial review: March 2015*
- *Review initial results with local shellfish farmers and other industry representatives: April 2015*
- *Final assessments available for local applications: June 2015*

3.6 Early warning system for harmful algal blooms (WSG, NOAA)

The Olympic Region Harmful Algal Blooms (ORHAB) Partnership on the coast and SoundToxins in Puget Sound are important programs that help the Department of Health target its toxin monitoring and testing to protect public health for those who harvest shellfish in our marine waters.

SoundToxins is a diverse partnership of businesses, tribal governments and Puget Sound residents that monitor for harmful algae in Puget Sound, managed by NOAA's Northwest Fisheries Science Center and WSG. It provides early warning of harmful algal bloom (HAB) events, thereby minimizing risks to human health and reducing the economic losses to Puget Sound fisheries. The program works with partners and scientists to determine the environmental conditions that promote the onset and flourishing of HABs and unusual bloom events and to document unusual bloom events and species entering the Salish Sea. SoundToxins continues to be supported via short-term research grants from NOAA and state agencies; however, a dedicated source of funding is needed to continue its vital role in Puget Sound.

The ORHAB partnership was founded in 1998 as a scientific collaborative among state, tribal and federal agencies and the University of Washington, with initial support from the NOAA Center for Sponsored Coastal Ocean Research. Its mission is to monitor plankton blooms and the presence of toxins to advance the understanding of these important coastal processes. By bringing together leading research scientists with state and tribal shellfish managers, ORHAB provides a constantly improving scientific basis for making decisions about the risks of shellfish openings. The long-term, coastwide database compiled by the ORHAB partners from sites from Neah Bay to the Long Beach Peninsula has proved extremely useful for studying broader coastal dynamics. The work of ORHAB's state partners has been supported with a surcharge on sales of state recreational shellfish licenses. Support for ORHAB's tribal partners has become more difficult to sustain, and additional funding is needed to continue the very beneficial role they play in the partnership.

Target Dates:

- *Identify potential funding sources for SoundToxins and ORHAB: March 2016*
- *Secure funding: December 2016*

3.7 Review and research shellfish ecosystem services (PSI)

a) Assess the influence of cultivated shellfish on localized water quality and sediment parameters. Build on review of shellfish ecosystem services conducted by the U.S. Geological Services during the first phase of the Washington Shellfish Initiative.

b) Provide recommendations for including shellfish cultivation in water quality trading scenarios when a water body is listed for excess nutrients or low dissolved oxygen under section 303(d) of the Clean Water Act.

Target dates:

- *Begin study: spring/summer 2015*
- *Study completed: early 2017*
- *Deliver NEP Reducing Nutrients in a Watershed final project report to Ecology: December 2017*

3.8 Assess the economic contribution of shellfish farming and wild harvest in Washington.

a) Convene state agencies and industry to design a system to improve data collection and sharing of information on the economics of shellfish with respect to harvest and production. (state agencies, industry, tribal governments)

b) Convene a task group to enhance our understanding of the upstream and downstream economic value of shellfish to build appreciation of the value-added economic components (jobs, revenue) (WDFW) including, but not limited to:

- retail sales
- tourism
- trade
- tribal commercial
- state commercial and recreational harvest

In addition, tribal governments and their citizens rely on ceremonial and subsistence shellfish harvest. Like tribal commercial harvest, this harvest is protected through treaty rights. The monetary value of ceremonial and subsistence harvest and associated treaty rights cannot be quantified, but should be acknowledged by the task group.

3.9 Promote collaborative, ecosystem-based management in Willapa Bay and Grays Harbor.

Willapa Bay and Grays Harbor are complex estuarine ecosystems that support wild stocks of finfish and Dungeness crab and a historic shellfish aquaculture industry, as well as a rich array of other species. Management challenges at the system scale, such as SLR, ocean acidification, nutrient and sediment transport, burrowing shrimp and Japanese eelgrass, are affecting both natural and anthropogenic processes. Resolving these challenges requires adaptive management and collaborative actions built on a commonly shared understanding of how the ecosystems function, how they have changed over time and what future conditions may be like. The steps below will promote cooperative, system-scale management by compiling and synthesizing information and addressing important information gaps:

a) Compile, synthesize and maintain historical data, management plans and research findings relevant to system-scale management challenges in Willapa Bay and Grays Harbor, focusing on how these ecosystems function, how they have changed over time and projections of changes that can affect management options. Make the information available via a purpose-built website. (TNC)
b) Convene resource managers, scientists and stakeholders to verify a common understanding of the ecosystems and the top-priority management challenges in each of them, and to identify research needs and information gaps that represent barriers to tackling the management challenges at a system scale. (WSU Extension Pacific County with assistance from TNC)
c) Help address the needs identified in (b) by matching them with appropriate potential funding sources, sharing the information with other participants and promoting collaborative project proposals. (TNC with assistance from WSU Extension Pacific County and other stakeholders)

GOAL 4: IMPROVE THE PERMITTING PROCESS TO MAINTAIN AND GROW SUSTAINABLE AQUACULTURE.

4.1 Programmatic biological assessment for federal permitting of shellfish activities (NOAA)

The U.S. Army Corps of Engineers (Corps), in consultation with the National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS), will develop a programmatic biological assessment (PBA) for Section 7 ESA consultation for common activities permitted by the Corps associated with shellfish, planting, harvest and restoration. Use of the PBA will increase the Section 7 consultation efficiency for applicants who meet the PBA terms and conditions.

Target dates:

- *Corps initiation of consultation: fall 2015*
- *NMFS and USFWS completion of consultation: spring 2016*
- *Corps implementation: Immediately upon completion of Section 7 consultation*
- *Report of permits issued with PBA: annually 2016–18*

4.2 Shellfish Interagency Permit Team Phase II (NOAA, ECY)

a) Upon completion of federal PBA evaluate federal/state permitting

Target dates:

- *Investigate potential of programmatic permitting: April 2016*
- *Evaluation of 2017 Nationwide Permit 48: April 2016*

b) Report to Governor on Shellfish Interagency Permit Team Phase I activities, including results and recommendations to increase efficiency of the permit process.

Target dates:

- *Draft report: February 2016*
- *Final report: March 2016*
- *Develop steps to implement recommendations: August 2016*

c) Continue quarterly meetings of full Shellfish Interagency Permit Team to maintain broad engagement with tribal, local, state and federal agencies.

- Develop a communication and outreach plan: July 2016

- Evaluation of effectiveness: ongoing
- Permit timelines to evaluate current and potential requirements for permit timelines: December 2016

d) Convene Shellfish Interagency Permit Team working groups to achieve multi-agency review of new farm permit applications.

Target dates:
- *Ad-hoc response to requests for new farm permit assistance: ongoing*
- *Develop a work plan for improved implementation: August 2016*

4.3 Improve guidance for local shoreline master programs for shellfish aquaculture. (ECY)

Develop Permit Writers Handbook. Guidance for local government and Ecology permit writers on applicable laws and rules, limits and conditions, BMPs, cumulative impacts, no net loss, and the latest information and science useful for administering shellfish shoreline permits. SIP would serve as a technical review panel. Ecology (funding dependent)

Target Dates: by fall 2016
- *Complete draft outline and timeline*
- *Complete draft RFP and scope of work for handbook development*
- *Secure funding*

4.4 Increased involvement of Department of Agriculture in shellfish farming and interagency coordination. (WSDA)

a) Continue engagement with industry through policy team shellfish lead.
b) Schedule reoccurring meetings with WSDA, industry, tribal governments and partner agencies to share information, keep lines of communication open and identify opportunities for coordination.
c) Continue agency and industry discussions on aquaculture coordinator role and ombudsman role at WSDA.

GOAL 5: RESTORE NATIVE SHELLFISH – OLYMPIA OYSTERS AND PINTO ABALONE.

5.1 Olympia oysters:

a) Continue collaborative work to reestablish sustainable breeding populations in the state's 19 priority areas located in Puget Sound. *Note: Breeding populations have already been restored in two (Liberty Bay, Fidalgo Bay) of the 19 priority areas. On-the-ground work is underway in many of the remaining 17 areas. (WDFW, tribal governments, Puget Sound Restoration Fund [PSRF])*

b) Collaboratively maintain and operate the Kenneth K. Chew Center for Shellfish Research and Restoration at the Northwest Fisheries Science Center's Manchester Lab and assist with optimization techniques for native Olympia oyster and pinto abalone production in support of state shellfish restoration goals. (NOAA, PSRF)

Target date: ongoing through September 2016

c) Produce 2,500 bags of Olympia oyster seed (seeded cultch) to accelerate Olympia oyster recovery at priority sites. Genetically diverse seed will be produced at the Kenneth K. Chew Shellfish Center using conservation protocols co-developed by PSRF, University of Washington and Washington Department of Fish & Wildlife. (PSRF)

d) Conduct water quality monitoring associated with shellfish production at the Kenneth K. Chew Center. Measurements of dissolved oxygen, salinity, temperature, pH and pCO_2 in hatchery water supply will be available daily to researchers at the center and annual seasonal data summaries available online. (NOAA)

Target dates: annual data summaries: September 2016

e) Complete the Ecology-funded, 10-acre native oyster enhancement project in Port Gamble Bay. (PSRF)

f) Seek funding to initiate an additional 10 acres of enhancement in two or three of the 19 priority locations to help reestablish breeding populations. (PSRF)

g) Advance partnerships to accelerate and expand native shellfish restoration through funds from NRCS' Environmental Quality Incentives Program, which provides payments to farmers for habitat restoration. Identify opportunities and establish processes to provide payments to tribal governments and shellfish growers for restoration of Olympia oyster habitat. (NRCS)

h) Evaluate native oyster restoration opportunities in Willapa Bay and Grays Harbor. (WSU Extension Pacific County)
- Conduct a planning phase to evaluate feasibility of restoration work in coastal estuaries, based on current available science, to determine whether more research and evaluation are needed.
- Complete survey of subtidal environments to conduct a more accurate assessment of current population size.

5.2 Pinto abalone (WDFW, PSRF)

a) Optimize hatchery efforts to more efficiently produce juvenile and larval abalone (with funding from WDFW, DNR and NOAA).

b) Outplant 5,000 juvenile abalone (2,500 in 2015; 2,500 in 2016).

c) Outplant 2 million larval abalone.

d) Complete the DNR-funded project to assess previous larval out plants and refine larval out plant methodologies.

5.3 Other native shellfish

a) Take conservation actions if other native shellfish stocks are determined to be in decline or threatened. Actions may include restoration, stock status research and fishery closures.

GOAL 6: ENHANCE RECREATIONAL SHELLFISH HARVEST.

6.1 Enhance recreational shellfish harvest. (WDFW, DOH) ***Note: This section also interconnects with Goal 1 on improving water quality as a key mechanism for increasing access to recreational shellfish harvest.***

a) Maintain levels of seeding on recreational beaches by WDFW. Incremental funding increases will be needed to maintain a base level of seed planting.
- Document increases in harvest trips and state funding resources.
- Identify and pursue other avenues for funding.

b) Identify opportunities for enhancement at key coastal recreational beaches. (WDFW)

c) Increase recreational shellfish harvest at two large and strategically placed public tidelands. (WDFW, DOH)

GOAL 7: EDUCATE THE NEXT GENERATION ABOUT SHELLFISH RESOURCES, ECOSYSTEMS SERVICES AND WATER QUALITY. ENGAGE THE PUBLIC IN SHELLFISH RESOURCES THROUGH EDUCATION AND OUTREACH.

Preserving and understanding local shellfish resources, the role they play in the ecosystem, what they contribute to local economies, the history and culture of shellfish in Washington, the human actions that affect their health, the actions that are needed to protect shellfish resources and, finally, the consequences for both humans and the ecosystem if shellfish populations decline.

7.1 Formal education goals:

a) Develop high-quality tools, curricula and materials that 1) teach K-12 students about shellfish resources in both classroom and field settings; 2) help schools meet Common Core and Next Generation Science Standards (NGSS); and 3) provide district support and train teachers to enable them to independently use the materials. (Pacific Education Institute [PEI])

b) Integrate shellfish education topics (which include ocean acidification) in multiple subject areas as they provide a real-world case study. (PEI)

c) Develop professional learning opportunities that help teachers connect shellfish resources to NGSS. (PEI)

d) Recommend sample shellfish curriculum resources for educators on the OSPI Environmental and Sustainability Education standards website. (OSPI)

e) Partner with tribal governments, state agencies and nonprofit organizations to provide internship opportunities for college students. (WSG)

f) Translate shellfish and ocean acidification scientific research findings into fact sheets and other accessible information to share on a credible website (WSG) for access by K-12 students and educators. (WSG)

7.2 Informal education and outreach goals:

a) Foster broad public understanding of local shellfish resources and the role they play in local ecosystems and economies. Topics include the history and culture of shellfish throughout Washington, human activities that impact shellfish resources and the consequences, for both humans and the ecosystem, if shellfish populations decline. Conduct activities and host events such as Whatcom Water Days, Kitsap Water Festival, Celebrate Oakland Bay, RainFest on the outer coast, State Park Shellfests, Oysterfest, Vashon-Maury Island Low Tide Festival and the Wooden Boat Festival (Olympia). (WSG)

b) Foster citizen engagement and understanding of the role of shellfish in the coastal ecosystem.
- Provide opportunities for citizen science monitoring, technical assistance programs, workshops and activities, including the State of the Oyster Study, technical assistance to tideland owners, marine biotoxin monitoring, and septic system education classes and socials.
- Provide education and outreach tailored to coastal communities and visitors, including Willapa Bay Oysters documentary series curricula and outreach activities. (WSG)
- Continue Shellfest and other educational/interpretive opportunities about shellfish and water quality, in Puget Sound, Georgia Straits, Grays Harbor, Willapa Bay and the outer coast. (WDFW, Parks, WSG)
- Develop interpretive signage at public access sites with shellfish resources on the coast and at Puget Sound locations. (Parks)

- Promote shellfish safety through Web communication and posting public beaches that are closed to shellfish harvest due to marine biotoxins, pathogens and pollution. (DOH)
- Host the Washington Shellfish Trail. (WSG)
- Develop education materials and outreach to grocery stores, farmers markets and seafood restaurants about safe shellfish handling. (WSG)

c) Host a gathering of informal shellfish educators to share resources and information. (WSG)

Key of state agency abbreviations:

- DNR – Department of Natural Resources
- DOH – Department of Health
- ECY – Department of Ecology
- Parks – State Parks
- WSCC – State Conservation Commission
- WSDA – Department of Agriculture
- WDFW – Department of Fish and Wildlife

Washington: A Shellfish State

The Environmental and Economic Value of Shellfish Resources in Washington

The farming of oysters, clams, mussels, and geoduck in the cold, nutrient-rich waters of the Pacific Northwest is a long-standing tradition and an important cultural and economic part of Washington's coastal communities.

Tribal Harvest

Tribes have harvested shellfish for generations upon generations, feeding their communities and their culture with healthy protein from Puget Sound and coastal shores.

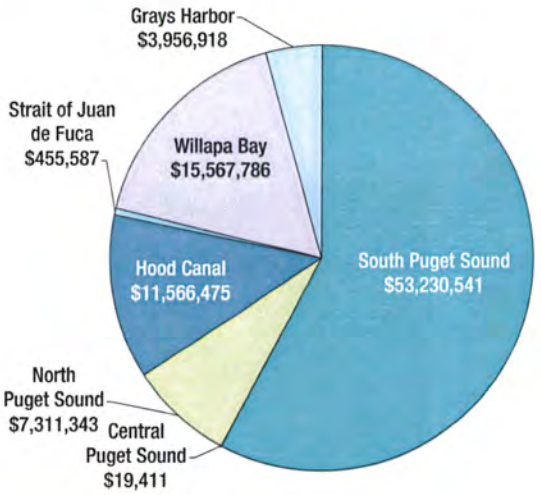
Recreational Harvest

In recent years Washingtonians and visitors made almost half a million trips to Puget Sound and the coast to recreationally harvest clams and oysters. Many families consider this an important family tradition that connects them to their past and their lands.

Shellfish Farming

Shellfish have been cultivated in Washington for more than 160 years, since our frontier days. The shellfish industry is a foundation of western Washington's rural economy and an important part of our state's heritage. Our shellfish are sought by consumers around the world and are a source of pride for the state.

Value of Washington State Shellfish Aquaculture by Region, 2013



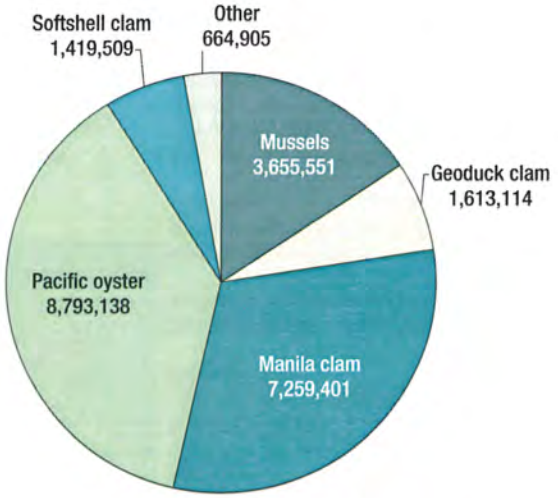
Economic Benefits

To meet the growing demand for seafood, Washington shellfish products are sold throughout the United States and exported worldwide with primary markets in Canada and Hong Kong.

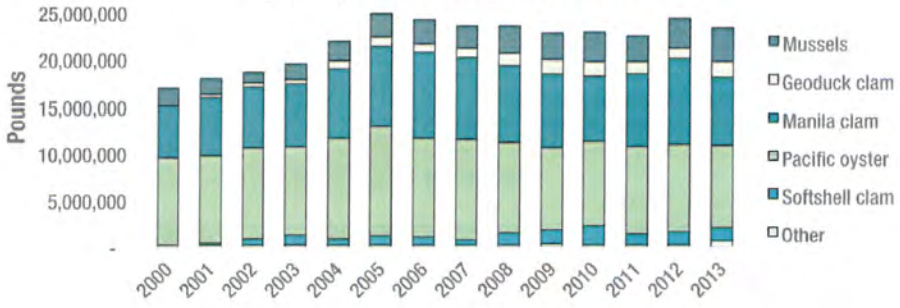
Some facts:

- Washington State is the leading U.S. producer of farmed bivalves.
- The total revenue of farmed bivalves in Washington was nearly $150 million in 2013.
- Shellfish aquaculture contributed $184 million to Washington's economy in 2010.
- Washington's shellfish industry generated 2,710 jobs in 2010.
- Washington's wild harvest shellfishery was valued over $40 million in 2012.

Washington State Shellfish Aquaculture Production by Species and Weight (lbs), 2013



Washington State Shellfish Production



Learn more | http://bit.ly/WAshellfishinitiative

WASHINGTON SHELLFISH INITIATIVE

Did You Know?

- *A single oyster contains about 0.5 grams of nitrogen.*
- *Consuming a dozen oysters is equivalent to removing 6 grams of nitrogen from the marine environment.*
- *A weekly harvest of about 200 oysters can compensate for the nutrient inputs of a typical waterfront homeowner on a properly functioning septic system.*

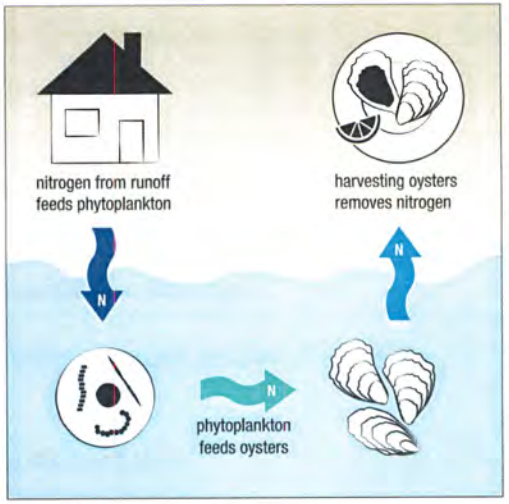
Science and Research

Research is underway to understand and develop mitigation for threats to shellfish resources including:

- *Ocean Acidification*
- *Habitat Destruction*
- *Climate Change*
- *Harmful Algal Blooms*
- *Water Quality/Runoff*
- *Restoration of Native Shellfish*

Restoring Lost Habitat

Less than 4% of historic core populations of native Olympia oysters remain in Puget Sound. Restoring native oyster habitat in historic locations can create complex nearshore habitat, natural filtration, and larval production.



Environmental Benefits

Shellfish are a key part of our marine ecosystems, providing habitat, increasing biodiversity, and helping filter and cleanse water. When shellfish feed, they filter phytoplankton out of the water, resulting in improved water clarity and quality. Clear water lets more sunlight reach the seafloor, promoting the growth of healthy seagrass habitats.

Biodiversity

Shellfish beds act like reefs, providing habitat and protection for many organisms. Scientists consistently find higher populations of marine life around shellfish beds.

Citations

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Shumway, S.E (editor). 2011. Shellfish Aquaculture and the Environment. Wiley-Blackwell, Oxford, UK.

WDFW Publications. Washington Department of Fish & Wildlife. Accessed December 31, 2015. http://wdfw.wa.gov/publications/.

Photos provided by: Debbie Preston/Northwest Indian Fisheries Commission, Puget Sound Restoration Fund, Vera Trainer/Northwest Fisheries Science Center, NOAA Fisheries West Coast Region.

Contact

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NOAA FISHERIES

The Washington State Shellfish Initiative, led by Governor Jay Inslee, is a convergence of the National Oceanic and Atmospheric Administration's National Shellfish Initiative and the state's interest in promoting the environmental, economic and cultural importance of shellfish.

WASHINGTON SHELLFISH INITIATIVE

The Washington State Shellfish Initiative is a convergence of the National Oceanic and Atmospheric Administration's (NOAA) National Shellfish Initiative and the State's interest in promoting a critical clean water industry. While the initiative supports Governor Gregoire's goal of a "dig-able" Puget Sound by 2020, it also encompasses the extraordinary value of shellfish resources on the coast. As envisioned, the initiative will protect and enhance a resource that is important for jobs, industry, citizens and tribes.

Overview

Washington State is taking additional action to protect and enhance shellfish resources. This effort supports the long-term goal of abundant shellfish resources for Washington's residents and Native American tribes, as well as a thriving and healthy shellfish aquaculture industry. As an outcome of the 2007 treaty rights settlement, many Puget Sound tribes are undertaking shellfish aquaculture as a means of enhancing shellfish resources for cultural and economic gain.

We recognize and respect that shellfish aquaculture and commercial and tribal harvest of wild shellfish resources are water-dependent uses that rely on excellent water quality. Shellfish also can help filter and improve the quality of our marine waters thereby being part of the solution to restore and preserve the health of endangered waters. We can have healthy marine waters and productive shellfish beds for a growing industry, Native American tribes and for all the citizens of Washington.

The Puget Sound Partnership has targeted a net increase from 2007 to 2020 of 10,800 harvestable shellfish acres, which includes 7,000 acres where harvest is currently prohibited in Puget Sound. However, the recent shellfish downgrade in Samish Bay is a reminder of the constant vigilance needed by landowners, businesses and local, state, federal and tribal governments to protect and restore shellfish beds. Such efforts also are required on the coast where there is considerable opportunity to enhance shellfish resources.

To restore and expand shellfish resources, Washington must renew its protection, restoration and enhancement efforts. These efforts will pay off in increased recreation, additional clean water jobs, and a healthier Puget Sound and coastal marine waters.

Shellfish: Jobs and Economic Opportunity

Shellfish are critical to the health of Washington's marine waters and the state's economy. Washington leads the country in production of farmed clams, oysters and mussels with an annual value of over $107 million. Washington shellfish growers directly and indirectly employ over 3,200 people and provide an estimated total economic contribution of $270 million. Surveys from the early 2000's indicate shellfish growers are the largest private employer in Pacific County and the second largest in Mason County. In just those two counties, they generate over $27 million annually in payroll. In addition, there is ceremonial and subsistence harvest in Puget Sound and coastal waters that tribes consider invaluable and unquantifiable.

Bivalves coming from Washington's cool clean waters are prized as some of the best in the world. This reputation has ensured that domestic and international demand for them has long exceeded

supply. This strong demand has fostered continued growth of shellfish production and hiring even during the current economic downturn. Implementation of the NOAA's National Shellfish Initiative in Washington will enable shellfish aquaculture in the state to expand to meet the demand for quality shellfish providing critical new jobs in rural Western Washington.

Annually, tourists and residents purchase over 300,000 licenses to harvest clams and oysters from Washington waters, providing more than $3.3 million in state revenues. WDFW conservatively estimates that the 125,000 shellfish harvesting trips made each year to Puget Sound beaches provide a net economic value of $5.4 million to the region. On Washington's coast, an average of 244,000 digger trips are made each season to harvest razor clams contributing an estimated $22 million value to the coastal economies.

Shellfish Initiative

1. Create a Public/Private Partnership for Shellfish Aquaculture

Federal, state and local model permitting program. Provide unified state leadership from state natural resource agencies by identifying a shellfish aquaculture coordinating lead for the state and a lead in each agency. Use the Governor's Office of Regulatory Assistance (ORA) to facilitate the state team. Formalize clear and efficient coordination among state and federal agencies, tribes and local governments for permitting and licensing. Develop and implement a Model Permitting Program that ensures early and continued coordination from all parties, with an operational agreement that commits all parties to see each project through from beginning to end. The goal of the program is to develop a consistent process for improved timeliness of permit decisions while ensuring regulatory compliance. The process will address tribal notification and consultation protocols. The process also will address opportunities for early and ongoing dialogue with permittees and others. The Model Permitting Program will be based on existing, successful programs like the MAP Team (Multi-Agency Permitting) which has a proven record of promoting coordinated decision making. The permitting team has initiated work on a draft operational agreement.

Continue vital shellfish aquaculture research. Sustain research on key issues related to aquaculture management and planning. Seek opportunities to partner with NOAA, Washington Sea Grant, USGS and others to build on existing programs and to build our understanding of shellfish and aquaculture in the Pacific Northwest. Priority should be given to research on geoduck aquaculture, the role of shellfish in nutrient cycling and other aspects of ecosystem services provided by shellfish. New research projects include:

- The Jamestown S'Klallam Tribe recently received their state 401 Water Quality Certification for a new geoduck farm which includes a significant monitoring component for evaluating potential impacts to adjacent eelgrass beds. The data from this monitoring will help improve understanding of the relationship between farms and eelgrass.
- Washington Sea Grant will provide $79,198 over two years to support development of a model that will serve as an innovative tool to assess the risk of toxic blooms in Puget Sound. WSG-funded research will study the cyst stage of the toxic algae Alexandrium catenella, responsible for paralytic shellfish poisoning, and evaluate the effectiveness of using cyst mapping as a tool for early warning of bloom events in Puget Sound.
- Washington Sea Grant will host a public symposium to share latest scientific research findings on shellfish production effects on the environment. The meeting will explore the scientific

basis for management decisions to balance competing land use interests, environmental protection and coastal development needs

Implement pilots. Implement pilot projects and use the Model Permitting Program to determine permitting efficiency, practicality and regulatory compliance (e.g., habitat protection). Potential pilots include a Washington Department of Natural Resources (DNR) lease site and North Sound restoration projects in bays like Sequim, Similk and Fidalgo.

Improve guidance for local shoreline master programs. Increase local government and public understanding and application of the new shellfish provisions in State Shoreline Guidelines (Chapter 173-26 WAC). The Department of Ecology (Ecology) will publish an aquaculture Shoreline Master Program Handbook section with special emphasis on geoduck aquaculture and net pen operations, update its aquaculture web resources to make them more comprehensive, and provide direct technical assistance and training to local governments. The guidance will address regulatory and technical assistance to protect against habitat impacts and planning to minimize conflicts with adjoining shoreline owners and other marine water users.

Review of shellfish ecosystem services. U.S. Geological Survey will conduct a review of available filter feeding models to quantitatively evaluate the capacity of cultivated shellfish to mitigate nitrogen pollution in Puget Sound. This work will be informed by NOAA research. If appropriate and feasible, Ecology will explore the possibility of implementing a nitrogen credit system using shellfish for pollution reduction. The credit system could stimulate new shellfish culture and jobs as well as identifying the role of shellfish in reducing nitrogen discharges.

2. Promote Native Shellfish Restoration and Recreational Shellfish Harvest

Restore native shellfish. Native shellfish restoration efforts will focus on two species: native Olympia oysters and pinto abalone.

Olympia oysters:

- Restore 19 historic, large, Puget Sound natural oyster beds and associated local ecosystems by 2022.
- Direct a $200,000 NOAA grant to the Northwest Straits Commission for Olympia oyster restoration in the North Sound.
- Revise and update Washington Department of Fish and Wildlife's (WDFW) 1998 Native Oyster Rebuilding Plan by December 31, 2011. Share the revised plan with NOAA for inclusion in the national Oyster Restoration Plan. WDFW's standardized metrics will be used to determine success.
- Increase collaboration with NOAA for assistance in funding and facilitating Olympia oyster research and restoration efforts conducted by WDFW, Puget Sound Restoration Fund (PSRF), tribal co-managers, shellfish growers and other partners.
- NOAA is planning to host a hatchery breeding program for native oysters to increase seed production that meets established genetic conservation guidelines.

Pinto abalone:

- Use a $560,000 federal grant awarded by NOAA to WDFW in September to bolster the number of pinto abalone. The program aims to re-establish a self-sustaining population of pinto abalone without ESA protections. The NOAA-funded research, coupled with

continued state funding, will advance abalone restoration efforts by developing hatchery and nursery programs for captive propagation and rearing. Priority abalone actions will be conducted by WDFW, Puget Sound Restoration Fund, University of Washington and non-profit organizations.

Enhance recreational shellfish harvest. Improve and increase public access to shellfish on public tidelands for tribal and recreational harvest through signage, maps, acquisition and other efforts.

Create public support for shellfish initiative. Leverage Washington State Parks to engage the public in the initiative.

- Washington Sea Grant will lead the state agencies and partners through a simple planning process to develop shellfish-related messages, publicize events, and otherwise develop materials to make connections between clean water, our region's shellfish resources and jobs.
- State Parks will conduct shellfish interpretive programs and events to help forge personal connections between clean, productive Puget Sound waters, the shellfish we eat, and the iconic role shellfish occupy in Washington's cultural and culinary identity. State Parks will collaborate with other public/tribal/private interests and help promote support of public lands and the Discover Pass program.

3. Ensure Clean Water to Protect and Enhance Shellfish Beds

Direct $4.5 million in Environmental Protection Agency funding to protect and improve water quality to meet state standards in commercial, recreational and tribal shellfish growing areas. Funds will be used to help reach the Puget Sound Partnership's shellfish indicator target of upgrading 10,800 acres of harvestable shellfish beds by 2020. The Department of Health (DOH) and Ecology are managing this new funding, which includes the following:

- More than $2 million to help local governments create sustainable pollution identification and correction (PIC) programs. These programs will be designed to identify and address pathogen and nutrient pollution from a variety of nonpoint sources, including on-site sewage systems, farm animals, pets, sewage from boats and stormwater runoff. Counties being offered funding pending negotiations are San Juan, Thurston, Pierce, Skagit and Kitsap, as well as the Hood Canal Coordinating Council, the consortium of counties and tribes that encompass the Hood Canal.
- More than $1 million to help local health jurisdictions carry out onsite sewage system management plans that inventory, inspect, and fix failing on-site sewage systems in Marine Recovery Areas and other areas sensitive to pathogen pollution.
- $1.5 million to reduce pathogen and nutrient loading by improving manure management in those areas with PIC programs. The fund will pay for eligible agricultural best management practices, including livestock exclusion fencing, off-stream watering, and livestock feeding. Interested land owners must work through a conservation district local government, tribe or other governmental entity. Some of this work can be implemented by putting the newly created Sound Corps to work.
- Increase local government understanding and application of practices for controlling pathogens, consistent with Chapter 173-201 WAC. Ecology will provide guidance on nonpoint source BMPs consistent with state water quality standards as well as training to local governments to ensure that PIC programs and federal funding implement these standards.

- Develop economically viable strategies to address impacts from stormwater and wastewater treatment outfalls, which are a significant factor for shellfish bed prohibitions.

Improve shellfish growing area protection and restoration efforts. Additional efforts are needed at all levels of government to improve water quality protections for shellfish growing areas. Two immediate steps are to:

- Form an EPA and state (i.e., Ecology, DOH, Washington State Department of Agriculture) "pollution action team" to respond quickly when water quality problems are identified that threaten to shellfish areas. The team will focus in priority areas and support PIC programs where established. The team will work with technical staff from affected tribes with treaty reserved rights. Services provided by the team include pollution identification, inspections, enforcement, flyovers and technical assistance, consistent with guidance provided for use of federal funds. The team will focus initially in Drayton Harbor and Portage Bay. There has been a long struggle to protect the community shellfish beds in Drayton Harbor, and there are growing concerns over tribal resources in Portage Bay. The Whatcom Conservation District will be a key local partner in working with the state and federal pollution action team.

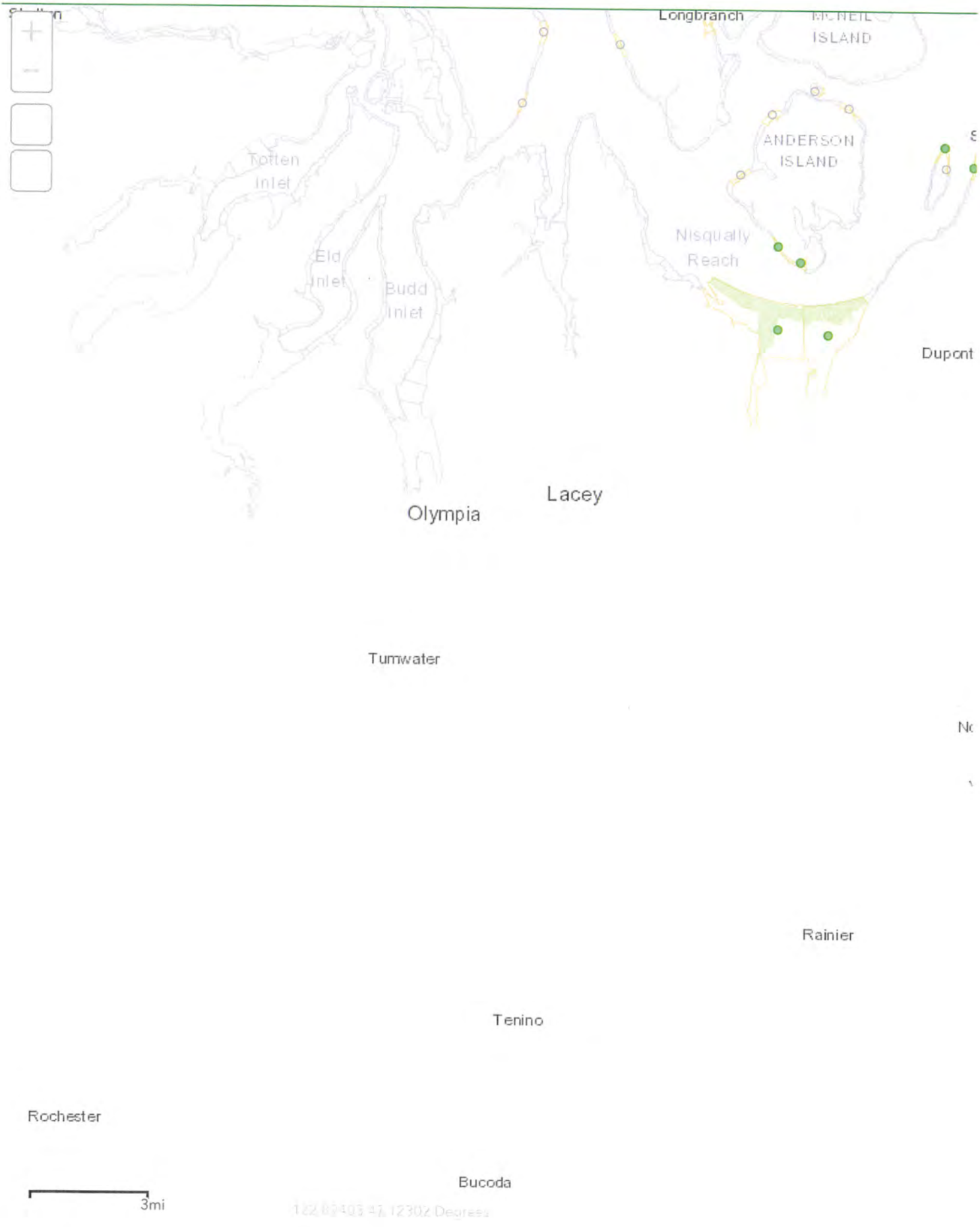
Take steps to address ocean acidification. Conduct research and develop recommendations to understand, monitor, mitigate and adapt to acidification in Puget Sound and Washington waters.

- Convene a Blue Ribbon Panel on Ocean Acidification including scientific experts, the relevant agencies and stakeholders to develop clear, actionable recommendations on understanding, monitoring, adapting and mitigating ocean acidification in Puget Sound and Washington waters.
- A new Washington Sea Grant research project will investigate the effects on Pacific oysters of exposure to natural water seawater that contains a high level of carbon dioxide. It will also explore new breeding programs for enhancing the tolerance of farmed Pacific oysters to higher CO2 seawater. Washington Sea Grant will provide $112,693 over two years (2012–14) for the project, building on 2010–13 funding of $478,082 and a total four-year investment of $590,785 to address ocean acidification impacts on shellfish resources.

Work with boaters to address potential pollution impacts.

- Strategically administer the Clean Vessel Program. The State Parks and Recreation Commission will target Clean Vessel Act grants toward marinas where significant recreational, commercial and tribal shellfish resources are harvested. These grants will fund the construction, renovation, operations and maintenance of boat pump-out stations and waste reception facilities for recreational boaters. State Parks will partner with the Washington Sea Grant, DNR and other entities on educational outreach to marinas and boaters that will publicize these pump-out locations and the need for their use.
- Complete No Discharge Zone Assessment. Ecology will complete an assessment needed to establish a No Discharge Zone, which would ban sewage disposal from commercial and recreational vessels for all or parts of Puget Sound.

Puget Sound Eelgrass Monitoring



Eelgrass Data Viewer

Eelgrass Monitoring

Marine Vegetation Atlas

Eelgrass Stressor Response

Nearshore Habitat Monitoring

Kelp Monitoring

Nearshore Habitat Inventory

Special Projects

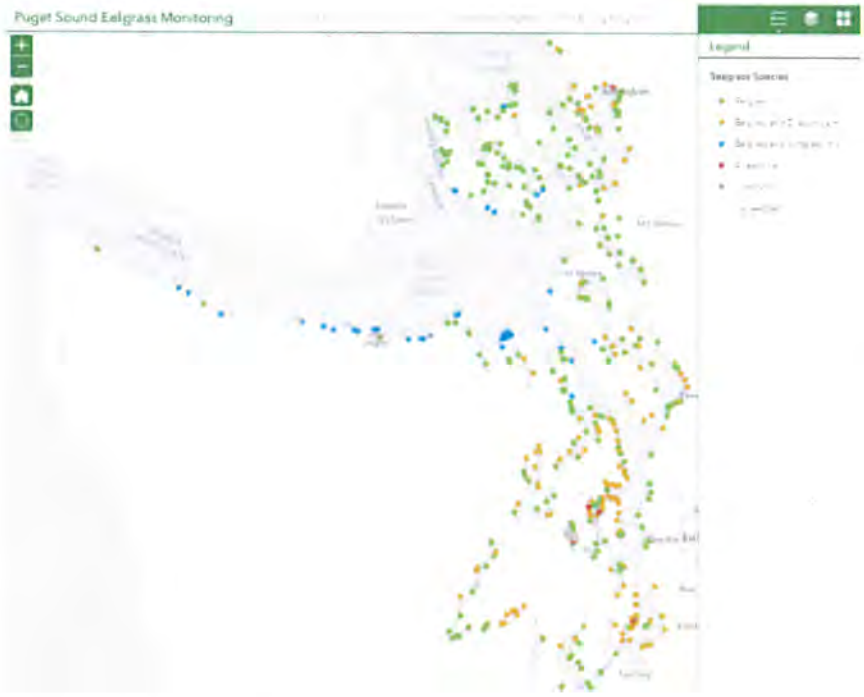
Nearshore Habitat Publications

Puget Sound Eelgrass Monitoring Data Viewer

Welcome to the Puget Sound Eelgrass Monitoring Data Viewer - An interactive map that provides access to 16 years of annual eelgrass monitoring data collected between 2000 and 2015 at selected sites in greater Puget Sound.

These data have been collected annually by DNR since 2000 for the purpose of tracking the status of eelgrass in greater Puget Sound as an ecosystem indicator. Underwater video is collected along transects to estimate the abundance of eelgrass at selected sites.

Click here to launch the Eelgrass Data Viewer in a separate window for full screen or mobile devices, or click on the image below:



ADDITIONAL RESOURCES

Links to more information about coastal habitats and marine vegetation in Washington State.
Washington Coastal Atlas
Encyclopedia of Puget Sound
DNR's GIS Data
Nearshore Habitat Program
Biotic Community Monitoring
Eelgrass Monitoring
Eelgrass Stressor Response Project
Nearshore Habitat Inventory

CONTACT

Nearshore Habitat Program
360-902-1100
nearshore@dnr.wa.gov

RELATED LINKS

Nearshore Habitat Program
Biotic Community Monitoring
Eelgrass Monitoring
Eelgrass Stressor Response Project
Inventory
Special Projects
Publications
Kelp Monitoring
WA Marine Vegetation Atlas

CONTACT

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RELATED LINKS

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Eelgrass Monitoring
Eelgrass Stressor Response Project
Inventory
Special Projects
Publications
Kelp Monitoring
WA Marine Vegetation Atlas

Special Projects
Publications
Kelp Monitoring
WA Marine Vegetation Atlas

QUESTIONS?

Please contact the department's Nearshore Habitat Program at 360-902-1100 or at nearshore@dnr.wa.gov.

ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT OF THE HEARING EXAMINER FOR THURSTON COUNTY

CASE NOS: 2010100540, 2010100420, and 2010100421 (Appeal of three administrative determinations by Resource Stewardship Department)

APPELLANTS: Taylor Shellfish Co., Inc., d/b/a Taylor Shellfish Farms; and Blind Dog Enterprises LTD, d/b/a/ Arcadia Point Seafood.

SUMMARY OF APPEALS: Taylor Shellfish Farms and Arcadia Point Seafood appeal determinations by the Thurston County Resource Stewardship Department that certain proposed geoduck aquaculture operations are "developments" under the state Shoreline Management Act.

SUMMARY OF ORDER:

The Department's summary judgment motion that the proposed geoduck operations are a "development" under the SMA because they involve "construction of a structure" is granted. The Appellants' summary judgment motion on the same issue is denied.

The summary judgment motions by the parties on whether the proposed operations are a "development" under the SMA because they involve "removal of any sand, gravel, or minerals" are denied due to the presence of genuine issues of material fact.

On the third ground of the administrative determinations, whether the tubes and netting serve as an obstruction on the beach, summary judgment is granted in favor of the Appellants on the issue of sediment movement: the proposed operations are not developments due to their effect on the movement of sediment. Summary judgment is not entered at this time on the other issues relating to this third ground, due to the need for further examination of the public trust doctrine and review of whether any Shoreline Hearings Board decisions address whether the "placing of obstructions" includes obstructions to marine life.

RECORD:

The procedural history of these motions is described in the Order, below. The following documents are relevant to these motions and are admitted into the record:

Exhibit 1. Appeal dated July 6, 2010 by Taylor Shellfish Co., Inc., d/b/a Taylor Shellfish Farms of the administrative determination dated June 30, 2010 by the Thurston County Resource Stewardship Department relating to proposed geoduck aquaculture operation, Project No. 2010100540. This exhibit contains the Appeal of Administrative Decision form, the Notice of Appeal of Administrative Decision, and attachments.

Exhibit 2. Appeal dated July 8, 2010 (stamped as received by Development Services on July 9, 2010) by Blind Dog Enterprises LTD, d/b/a/ Arcadia Point Seafood of the administrative determination dated July 1, 2010 by the Thurston County Resource Stewardship Department relating to proposed geoduck aquaculture operation, Project No. 2010100420.
This exhibit contains the Appeal of Administrative Decision form, the Notice of Appeal of Administrative Decision, and attachments.

Exhibit 3. Appeal dated July 8, 2010 (stamped as received by Development Services on July 9, 2010) by Blind Dog Enterprises LTD, d/b/a/ Arcadia Point Seafood of the administrative determination dated July 1, 2010 by the Thurston County Resource Stewardship Department relating to proposed geoduck aquaculture operation, Project No. 2010100421.
This exhibit contains the Appeal of Administrative Decision form, the Notice of Appeal of Administrative Decision, and attachments.

Exhibit 4. E-mail sent August 23, 2010 from Thomas Bjorgen to the parties.

Exhibit 5. E-mail sent August 24, 2010 from Thomas Bjorgen to the parties (Prehearing order).

Exhibit 6. E-mail sent October 26, 2010 from Thomas Bjorgen to the parties (Second prehearing order).

Exhibit 7. E-mail sent November 2, 2010 from Thomas Bjorgen to the parties (Second prehearing order supplement).

Exhibit 8. E-mail sent November 24, 2010 from Laura Kisielius to Thomas Bjorgen.

Exhibit 9. Stipulated Facts Regarding Proposed Geoduck Farm Operations, dated December 3, 2010, and accompanying e-mail sent December 3, 2010 from Laura Kisielius to Thomas Bjorgen.

Exhibit 10. E-mail sent December 8, 2010 from Thomas Bjorgen to the parties (Third prehearing order).

Exhibit 11. Appellants' Motion in Limine, dated December 8, 2010, with attachments.

Exhibit 12. Thurston County's Response to Motion in Limine, dated December 15, 2010, with attachments.

Exhibit 13. Appellants' Reply in Support of Motion in Limine, dated December 22, 2010, with attachments.

Exhibit 14. E-mail sent January 3, 2011 from Thomas Bjorgen to the parties.

Exhibit 15. E-mail sent January 3, 2011 from Jeff Fancher to Thomas Bjorgen, and e-mail sent January 4, 2011 from Laura Kisielius to Thomas Bjorgen.
Exhibit 16. E-mail sent January 6, 2011 from Thomas Bjorgen to the parties.

No testimony was taken in deciding these motions.

ORDER

A. Nature and location of the proposed geoduck operations.

The Appellants desire to establish shellfish farms on tidelands along Henderson Inlet in unincorporated Thurston County. To that end, Appellant Taylor Shellfish leased tidelands on Thurston County Assessor's Parcel No. 11905230300, known as the Lockhart property. Appellant Arcadia Point leased two tideland parcels, Assessor's Parcel No. 11905330200 (the McClure property) and Assessor's Parcel No. 11905230400 (the Thiesen property). The Lockhart and Thiesen properties are adjacent. The McClure property is approximately 1/4 mile south of the Thiesen property. Ex. 9, Stipulated Facts, Section 1.

Arcadia Point intends to use the McClure and Thiesen properties for geoduck farming. Its proposed method of operation is set out in Sections 4, 5, 8 and 9 of the Stipulated Facts at Ex. 9. In summary, the area on which the geoduck operations would be located on the McClure property is from .60 to .75 acres in size. On the Thiesen property the area is approximately 1.0 to 1.5 acres. PVC tubes four inches in diameter and ten inches in length would be pushed vertically into the beach substrate at a density not to exceed one tube per square foot. Approximately four to six inches of each tube will be exposed at the surface of the sand when the tide is out. Juvenile geoduck clams will be inserted into each tube, which will then be covered with a mesh cap secured with a rubber band. The purpose of the tubes and mesh caps is to prevent predators from killing juvenile geoducks. In 12 months or less, the mesh caps will be removed and the tubes will be covered with area netting to contain the tubes as the geoducks grow and push the tubes from the sand and to protect them from predators. The net is secured using "U" shaped rebar, which will be pushed in flush with the sand. No later than 24 months after insertion, the tubes and area netting will be removed entirely, although the netting may be installed again depending on the level of benthic predators. Between five and seven years after planting, the geoducks will be removed. Harvesting will take place by loosening the sand around the geoduck using a pressurized hose and nozzle and a vessel-mounted high volume, low pressure water pump. The clams would be extracted one at a time by hand. Ex. 9, Stipulated Facts, Sections 4, 5, 8 and 9.

Taylor Shellfish intends to use the Lockhart property for geoduck farming. The area subject top the operations would be from .12 to .9 acres in size. Its proposed method of operation is the same as that described above, with the small differences noted in Section 6 of the Stipulated Facts. These differences are not relevant to the decision of these motions.

The parties stipulate that the purpose of the area or canopy nets "can be to contain loose tubes, to prevent predators from killing juvenile geoducks, or both." Ex. 9, Section 8.

B. Procedural history.

The Appellants and the County staff disagreed whether the proposed activities constituted "development" under RCW 90.58.030 (3), part of the state Shoreline Management Act (SMA). The Appellants and the County Staff agreed that the Appellants would submit information to the County for the sole purpose of allowing the Staff to administratively determine whether the proposals were "developments" under the SMA. The Appellants submitted this information. Ex. 9, Stipulated Facts, Sections 2 and 3.

On June 30, 2010 the Resource Stewardship Department issued an administrative determination for the proposal on the Lockhart property, found at Ex. 1. On July 1, 2010 the Department issued administrative determinations for the proposals on the Thiesen and McClure properties, found, respectively, at Ex. 2 and 3.

Each of these administrative determinations concluded that the proposed activities constituted "development" under the SMA.[1] Each determination rested on the same four grounds:

1. The placement of tubes and netting on the beach constitutes construction of a structure.

2. The method of harvest will remove some amount of sand and other minerals from the seabed.

3. The tubes and netting serve as an obstruction on the beach.

4. The tubes and netting, even though temporary, will potentially interfere with the normal public use of the surface waters, particularly during low tides.

See Ex. 1, 2 and 3.

On July 6, 2010 Taylor Shellfish Farms appealed the Department's determination relating to the proposed operations on the Lockhart property.
On July 9, 2010 Arcadia Point Seafood appealed the administrative determinations relating to the proposed operations on the Thiesen and McClure properties.

On December 3, 2010 the parties submitted a set of stipulated facts, found at Ex. 9.

On December 8, 2010 the Appellants submitted a motion in limine, found at Ex. 11, asking that issues related to the first three grounds of the administrative determinations set out above be determined as a matter of law on the basis of the stipulated facts, without the submission of testimony. The motion also asked that the fourth ground be determined after a hearing, with the opportunity to submit testimony and other evidence.

On December 15, 2010 the Department filed its response to the motion in limine, found at Ex. 12. The Department opposed the motion in limine and also asked that, based solely on

[1] Each of these determinations also concludes that the proposals are "substantial" developments, because they exceed the set monetary threshold. Their characterizations as "substantial" is not at issue in these appeals.

the stipulated facts, all three proposals be found to meet the definition of development, obviating the need for a hearing on the appeals.

On December 22, 2010 Appellants filed their reply in support of their motion in limine, found at Ex. 13. Among other matters, the Appellants characterized the Department's position as seeking to convert the motion in limine to a partial summary judgment motion requesting a decision on the first three grounds of the administrative determinations as a matter of law based on the stipulated facts. After receiving clarification from each party, the Hearing Examiner at Ex. 16 characterized the posture of the motions as follows:

> Each party requests summary judgment in its favor on each of the first three grounds on which the administrative determinations at issue are based. Each party asks that summary judgment be granted on the basis of the stipulated facts of December 3, 2010.
>
> Neither party asks to submit additional briefing on the summary judgment motions.
>
> Each party agrees that the fourth ground of the administrative determinations would be decided through an evidentiary hearing. The results of the summary judgment motions may affect whether that ground is reached.
>
> If any part of the motion in limine remains live after the summary judgment decision, it will be decided soon after.

C. <u>The summary judgment motions</u>.

1. <u>Authorization of summary judgment motions</u>.

Summary judgment in Superior Court is granted

> "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Superior Court Civil Rule (CR) 56.

Chapter II, Section 2.6 of the Hearing Examiner Rules imposes a page limitation for motions, plainly implying that motions are authorized. The heart of summary judgment is simply the determination that under agreed or uncontested facts, a party is entitled to prevail under applicable law. Since this determination would be made without an evidentiary hearing, it is suitable for decision by motion under the Hearing Examiner Rules, especially when all parties agree to it. Thus, summary judgment is one of the motions impliedly authorized by the Hearing Examiner Rules.

2. <u>Interpretation of relevant SMA provisions</u>.

Each party makes a number of arguments as to how the SMA should be interpreted in resolving the issues presented by this appeal. These more general points are addressed before reaching the specific issues on appeal.

The Department points out that RCW 90.58.900 states that the SMA

"is exempted from the rule of strict construction, and it shall be liberally construed to give full effect to the objectives and purposes for which it was enacted."

The Department also notes that the Supreme Court has held that "the SMA is to be broadly construed in order to protect the state shorelines as fully as possible." Buechel v. Department of Ecology, 125 Wn.2d 196, 203 (1994).

The SMA serves both the purposes of protecting the natural and ecological functions of the shorelines and planning for and fostering all reasonable and appropriate uses. See 90.58.020. Therefore, the mandate of RCW 90.58.900 to liberally construe the Act to serve its purposes does not perceptibly push in either direction in construing the definition of development. The holding in Buechel, on the other hand, has much less of the protean about it. The Court's direction to broadly construe the Act to protect the shorelines as fully as possible leans in favor of a broader scope of the definition of "development", everything else being equal, since that will ensure a more thorough implementation of shoreline policies through the permitting process.

The Appellants contend that the broader scope of "development" argued by the Department is inconsistent with the policies of the SMA. The Appellants state that RCW 90.58.020 directs that preference be given to shoreline uses that, among other things, recognize and protect the statewide interest over local interest, result in long term over short term benefit, and protect the resources and ecology of the shoreline. The Appellants then cite to WAC 173-26-241 (3) (b) which states that shellfish aquaculture is of statewide interest and that, "properly managed, it can result in long-term over short-term benefit and can protect the resources and ecology of the shoreline." Therefore, Appellants argue, shellfish aquaculture is a preferred use under RCW 90.58.020, leaving the Department's broad reading of "development" inconsistent with the Act.

However, the statement in RCW 90.58.020 on which the Appellants rely applies to shorelines of statewide significance, and the sites at issue are not such shorelines under the definitions in RCW 90.58.030. On the other hand, the preferences in RCW 90.58.020 cited by the Appellants do seem consistent with the general purposes of the Act. This shows that the Appellants' argument retains its force, even if these are not shorelines of statewide significance.

Turning to the merits of that argument, RCW 90.58.020 states in pertinent part:

"The department, in adopting guidelines for shorelines of statewide significance, and local government, in developing master programs for shorelines of statewide significance, shall give preference to uses in the following order of preference which:

(1) Recognize and protect the statewide interest over local interest;

(2) Preserve the natural character of the shoreline;

(3) Result in long term over short term benefit;

(4) Protect the resources and ecology of the shoreline;

(5) Increase public access to publicly owned areas of the shorelines;

(6) Increase recreational opportunities for the public in the shoreline;

(7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary."

This, by its express terms, is a ranking of preference among different uses. It does not suggest that any use, no matter how highly ranked, should be preferred over no development by narrowing the scope of permitting requirements. Such a conclusion would ignore the status of the natural features of the shorelines as an element of the statewide interest and the highly ranked position of the natural character of the shorelines in the hierarchy of preferences in RCW 90.58.020. Thus, these policies do not favor either interpretation of "development" in these appeals.

The Appellants state also that shellfish beds are identified as both priority habitats and critical saltwater habitats by the state shoreline rules. They argue that the Department's attempt to regulate shellfish beds as developments is antithetical to the SMA's protection of critical saltwater habitats and that a similar argument was rejected by the Ninth Circuit in APHETI v. Taylor Resources, 299 F.3d 1007 (2002). The issue in that case, in the words of the Court, was

> "whether the mussel shells, mussel feces and other biological materials emitted from mussels grown on harvesting rafts . . . constitute the discharge of pollutants from a point source without a permit in violation of the Clean Water Act."

APHETI, supra. The Court answered this question in the negative for a number of reasons. Most pertinently, the Court stated that

> "Congress plainly and explicitly listed the "protection and *propagation* of . . . shellfish" as one of the goals of reduced pollution and cleaner water. 33 U.S.C. § 1251(a)(2) (emphasis added) . . . It would be anomalous to conclude that the living shellfish sought to be *protected* under the Act are, at the same time, "pollutants," the discharge of which may be *proscribed* by the Act. Such a holding would contravene clear congressional intent, give unintended effect to the ambiguous language of the Act and undermine the integrity of its prohibitions."

Id. at 1016. The Applicant argues it is similarly anomalous to conclude that shellfish beds to be protected from encroaching development are also regulated as development under the SMA. Ex. 13, pp. 6-7.

The Appellants' argument is supported by the inference in APHETI that the Clean Water Act's goal of protecting and propagating shellfish means that the natural emissions of shellfish are not subject to NPDES permits. The shoreline rules have a similar goal of protecting

shellfish beds as critical saltwater habitats. The heart of the Court's reasoning, though, was the anomaly of deeming shellfish protected by the Act to be pollutants which can be proscribed under the Act. A similar contradiction is not present in requiring shellfish operations to obtain a permit under the SMA, since the more particular scrutiny afforded by the permit process should better reconcile potentially conflicting shoreline policies touching shellfish farming. Without deciding the issue, the rationale of APHETI could provide an argument against denial of a permit once the merits of the permit are reached. For the reasons given, though, I do not believe it supports any exemption from the permit process itself.

WAC 173.26.020 (24) defines priority habitat as "a habitat type with unique or significant value to one or more species." It states further that an area classified as priority habitat must have one or more of thirteen listed attributes, one of which is "shellfish bed". However, to say that a priority habitat may be a shellfish bed does not imply that all shellfish beds are priority habitats. To do so ignores the heart of the definition that a priority habitat must have unique or significant value to one or more species. The stipulated facts and cited legal authority are insufficient to show that the beds in question are priority habitats.

On the other hand, WAC 173-26-221 (2) (c) (iii) does plainly define critical saltwater habitats to include all commercial and recreational shellfish beds, among other items.[2] Master programs, according to WAC 173-26-221 (2) (c) (iii) (B), "shall include policies and regulations to protect critical saltwater habitats and should implement planning policies and programs to restore such habitats." This subsection states further that "all public and private tidelands or bedlands suitable for shellfish harvest shall be classified as critical areas", presumably critical saltwater habitats.

The designation of shellfish beds as a critical area, though, hardly implies a blanket exemption from shoreline permit requirements. On the contrary, the complexities of applying other shoreline policies in light of those protecting critical saltwater habitats, if anything, increases the worth of a principled permit process. Designation as a critical saltwater habitat does not support a narrower reading of "development" and a consequently narrower scope of the permit process.

3. The first ground of the administrative determinations: that the placement of tubes and netting on the beach constitutes construction of a structure.

By agreement of the parties, the facts on which summary judgment will be decided are those set out in the stipulation of facts at Ex. 9. Those facts relevant to decision of this first ground are set out in Sections 4, 5, 6 and 8 of the stipulation and are summarized above, although not necessarily comprehensively. Any factual allegations not set out in the stipulation will be considered, if at all, only in deciding whether genuine issues of material fact are present.

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[2] WAC 173-26 comprises the 2003 shoreline rules, which govern the adoption of shoreline master programs. The County's current SMP was adopted before those rules were promulgated and therefore is not subject to their terms. WAC 173-26-010, however, states that "[t]he provisions of this chapter implement the requirements of [the SMA]." Therefore, I believe the Appellants are correct that these rules may be consulted in interpreting the SMA, even though the County's new master program is not yet adopted.

Factual allegations outside the stipulation will not be considered in establishing any matter of fact.

A substantial development permit (SDP) is required for a use or activity on the shorelines which is both "substantial" and a "development". RCW 90.58.140. Under RCW 90.58.030 (3) (e), a development is "substantial" if its total cost or fair market value exceeds $5718 or if it materially interferes with the normal public use of the water or shorelines of the state. It is not disputed that the cost or value of each proposed operation would exceed this monetary threshold. Thus, the validity of the administrative determinations turns on whether the proposed geoduck operations count as "development".

"Development" is defined by RCW 90.58.030 (3) (a) as

> "a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level;"

This definition is the same as that in WAC 173-27-030.

Under these definitions, the key question in the challenge to the first ground of the administrative determinations is whether the proposed operations will involve "construction" of a "structure".

The shoreline rules define "structure" as

> "a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except for vessels."

WAC 173-27-030 (15).

The Thurston Region Shoreline Master Program (SMP), on the other hand, defines "structure" as

> "[a]nything constructed in the ground, or anything erected which requires location on the ground or water, or is attached to something having location on or in the ground or water."

This definition, especially its reference to "anything erected which requires location on the ground or water", could, in this context, be substantially broader than the definition in WAC 173-27-030 (15).

Local master programs must be consistent with the shoreline rules found in the WAC. RCW 90.58.080 (1).[3] An ordinance improperly conflicts with a statute if it "permits or licenses

[3] See Footnote 2, above.

that which the statute forbids and prohibits, and vice versa." Weden v. San Juan County, 135 Wn.2d 678, 693 (1998); citing Bellingham v. Schampera, 57 Wn.2d 106, 111 (1960). The broader scope of the definition of "structure" in the SMP, above, does not prohibit that which the statute (or rule) permits, but rather it arguably requires an SDP for an activity for which the statute or rule would not. The requiring of a permit, though, could have just as severe consequences as a flat prohibition. Thus, the Weden/Schampera approach seems also suited to determining whether an SMP's broader definition of "development" would conflict with the WAC rule. Since the broader SMP definition would require an SDP for a use for which the WAC rule would not, it would raise an impermissible conflict by analogy to those decisions.

Perhaps an even more basic principle in determining whether a subordinate level of government may expand restrictions adopted at a superior level is legislative intent. See Ray v. ARCO, 435 U.S. 151 (1978). In that case the Supreme Court held that certain state regulations of oil tankers were preempted by federal law, because

> "[e]nforcement of the state requirements would at least frustrate what seems to us to be the evident congressional intention to establish a uniform federal regime controlling the design of oil tankers."

Ray, 435 U.S. at 165. Although the SMA is focused on local control, it does include detailed definitions as to what counts as a substantial development and establishes the permit for a substantial development as a centerpiece of shoreline regulation. This permitting scheme was adopted by the legislature in service of the sometimes jostling goals of protecting the natural and ecological functions of the shorelines, while planning for and fostering all reasonable and appropriate uses. See 90.58.020.

The adoption of detailed permit thresholds to serve potentially conflicting goals strongly suggests that the legislature intended they be followed. Although a county has ample scope in adopting the policies under which SDPs are judged, I think it must accept the state's call as to when they are required. Therefore, the definition of structure in WAC 173-27-030 (15) will control.

Returning to the examination of that definition, the geoduck activities described in the stipulation do not constitute "a permanent or temporary edifice or building". Thus, they do not involve a structure under the first element of the definition.

The second element is disjunctive: "any piece of work artificially built or composed of parts joined together in some definite manner . . ." Under this, a use involves a structure if it involves a "piece of work artificially built". Under customary definitions, the PVC tubes are pieces of work and are artificially built. This seems plainly to classify them as structures under WAC 173-27-030 (15). The Appellants argue to the contrary that although the tubes are artificial, the tubes and netting together are not a piece of work artificially built, since "built" is defined as "composed of pieces or parts joined systematically". Ex. 13, p. 10. Since the tubes are not joined together by the net, the Appellants argue, the use is not "built" under applicable definitions. Id.

Under this argument, a use could consist of different structures (pieces of work artificially built), but would not itself be a structure unless the constituent structures were "joined

systematically". This position taxes logic with the result that a use consisting exclusively of structures would itself not be a structure unless the constituent structures were satisfactorily joined. Similarly, it contradicts the definition of structure as "any piece of work artificially built". (Emph. mine.) It also would effectively remove the "or" from the definition of structure by requiring that constituent structures also be joined systematically. For these reasons, I don't believe this argument is consistent either with the text of the definitions or the purposes they serve. The proposed geoduck operations involve structures.

The second prong of the disjunctive definition noted above is "a piece of work . . . composed of parts joined together in some definite manner". Whether the proposal involves a structure under this definition is less certain. The only way in which the PVC tubes are arguably "joined together" in the proposed operations is through the area net which is spread over them. The net is not attached to the tubes, but is stretched over them and anchored to the sea bottom with rebar. The Appellants argue through a forceful analogy that if this is enough to make a structure, then every woodpile with a tarp over it is also a structure, since the tarp protects the pile from the elements as the net protects the geoducks from predators. If it be objected that the net also holds loose tubes together, the analogy could be modified to a tarp spread over a pile of leaves to keep them from blowing away. In either event, deeming the presence of the tarp sufficient to transform the pile into a structure seems counter to both ordinary usage and the building codes.

What may seem absurd under one set of laws, though, is not necessarily so under others. As far as process is concerned, the heart of the purpose of the SMA is the recognition that

> "coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefore, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines."

RCW 90.58.020.

Turning to substance, the legislature stated that

> "[i]t is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto."

RCW 90.58.020.

The SMA implements these policies in part through a permit system. The definition of development is in large part the litmus showing when a permit is required for a proposed use. Whether or not it is absurd to deem the tarp to make a structure, it is not irrational or absurd for the legislature to decide that having parts joined together in some definite manner makes a piece of work a "structure" in applying this prong of the definition of development. To fully serve the SMA policies just noted, interpretation should lean in the direction of the broader reading of these definitions. Inclusion of a doubtful case in the permit process better serves those policies, both procedural and substantive, than exclusion.

The PVC tubes, mesh caps and nets are pieces of work, individually or collectively. The tubes are parts of that work. Their array or configuration is in "a definite manner". The question, then, is whether they are "joined together" in that manner.

The area net is spread over and comes into contact with the tubes, but is not attached to them. The two purposes of the nets are to contain loose tubes and afford protection from predators. Ex. 9. Thus, the nets do not hold the tubes together or in place. Only when they come loose does the net contain them.

"Join" is not defined in the SMA, its implementing rules or the SMP. The principal dictionary definitions of "join" are

> "to put or bring together and fasten, connect or relate so as to form a single unit, a whole or continuity . . .
>
> to put or bring into close contact, association or relationship . . .
>
> to come into the company of . . ."

Webster's Third New International Dictionary (1976). The third of these entries, though, is likely not apt, since its examples all relate to persons.

The use of the terms "fasten" and "connect" in the first entry suggests that the net does not "join" the tubes, since the net is not attached to them and only holds them together if they come loose from the sea bottom. On the other hand, the facts that the net is anchored so as to close the area of the tubes to predators and that it is placed to contain the tubes as they are pushed from the sand suggests that it brings the parts into association or relationship, thus falling within the second entry. Ordinary English usage welcomes either reading.

The objective of statutory construction is "to ascertain legislative intent as expressed in the statute." Martin v. Meier, 111 Wn.2d 471, 479 (1988). More specifically,

> "[i]n determining the meaning of words used but not defined in a statute, a court must give careful consideration to the subject matter involved, the context in which the words are used, and the purpose of the statute [cit. om.] 'Language within a statute must be read in context with the entire statute and construed in a manner consistent with the general purposes of the statute.' [cit. om.]"

PUD of Lewis County v. WPPSS, 104 Wn.2d 353, 369 (1985). In short, the "paramount concern"

> "is to ensure that the statute is interpreted consistently with the underlying policy of the statute."

Safeco Insurance Co. v. Meyering, 102 Wn.2d 385, 392 (1984).

For the reasons expressed above, when the text of the law and available definitions leave the matter equally doubtful, the procedural and substantive polices of the SMA are better served by navigating the permit process. Therefore, the PVC tubes should be deemed "joined" for purposes of the definition of "structure".

The final step is to determine whether the use involves the "construction" of a structure, as stated in RCW 90.58.030 (3) (a), when none of the constituent parts of the operations is actually constructed in the shoreline. Although "construction" is not defined in the SMA, other definitions in it answer this question.

RCW 90.58.030 (3) (e) defines substantial development and exempts from its scope the "construction or modification of navigational aids such as channel markers and anchor buoy." Unless they are deemed "obstructions', navigational aids would only be deemed developments or substantial developments by virtue of involving construction of a structure. Buoys and the like are constructed on shore and placed in waters subject to the SMA. Thus, under the Act the placement of structures in the shorelines counts as construction. Therefore, placement of the tubes and nets involve "construction" of a structure.

These conclusions, however, are contradicted by Attorney General Opinion (AGO) 2007 No. 1. That opinion addressed, among others, the question whether shoreline substantial development permits are required for planting, growing and harvesting farm-raised geoducks by private parties. The method of geoduck operations examined by the AGO is virtually the same as that involved in these appeals. The AGO concluded that geoduck operations would fall within the definition of "development" in the SMA only if they caused substantial interference with normal public use of the surface waters, one of the elements of that definition. The AGO concluded that geoduck operations would not fall within any of the other elements of the definition of development.

The AGO cited the definition of structure from WAC 173-27-030 (15) as "a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner", the same definition analysed above. The AGO noted that the PVC tubes are not edifices or buildings and do not form an edifice or building taken together. The opinion stated also that the tubes are not parts joined together in a definite manner. Therefore, it concluded, geoduck operations do not involve structures.

This analysis, however, ignored without explanation the element of the definition including "any piece of work artificially built". In doing so, the AGO read the word "or" out of the definition in violation of the canon of construction that a legislative body is presumed not to have used superfluous words and that meaning, if possible, must be accorded to every word in a statute. See Applied Industrial Materials v. Melton, 74 Wn. App. 73 (1994). The only way of

according meaning to every word in the definition of "structure" is to deem it also to include "any piece of work artificially built". When that is done, as shown above, the proposed operations must be deemed to involve structures.

In addressing the "composed of parts joined together" prong of the definition, the AGO concluded that the tubes do not meet this description, but did not analyse the definition of "join" or the structure or function of the area net. Those analyses, as shown above, indicate that the tubes and net constitute a structure under this prong also.

The AGO states that its conclusion is reinforced by the decision in Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801 (1992), in which the Court rejected the argument that the removal of railroad trestles was a development, because it modified a structure. The Department argues at Ex. 12 that Cowiche Canyon has no application to this case, because it involves removal, not installation. The Appellants reply at Ex. 13 that the relevance of the case lies in its use of a common-sense approach in concluding that removal is not modification. The Appellants are correct, but the analysis above applies that common-sense approach in concluding that these operations are structures under the definition.

As the Appellants point out in Ex. 13, Attorney General Opinions are not controlling, but are entitled to great weight. Thurston County v. City of Olympia, 151 Wn.2d 171, 177 (2004). As also pointed out by Appellants, greater weight attaches to an agency interpretation when the legislature acquiesces in that interpretation, and the legislature has not overturned this AGO, even though it has adopted legislation concerning geoducks since its issuance. Legislative acquiescence, however, "is not conclusive, but is merely one factor to consider." Meyering, 102 Wn.2d at 392.

These rules, I believe, mean that an Attorney General Opinion is something more than a tiebreaker if a decision cannot be made on other grounds. They mean, at least, that an AGO must play a prominent and weighty role in making the decision. It is not, however, conclusive.

Here the AGO failed to consider part of the definition which it was construing, the element deeming "any piece of work artificially built" to be a structure. Nor did it offer any analysis construing the definition to exclude that element. This decision, therefore, does not so much disagree with the AGO's analysis, as fill in an element not treated in it. This decision does disagree with the AGO's conclusions, but, for the reasons above, I believe that disagreement is well founded.

The other element of the definition, "piece of work . . . composed of parts joined together in some definite manner . . ." is, as noted, a much closer call. As such, the deference accorded Attorney General Opinions becomes more important. However, as noted the AGO does not analyse the definition of "join" or the structure or function of the area net. When that is done, and the policies of the SMA and the canons of construction are examined, the discussion above shows, I believe, that the better interpretation is that this counts as a structure. Following the AGO in spite of this would elevate "great weight" to conclusiveness, which is not the role of an AGO.

4. The second ground of the administrative determinations: that the proposal will involve the removal of sand, gravel or minerals.

As noted, "development" is defined by RCW 90.58.030 (3) (a) to include "removal of any sand, gravel, or minerals".

The Department states at Ex. 12, pp. 9-10, that proposed operations will remove sand from the site, will generate a turbid plume which transports sediment off the site, will result in loss of elevation at the site due to sand removal, and will increase erosion during storms. The Department bases these factual allegations on a consultant statement and the Washington Geoduck Growers Environmental Codes of Practice, part of Ex. 12.

None of these factual allegations are included in the stipulation of facts at Ex. 9. The principal stipulated facts concerning harvesting are that the sand around the geoduck will be loosened using a pressurized hose and nozzle and a vessel-mounted high volume, low pressure water pump. The clams will then be extracted one at a time by hand. See Ex. 9, Sections 4 and 9.

The parties have stipulated that the summary judgment motions will be decided on the basis of the stipulated facts. This is consistent with the nature of summary judgment, which can only rely on facts which are agreed or which raise no material issue. See CR 56. The Appellants make clear at Ex. 13, p. 2 that they dispute the factual allegations made by the Department in Ex. 12 and are ready to offer contrary evidence.

For these reasons, the factual allegations in Ex. 12 cannot be relied on for the truth of the matters asserted. Only the facts stipulated in Ex. 9 may play that role. The allegations in Ex. 12, however, along with the Appellants' statement at Ex. 13, p. 2, show that the amount and nature of sand or sediment removal is a genuine issue of fact.

The Department points out also that the definition of development includes "removal of **any** sand, gravel, or minerals" (emph. added) and argues that by their nature these operations will result in some removal of sand and sediment through injection of pressurized water and loosening of the geoducks. Based on the stipulation only, I expect the Department is correct in this factual assertion. However, I do not believe the Department is correct in the implied corollary, that the disturbance of the minutest amount of sediment counts as removal under the definition. If that were the case, as the Appellants argue, walking on the beach at low tide would be a "development", since some sand or mud would be removed on shoes. To avoid this strained or absurd consequence, some minimal amount or type of removal of beach material must be allowed without triggering characterization as a development. The nature of that threshold need not be determined here. Its presence, though, means that the Department's argument cannot be accepted.

The Appellants invoke in their favor the canon of construction providing that the meaning of words may be indicated or controlled by those with which they are associated. See State v. Roggenkamp, 153 Wn.2d 614, 623 (2005). They argue that since sand, gravel, and minerals are all materials that are mined in the shorelines, this prong of the definition is intended only to capture the mining of those materials. The purpose of the canons of construction, as with all statutory construction, is to identify and serve legislative intent. Martin, supra. To determine that intent, a court will look first to the language of the statute. Where statutory language is plain and unambiguous, a statute's meaning must be derived from its wording. SEIU v. Superintendent of Public Instruction, 104 Wn.2d 344, 348 (1985).

The use of the word "any" in this definition signals a plain intent to include actions beyond mining. The ambiguity in the *de minimus* threshold just discussed is best dissolved by judicial implication of a reasonable minimum level, not through narrowing the definition's scope to contradict its terms. Further, the inclusion of "dredging" in the definition of development, an activity commonly associated with seabed mining, suggests that the prong of the definition under consideration was intended to reach beyond mining. The reference to "removal of any sand, gravel, or minerals" is not restricted to mining.

The Appellants' principal argument on this point rests on the AGO discussed above and the adherence of the Department of Ecology and Department of Natural Resources to it. The AGO characterized geoduck harvesting as incidentally releasing silt and sediment which may temporarily be found in the surrounding water. AGO 2007 No. 1, p. 2. The AGO concluded that this did not involve the "removal of any sand, gravel, or minerals" for two reasons. First, the disruption of substrate around a geoduck cannot legally be distinguished from clam digging or raking and it would be too burdensome to require substantial development permits for all significant clam beds. Id. at 7. Second, only a "minimal" amount of materials would be removed.

The Attorney General is authorized to give written opinions "upon constitutional or legal questions." RCW 43.10.030 (7). The conclusion that a specific set of facts falls within a statutory definition is an opinion on a legal question. Thus, this AGO's analysis of whether described geoduck operations constituted a structure was an authorized role of an AGO. Here, in contrast, without citing any evidence, the AGO concludes that the geoduck operations will only remove a "minimal" amount of materials and thus do not meet this prong of the definition of development. This conclusion is announced, no matter what the consistency of the substrate, what the pressure of the water used, what the length of water injection, or what the characteristics of water or current; and without any consideration of how much sand or sediment might in fact be removed under these varying conditions. These are factual determinations and, as the assertions of the Appellants and Department suggest, likely highly contested factual determinations. As such, they are not amenable to determination as a matter of law or by definition. The AGO's attempt to do so, I believe, was beyond the authority of RCW 43.10.030 (7).

The AGO also expresses concern that a contrary interpretation would have the unintended consequence of requiring other clam operations to obtain a substantial development permit. This would be persuasive if it were established that geoduck and other clam harvesting disrupts a similar amount of substrate and that other clam harvesting is exempt from obtaining a substantial development permit. The first point is a matter of fact which is assumed by the AGO. The second is a legal issue which is touched only through the statement: "We find no indication that the SMA has ever treated clam harvesting, alone, as development." AGO 2007 No. 1, p. 2. The lack of such an indication, however, doe not necessarily show that all clam harvesting is in fact exempt under the SMA.

Whether these geoduck proposals constitute development through the removal of any sand, gravel, or minerals raises a number of issues of material fact and is not amenable to resolution through this AGO. Therefore, the summary judgment motions by Appellants and the Department on this issue are denied.

5. The third ground of the administrative determinations: that the tubes and netting serve as an obstruction on the beach.

RCW 90.58.030 (3) (a) defines development to include "placing of obstructions". Because the definition also includes "any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters", the obstructions referred to seem intended to be other than those interfering with normal public use of the surface of the waters. The administrative determination on appeal is consistent with this view, finding that the tubes and netting are an obstruction "on the beach".

The tidelands on which these operations are proposed are privately owned. See Ex. 9, Section 1. Under general principles of property law, the private owners could exclude the public from walking on their beaches. See Presbytery of Seattle v. King County, 114 Wn.2d 320 (1990) (the right to exclude others is one of the fundamental attributes of property ownership). The AGO discussed above concluded that tubes could obstruct one walking on the beach, but that would only be relevant if the public had a right to use the tidelands. Thus, the AGO concluded, a geoduck operation on private tidelands would not constitute development through the placing of obstructions. Implicit in this holding is the view that "obstructions" refers to the impeding of human passage, not that of fish, shellfish or sediment.

The AGO's conclusion that tubes and nets cannot obstruct public passage on beaches which the public has no right to use is sound in both logic and policy. Before resting in that conclusion, though, the public trust doctrine must be examined.

Our Supreme Court outlined the public trust doctrine in the following holdings from Caminiti v. Boyle, 107 Wn.2d 662 (1987):

> ". . . the State's ownership of tidelands and shorelands is not limited to the ordinary incidents of legal title, but is comprised of two distinct aspects.
>
> The first aspect of such state ownership is historically referred to as the jus privatum or private property interest. As owner, the state holds full proprietary rights in tidelands and shorelands and has fee simple title to such lands. Thus, the state may convey title to tidelands and shorelands in any manner and for any purpose not forbidden by the state or federal constitutions and its grantees take title as absolutely as if the transaction were between private individuals . . .
>
> The second aspect of the state's ownership of tidelands and shorelands is historically referred to as the jus publicum or public authority interest . . . More recently, this jus publicum interest was more particularly expressed by this court in WILBOUR v. GALLAGHER, 77 Wn.2d 306, 316, 462 P.2d 232, 40 A.L.R.3d 760 (1969), CERT. DENIED, 400 U.S. 878 (1970) as the right
>
> > 'of navigation, together with its incidental rights of fishing, boating, swimming, water skiing, and other related recreational purposes generally regarded as corollary to the right of navigation and the use of public waters.'
>
> The state can no more convey or give away this jus publicum interest than it can "abdicate its police powers in the administration of government and the preservation of the peace . . . Thus it is that the sovereignty and dominion over this state's tidelands and

> shorelands, as distinguished from TITLE, always remains in the State, and the State holds such dominion in trust for the public. It is this principle which is referred to as the 'public trust doctrine'. "

Caminiti, 107 Wn.2d at 668-670 (footnotes and citations omitted). See also Wilbour v. Gallagher, 77 Wn.2d 366 (1969), State v. Longshore, 141 Wn.2d 414 (2000), and Washington State Geoduck Harvest Assoc. v. DNR, 124 Wn. App. 441 (2004).

The requirements of the public trust doctrine, the Court held, "are fully met by the legislatively drawn controls imposed by the Shoreline Management Act . . ." Caminiti, 107 Wn.2d at 670.

As stated in the excerpt from Wilbour v. Gallagher, above, the public trust doctrine protects the right of navigation,

> "together with its incidental rights of fishing, boating, swimming, water skiing, and other related recreational purposes generally regarded as corollary to the right of navigation and the use of public waters."

In the unpublished opinion of Bainbridge Island v. Brennan, No. 31816-4-II, (2005), Division II of the Court of Appeals held that under the public trust doctrine, the public may use tidelands when covered by water, but the public has no right to walk across private property when the tide is out.

The Supreme Court approached the same issue in State v. Longshore, above, when it decided that the public trust doctrine does not give the public the right to gather naturally growing shellfish on private property. The Court expressly stated, though, that it did not determine whether the public has a right to cross over private tidelands on foot. Longshore, 141 Wn.2d at 429, n. 9.

With the unpublished status of Brennan and the express "non-decision" of Longshore, the fairest conclusion is that our appellate courts have not yet decided whether the public trust doctrine gives the public the right to walk across private tidelands. Consistently with the AGO, whether the PVC tubes are obstructions on the beach and hence "developments" depends on whether the public has that right. Given the complexities of the application of the public trust doctrine, this is not an issue that should be decided without briefing. Therefore, the summary judgment motions on this issue should not be decided at this time.

The remaining issue is the Department's contention that the tubes and nets constitute obstructions on the beach, because they impede the passage of fish and other sea creatures or the flow of sediment.

"Obstruction" is not defined in either the SMA, its implementing rules, or the SMP. No case law or Shoreline Hearings Board decisions on the meaning of obstruction were cited. As noted, the AGO takes the position that obstruction applies only to human passage. The Department argues that the mandate to construe the SMA broadly to protect the state shorelines as fully as possible means that obstructions to marine life must also be considered. The Appellants cite the AGO, point out that the Department's consultants conclude that the effect of the tubes on sediment movement is likely negligible, point out that requiring marine

animals to move around the tubes does not comport with the accepted definition of obstruction, and raise a number of factual issues.

With none of the arguments being definitive, I would normally defer to the view expressed in the AGO, because it is a rational way of implementing the purposes of the SMA. However, because the issue might be treated in the decisions of the Shoreline Hearings Board, it makes most sense to allow the parties to research that, if desired, before deciding whether obstructions of marine life count as obstructions under the definition of development. The one holding that can be made at this time is that the proposed operations do not meet the definition of development due to their effect on sediment flow. Even if the obstruction of sediment flow fell within the definition of development, the facts alleged by the Department, if considered, would show only that the proposals' effect on sediment movement would be negligible. Thus, assuming all pertinent legal and factual issues favorably to the Department, no obstruction of sediment would be shown.

D. Summary of order.

1. The Department's summary judgment motion that the proposed geoduck operations are a "development" under the SMA because they involve "construction of a structure" is granted. The Appellants' summary judgment motion on the same issue is denied. The first ground of the administrative determinations on appeal, that the placement of tubes and netting on the beach constitutes construction of a structure and consequently a development, is upheld.

2. The summary judgment motions by the parties on whether the proposed operations are a "development" under the SMA because they involve "removal of any sand, gravel, or minerals" are denied due to the presence of genuine issues of material fact.

3. On the third ground of the administrative determinations, whether the tubes and netting serve as an obstruction on the beach, summary judgment is granted in favor of the Appellants on the issue of sediment movement: the proposed operations are not developments due to their effect on the movement of sediment. Summary judgment is not entered at this time on the other issues relating to this third ground, due to the need for further examination of the public trust doctrine and review of whether any Shoreline Hearings Board decisions address whether the "placing of obstructions" includes obstructions to marine life.

4. The effect of the above decisions is that the proposed operations are deemed "developments" under the SMA under the first ground of the administrative determinations, requiring a substantial development permit for the proposals. Thus, unless this determination is reversed, a hearing on a substantial development permit is required for the proposed operations, and the appeals of the other grounds of the administrative determinations are mooted, as well as the motion in limine.

Dated this 21st day of January, 2011.

Thomas R. Bjorgen

Shoreline Permitting Manual

Guidance for local governments

DEPARTMENT OF
ECOLOGY
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Recreation & Navigation

SHB

42.

The Board finds, based on the weight of the evidence presented on the potential for impacts from escapement of aquaculture gear from these proposed farms, entanglement of species in canopy nets used on these farms, and pollution from breakdown of plastics from the PVC tubes used on these farms, that these farms are unlikely to have such impacts.

F. Recreation/navigation

43.

Petitioners presented the testimony of several individuals that recreate around and in the waters of South Puget Sound. They each testified as to how their recreational use of South Puget Sound had been negatively impacted by established geoduck farms in the area. Common themes in their testimony included negative interactions with geoduck farm workers/managers when kayaking or paddling past geoduck farms, being told by geoduck farm workers/managers that they were on private property when they were in several feet of water, and feeling threatened when boating past a geoduck farm; inability to go close to the shore or access inlets on low tides in paddle boats and kayaks because of the presence of PVC tubes; inability to fish in shallow areas where geoduck farms are present because of the presence of PVC tubes; having props on small boats get caught in nets; and being afraid to scuba dive in areas due to the presence of geoduck nets and the possibility of entanglement. Macomson Testimony, Eggelston Testimony, Troy Testimony, McDonald Testimony, Paradise Testimony.

44.

In response, the applicants testified that they do not restrict public use of the waters overlying their farms or public access to the beach. The evidence in the record is that the PVC tubes protrude only two to six inches from the substrate. Further, the tubes are present only about 24 months out of the multi-year growing cycle of one planting of geoducks. Geoduck farmers themselves occasionally use scuba diving to harvest geoducks. Steve Wilson, who is an experienced diver, testified that divers work in and around geoduck canopy nets all the time. In his opinion it is very unlikely that a scuba diver could become entangled in geoduck canopy nets. Wilson Testimony, Xia Testimony, Cooper Testimony, Phipps Testimony.

45.

The Board finds that, while these geoduck farms may cause very limited restrictions to recreating in very shallow water in the area of the farms when the PVC tubes are present, the impact from these restrictions on the public will be very minor.

G. Cumulative Impacts

46.

Neither the County nor the applicants performed a shoreline cumulative impacts analysis prior to the approval of the four SSDPs at issue here. Petitioners did not challenge the negative threshold determination under the State Environmental Policy Act (SEPA), but raised the issue only as it relates to the Shoreline Management Act (SMA) and the local shoreline master program and related regulations with respect to cumulative impacts. Thus, although the evidence in the record before the Board did not include what cumulative impact analysis may have been

farming, the farm operators involved in these appeals, Henderson Inlet and Eld Inlet, aquaculture, and even for the most part the South Puget Sound. In response to this generalized testimony, the Respondents presented specific evidence regarding the farming practices to be used on these farms to reduce the possibility of aquaculture gear escaping, the trend downward of gear escapement from geoduck farms as documented through the bi-annual cleanups of garbage by the shellfish industry, the type of nets used by geoduck farmers as differentiated from fishing nets, the results from sediment sampling conducted near geoduck farms, and analysis of stomach contents of fish caught on geoduck farms, which fails to show the presence of microplastics near the farms. In the light of this very convincing evidence which was generally not responded to by Petitioners, the Board concludes that these farms will not have negative impacts due to marine debris.

17.

Petitioners offered evidence on one final area of potential impacts at the hearing: interference with the public's recreational activities along the shorelines where these proposed farms will be located. Many of the witnesses that testified were kayakers that had experienced negative encounters with geoduck farm workers. A recreational fisherman testified about limitations on access to shallow water when PVC tubes are present. Scuba divers were afraid that they could become entangled in geoduck area netting.

18.

As to the risk of entanglement for scuba divers, the Board is not convinced, given the visibility of the geoduck netting and the fact that it is anchored to the substrate, that geoduck

canopy netting causes much, if any, risk of entanglement. The evidence established that most of the risk of entanglement to both divers and other animals comes from escaped, and nearly invisible, fishing nets, not geoduck nets.

19.

The evidence established that in areas and times when the water is the most shallow, and PVC tubes and nets are present, kayakers may be restricted from paddling all the way up to the shoreline, and fishermen could not fish right up to the edge of the shoreline. The Board notes that these minor restrictions are of limited duration (PVC tubes and nets are present only for at most two of the approximately six to seven years the geoducks are in the ground). Further, the impact is in a very limited area geographically (because the PVC tubes protrude about six inches from the substrate). Of most significance to the Board, the evidence did not establish that there was anything unique in the location of these proposed farms that made these very minor restrictions to recreation any more significant than they would be from any geoduck farm. The Legislature, in the SMA, has already made the decision that the minor, temporal and geographical limited restrictions from well-managed and -located geoduck farms are justified by their long-term benefit to the statewide interests. Therefore, the Board concludes that the very minor restrictions on recreation posed by these farms does not violate the SMA and or TRSMP.

20.

The Board was troubled by accounts from citizens that they felt intimidated by geoduck farmers when recreating on waters of the Puget Sound. The answer to these types of problems, however, is not precluding these four geoduck farms. Instead it is the responsibility of geoduck

farmers to properly manage and train their workers to prevent these situations. Further, if a citizen determines that they have been precluded from the use of public waters by threatening or intimidating actions of geoduck farmers or their workers, it is incumbent on the citizen to bring the encounter to the attention of the farm owners and/or appropriate regulatory agencies and/or law enforcement.

C. Need for cumulative impacts analysis

21.

The final question for this Board is whether the County should have performed a cumulative impacts analysis prior to making a decision on these SSDPs. The Board recently visited the issue of when a cumulative impacts analysis is required prior to approval of an SSDP under the SMA in reviewing a decision in which the County denied an SSDP for a mussel raft. In that decision, the Board stated:

> Consideration of cumulative impacts is not a listed requirement for review of an SSDP as it is for shoreline conditional use permits and variances. *See* WAC 173-27-150, -160, -170. Further, the Board has stated that a cumulative impacts analysis is not required for an SSDP approval under the SMA. *Coalition to Protect Puget Sound Habitat v. Pierce County,* SHB No. 11-019 (2012)(CL 15). However, the Board has also held that it is not precluded from considering cumulative impacts in its review of an SSDP in some circumstances. *Fladseth v. Mason County,* SHB No. 05-026 (2007)(CL 13).

Taylor Shellfish Company, Inc. v. Thurston County, SHB No. 12-012, CL 9 (June 17, 2013)(*Taylor Mussel Raft).*

[58]

There are six pending applications for geoduck farms in Pierce County. New aquaculture projects in this area have been approved, proposed, or are contemplated for proposal. A manila and littleneck clam farm has been approved on the other side of Henderson Bay. In addition, Taylor Shellfish, which is now harvesting oysters and clams on 79 acres, just proposed a new project in Burley Lagoon. There is also an additional geoduck farm intended to be located northeast of the Farm Site that will be virtually on forage fish habitat. Bed preparation has been witnessed since 2012 near the Farm Site. Mr. Booth confirmed he understood there may be an attempt in the near future to submit another geoduck application. Mr. McCrae of Washington Shellfish submitted an application in 2002, but was recently told he needs to submit a new one if he wishes to proceed with aquaculture operations. De Tienne Testimony; McDonnel Testimony; Penttila Testimony; Newell Testimony; Booth Testimony; Ex. P-117; Ex. P-139; Ex. P-142c.

E. Recreational Impacts

[59]

Witnesses presented evidence that the gear used in aquaculture—including the nets and PVC pipes specifically used in geoduck aquaculture—can break and/or escape and can result in significant marine debris. Newell Testimony; Ex. P-127; Macomson Testimony; Ex. P-129; McDonnel Testimony; Wenman Testimony; Ex. P-128; Paradise Testimony. Additionally, the high winds and waves in this area would make it more likely that gear will come loose. The County has received increased complaints regarding aquaculture debris in Burley Lagoon, with loose netting being a particular complaint. Booth Testimony; Ex. P-111. The Permit requires

beach patrols be done weekly at the proposed Farm Site, and within one day of storm events to retrieve any debris. Ex. R-1 at p. 30 (Condition 25) (incorporating MDNS mitigation conditions and eelgrass surveys); Ex. R-3 at p. 9 (MDNS mitigation condition # 8). This was a mitigation measure premised on the assumption that debris will occur. Booth Testimony.

[60]

Numerous witnesses testified that they use the area around the proposed Farm Site to swim, scuba dive, kayak, windsurf, and otherwise enjoy the natural environment. *See, e.g.*, Paradise Testimony; Newell Testimony; Macomson Testimony. In particular, the high waves in the area make it a popular windsurfing site. The Farm Site is located roughly 1,500 feet west of Purdy Sand Spit Park/Wauna Public Boat Launch. Windsurfers often begin there and ride towards the area nearer the Farm Site. It is possible some could end up closer to the Farm Site. Paradise Testimony; Newell Testimony; Ex. R-2 at p. 2 (proximity to boat launch). In addition, many of the witnesses recounted incidents in which they or others who were boating, swimming, or otherwise recreating, became ensnared in loose netting, or had their recreational or boating gear damaged or ensnared. This was presented as a safety concern, given the potential for individuals to drown or otherwise come to harm. Broken PVC tubes left in place intertidally have also injured people walking or otherwise recreating on the tidelands. Finally, concerns over potential harassment by farm owners were expressed, based on similar experiences elsewhere. Newell Testimony; Wenman Testimony; McDonnel Testimony; Paradise Testimony; Macomson Testimony; Ex. P-103; Ex. P-106; Ex. P-109.

[61]

There are no conditions in the Permit to protect recreational users in the area. The Permit requires that "[b]uoys on anchors shall be placed intervisibly along and at angle points on any ownership boundaries that extend below extreme low tide, for the harvest term," but this a measure for the harvest divers. Ex. R-1 at p. 29 (Condition 10). No conditions were added because, in the County's view, impacts to recreational users would be unlikely. Mr. Booth testified that this is especially true given the subtidal nature of the Farm, in which the PVC tubes planted (which protrude two to three inches above the substrate), will be fully submerged. Booth Testimony.

[62]

The Board finds that the recreational use in this area, and in particular its popularity for windsurfing, makes this proposed Farm unique from past geoduck farms reviewed by the Board. While the Board agrees that planted PVC tubes submerged at this subtidal location pose a minimal risk to recreational users, the extent to which other risks may exist nonetheless remains unclear based on the testimony. Of particular concern, is the likelihood that boaters or windsurfers might unknowingly cross into the Farm Site at a time when canopy nets or other gear that could pose a risk are exposed, or that more experienced windsurfers may come in contact with the subtidal structures. In case of a future application at this Site,[5] any permit issued should contain a condition to better address the unique recreational use of this area and mitigate

[5] While we have reversed the Permit in this case, the decision does not completely rule out that a future operation, with appropriate analysis, buffers, and conditions that address site characteristics and limitations, could not be permitted under the SMA.

Haley Farm are high bank, and therefore do not afford views of the Haley Farm. Macfarlane Testimony.

50.

The Petitioner's lay witnesses expressed concerns that geoduck farming at the Haley Farm would interfere with the public's access to the beach and neighboring land owned by state parks in the vicinity of the Farm. The land owned by state parks has not been formally opened as a park and has limited public access and use. One witness testified that his family owns property adjacent to the Haley Farm, and that he walks the beach in that area. TSF spokesperson Diane Cooper testified that TSF allows the public to access its tidelands when it is the owner. However, if TSF is not the owner, the owner can choose to prohibit public access. Here, the Shellfish companies do not intend to exclude members of the public from accessing the Haley Farm site for recreational activities consistent with their farming operations. Cooper Testimony, Smith Testimony, Booth Testimony.

51.

The Board finds based on the weight of the evidence that the Petitioner has not proven that the Haley Farm will have an adverse impact on aesthetics, public access, and property values.

H. Cumulative Impacts

52.

There are several aquaculture farms along the west shore of Key Peninsula. The closest in the County to the proposed Haley Farm is a manila clam/oyster farm 4300 feet to the north in

issue into two parts. This section, Part A, will analyze the Petitioner's claims under the SMA and SMP. The Petitioner's claims based on SEPA will be analyzed in Part B, *infra*.

13.

The Petitioner contends that the Haley Farm will cause adverse impacts from beach clearing, use of aquaculture gear, harvest activities, sediment disturbance, plastic debris and microplastics pollution in violation of the SMA and SMP. The Petitioner asserts that clam density associated with geoduck farming and the genetics of farm-raised geoducks will result in diseases and parasites, and that fish, birds, wildlife, aesthetics values, public access, and property values will all be adversely impacted in violation of the SMA and SMP. The Petitioner also claims that the Haley Farm will cause cumulative impacts in violation of the SMA. As noted in the findings of fact, the Board has found that the petitioner has failed to meet its burden of proof factually on all of these claims.

14.

The Board concludes that the Haley Farm SSDP is appropriately conditioned to restrict beach clearing activities that would cause impacts in violation of the SMA and SMP. While some individual sand dollars may be damaged or killed, the only scientific analysis presented at the hearing supports the conclusion that impacts to the sand dollar population at Haley Beach will be temporary and insignificant.

15.

There was little new or site specific evidence presented to the Board pertaining to impacts from geoduck gear and harvest in this hearing. Both of these topics have been extensively

additional condition, the Board concludes that the Petitioner has failed to meet its burden of proof that the SSDP violates the SMA and SMP because of impacts from plastics.

21.

The Board concludes that the weight of the evidence presented at the hearing does not support the petitioner's contention that the Haley Farm will impact property values. Moreover, the Petitioner has failed to provide a legal argument that connects this assertion with a violation of the SMA or SMP. Therefore, the Board concludes that the Petitioner has failed to meet its burden of proof that the SSDP violates the SMA and SMP because of impacts to property values. Additionally, the Petitioner has failed to present any legal analysis on Issue number 3 (protection of private property rights) and therefore the Board concludes that the Petitioner has waived this issue.

22.

The Petitioner has provided scant evidence and even less legal argument regarding the impact of the Haley Farm on public access. The Washington Supreme Court has held that shellfish growers farming on private tidelands, whether owned or leased, are entitled to exclusive possession and control of such tidelands and the shellfish grown on them. *State v. Longshore,* 141 Wn.2d 414, 424-429, 5 P.3d. 1256 (2000). A shellfish grower's right to exclusive possession includes the right to exclude the public from such tidelands when they are not submerged. *Wilbur v. Gallagher,* 77 Wn.2d 306, 314, 462 P.2nd 232 (1996). However, the evidence in the record supports the conclusion that the Shellfish Companies intend to allow access to their tidelands at Haley Farm for recreational purposes, consistent with their farming

activities. The Board concludes that the Haley Farm will have little impact on the current legal access to the beach in the area, and therefore does not violate the SMA or SMP.

23.

The Board has held in past cases that it may consider cumulative impacts resulting from the approval of an SSDP pursuant to the SMA and local SMP, separate from SEPA. The Board has established factors to consider in making the determination of whether a cumulative impacts analysis is appropriate. *De Tienne*, SHB No. 13-016, pp. 54, 55. These factors are:

1. Whether a shoreline of statewide significance is involved;
2. Whether there is potential harm to habitat, loss of community use, or a significant degradation of views and aesthetic values;
3. Whether a project would be a "first of its kind" in the area;
4. Whether there is some indication of additional applications for similar activities in the area;
5. Whether the local SMP requires a cumulative impacts analysis be completed prior to the approval of an SSDP;
6. The type of use being proposed, and whether it is a favored or disfavored use.

Based on the Board's findings of fact, and the conclusions it has reached herein, none of these factors are present in this appeal. Therefore the Board concludes that a cumulative impacts analysis was not necessary under the SMA and SMP.

B. Petitioner failed to prove that County erred in issuing an MDNS under SEPA for the Haley Farm (Issue 1)

24.

When challenging a County's SEPA decision, the appealing party has the burden to show that the County's threshold determination is clearly erroneous. In the present case, the Board can invalidate the County's decision to issue an MDNS only if it is firmly convinced that the County

State and Academic Resources

Tim Gates – Department of Ecology
Joel Bakker –Plastics expert, UW Tacoma Urban Waterways
Laura Butler – Aquaculture Coordinator at WSDA

State Shoreline Hearings Board Decisions

See Taylor Shellfish comment letter pg. 6-7 dated 9/11/17

State Documents

Shoreline Master Programs Handbook (ECY)
https://fortress.wa.gov/ecy/publications/SummaryPages/1106010.html

Shoreline Permitting Manual: Guidance for local governments (ECY)
https://fortress.wa.gov/ecy/publications/SummaryPages/1706029.html

Federal Documents

Endangered Species Act – Section 7 Consultation USFWS Biological Opinion dated 8/26/16
https://www.nws.usace.army.mil/Portals/27/docs/regulatory/160907/USFWS_Final%20BiOp_AQ%2020160826.pdf

Endangered Species Act – Section 7 Biological Programmatic Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation, National Marine Fisheries Service
https://www.nws.usace.army.mil/Portals/27/docs/regulatory/160907/NMFS_2016_09-02_WA%20Shellfish%20Aquaculture_WCR-2014-1502.pdf

Programmatic Biological Assessment, Shellfish Activities in Washington State Inland Marine Waters, U.S. Army Corps of Engineers Regulatory Program, October 2015
https://www.nws.usace.army.mil/Portals/27/docs/regulatory/160907/Shellfish%20PBA_%20Oct30_2015_final.pdf

Pacific Coast Shellfish Growers Association

Ian Lefcourte

From: Ian Lefcourte
Sent: Wednesday, August 21, 2019 4:19 PM
To: SMP
Subject: FW: Comments on proposed SMP
Attachments: 20111028_TaylorArcadia_vs_ThursCnty_Superior_Tabor.pdf; 20110121_ThurstonCnty_HearingExaminer_Bjorgen_Order_SDP.pdf

Categories: To Do Public Comment

Public Comment

From: PlanningCommission <PlanningCommission@co.thurston.wa.us>
Sent: Wednesday, August 21, 2019 4:03 PM
To: Andrew Deffobis <andrew.deffobis@co.thurston.wa.us>; Brad Murphy <brad.murphy@co.thurston.wa.us>
Cc: Ian Lefcourte <ian.lefcourte@co.thurston.wa.us>
Subject: FW: Comments on proposed SMP

FYI.

From: Patrick Townsend <patrick.townsend@townsendsecurity.com>
Sent: Tuesday, August 20, 2019 11:46 AM
To: PlanningCommission <PlanningCommission@co.thurston.wa.us>
Cc: Kathryn Townsend <kath.townsend@gmail.com>; Patrick Townsend <patrick.townsend@townsendsecurity.com>; Phyllis Farrell <phyllisfarrell681@hotmail.com>; Laura Hendricks <laura.l.hendricks@gmail.com>; Kathy Knight <KATSEA@aol.com>; Anne Van Sweringen <avansw2@gmail.com>
Subject: Comments on proposed SMP

Dear Planning Commissioners:

The proposed SMP changes the permitting type for geoduck aquaculture from the current Substantial Shoreline Development Permit (SSDP) to a Conditional User Permit (CUP). This seems extraordinarily inappropriate and misguided given that Thurston County initially determined that a SSDP permit was required for geoduck aquaculture due to the presence of plastic and net structures in the tideland. The decision by Thurston County was appealed by the shellfish industry, and the courts upheld the view of Thurston County. Thurston County expended considerable taxpayer resources developing and defending the requirement for an SSDP, and other counties followed this precedent. It appears to be an arbitrary and capricious action at this point to abandon the legal rulings, the monetary investment and all the study related to those rulings. Given the cumulative impact analysis of the Army Corps showing impacts of aquaculture on eelgrass, forage fish, and the ecosystem that includes endangered and threatened species like salmon and Southern Resident Killer Whales, it is ill-conceived that the County should arbitrarily change the regulations. The requirement for permitting is "no net loss."

Please review the attached two documents from Judge Thomas R. Bjorgen and Judge

Gary Tabor, who both ruled that PVC put into the tideland for geoduck farming constitutes a structure and therefore requires a shoreline substantial development permit. The question of the discrepancy in the Draft SMP Update between permitting of geoduck aquaculture requiring a CUP and other shellfish aquaculture requiring SSDP must also be explained.

We are out of town and will not be able to attend the Planning Commission meeting on August 21, 2019. We will provide more extensive comments related to permitting for geoduck aquaculture when we return.

Thank you,

Patrick and Kathryn Townsend

Patrick Townsend
CEO

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF THURSTON

TAYLOR SHELLFISH COMPANY, INC.,	)	
Petitioners,	)	
vs.	)	
THURSTON COUNTY, et al.,	)	SUPERIOR COURT NO. 11-2-01019-5
Respondents.	)	

RULING OF THE COURT

BE IT REMEMBERED that on October 21, 2011, the above-entitled and numbered cause came on for hearing before JUDGE GARY R. TABOR, Thurston County Superior Court, Olympia, Washington.

Pamela R. Jones, Official Court Reporter
Certificate No. 2154
Post Office Box 11012
Olympia, WA 98508-0112
(360)786-5571
jonesp@co.thurston.wa.us

A P P E A R A N C E S

For the Plaintiff:

LAURA C. KISIELIUS
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PLAUCHE & STOCK
811 First Avenue, Suite 630
Seattle, WA 98104

For the Defendant:

JEFFREY G. FANCHER
Deputy Prosecuting Attorney
2000 Lakeridge Drive SW
Olympia, WA 98502

October 21, 2011 Olympia, Washington

AFTERNOON SESSION

Department 4 Hon. Gary R. Tabor, Presiding

APPEARANCES:
For the Petitioners, Laura C. Kisielius, Attorney at Law; for the Respondent, Jeffrey G. Fancher, Deputy Prosecuting Attorney

Pamela R. Jones, Official Reporter

* * * * *

THE COURT: Counsel, in my time as a judge, one of my goals has been to try to do my preparation up front when matters come before me so that, if possible, I can issue a ruling after I've heard oral argument. It's come back to me that some people think, well, how can a judge just rule off the top of their head. I've spent considerable time going through the briefing and the record in this particular case to try to understand the issues. Counsels' arguments here today have been helpful to me, but I am prepared to issue a ruling.

I've somewhat jokingly said also over the years, that a judge has a pretty thankless job, because anytime a judge rules, half the room is mad at the judge. And while that's somewhat tongue in cheek, it's still obvious that somebody wins and somebody loses in issues that come before a court. That does

not mean that I don't take matters very seriously. I've also said that I have to call things the way I see them, and that does not mean that I'm taking my job less than very seriously.

While I recognize that in many cases any decision that this Court makes may be reviewed by a higher court, that does not in any way remove the responsibility from this Court to rule as I think the law and/or the facts require. I think that counsel both agree that the primary issue in this particular case boils down to definitions, and so we start out with the idea that there may be cases of substantial development requiring a specific permit process or review. I don't think anybody disagrees that this would be substantial, but the issue is, is it a development or are these three applications developments. It is only a development if the definition of "structure" applies, and so I've heard extensive argument. There's been extensive briefing about what the term "structure" means.

There has been an Attorney General's Opinion that indicated that the term "structure" did not apply to this type of situation in the opinion of the Attorney General. Well, everybody has conceded that this Court is not bound by an Attorney General's Opinion.

It doesn't mean that I shouldn't take it into account, doesn't mean that I can't agree with it, it means I don't have to. I guess I would just pose this: If the Attorney General had ruled that this was a structure, I suspect that petitioners here would be arguing that I don't have to follow the Attorney General's Opinion and they would be right. The issue is how I'm going to interpret this, because I agree that on issues of law this Court has the right to a de novo determination.

Now, by saying that, however, that does bring into play another issue. While my determination of the law can be de novo, I don't believe that I'm required here today to determine what the law is. Now, I may very well do so and give you my opinion; I'm not sure that that's required. I think what's required is whether I determine that the standard has been met and the standard is "clearly erroneous." Everybody agrees that that's the standard at least as to a portion of this. The petitioners have argued that it is clearly erroneous because it didn't follow what the law is if I accept the definition of "structure" that they pose.

By having to reach the issue of whether or not there is this clearly erroneous standard being met

here, however, I think I have to go back to what everybody has had to argue about structure. I found the hearings examiner's review of interpretation of the term "structure" extremely helpful. And by saying that, let me just stop for a moment and say one other thing.

When I was an attorney sitting on the other side of this bench, one of my pet peeves was a judge ruling on something that I'd argued and taking all day to do it, and it really frustrated me when I had to sit and listen to a judge drone on and on not knowing where the judge was going. And so one of my attempts to deal with that from the very beginning is I try not to beat around the bush too far. There is a danger to that. By telling you where I'm going, some people may not hear another word that I say if I've ruled against them. On the other hand, that's why we have a court reporter. People can go back, and I am going to tell you where I'm going and I'm going to go back and cover some of the territory that brings me there.

I'm denying the petitioner's appeal in this case because I believe that the term "structure" does apply to a situation such as this. I believe that the hearings examiner's analysis of this, including

looking at definitions of words, was clearly more in-depth and, in my opinion, appropriate than the Attorney General's Opinion. As Mr. Fancher has pointed out, the Attorney General's Opinion about the idea of structure, first of all, misinterprets the fact that there are two provisions to that definition, and secondly, only gives a few lines of analysis.

I believe, first of all, that the PVC tubes that we've talked about have been artificially built despite argument about "built" really means joined together, which I don't agree with because that's the second part of the two-part test. "Artificially built" can mean manufactured or in some other way fashioned. It is built. It's clear that that's built.

And secondly, as to "parts joined together," it seems to me that it is clear that when you take however many thousand tubes we're talking about and place them in a rather precise location in reference to one another, that is, a relative position of approximately one every square foot or slightly less than that, in the case of one of the farms, when the domain, if you will, the area of the farm is determined by those so-called juvenile clams, I found

that a little bit interesting, that term, but I understand we're talking about very small little clams that are being planted, if you will, in those tubes in the location that's allowed if the permit is issued, inside those tubes that are sunk into the sand are covered either individually or by an area netting. That is clearly, in my opinion, joined together in some definite manner. There is a relationship between the various tubes, in my opinion.

Now, having determined that I believe that's the commonsense determination of the law, I go back to the idea that I don't think I have to determine what the law is. I think what I just told you was probably dicta, because I think the real issue for me is whether or not the petitioners in this case have met their burden of proof for challenging this particular finding by, ultimately, the Board of County Commissioners, and that's clearly erroneous. "Clearly erroneous" means by definition that it's absolutely without question. There are very few issues in the law that are absolutely without question. I realize there are standards, criminal matters are beyond a reasonable doubt, most civil matters are by a preponderance of the evidence, but

an issue of saying absolutely this is what it means and no definition otherwise could be accepted is not met in this particular case.

When I look at the analysis by the hearings examiner versus the analysis by the Attorney General, and I guess I need to address the analysis that went along with the Attorney General by the Ecology saying that because of the Attorney General Opinion, the only issue for these types of projects is whether or not there is interference with normal public use of the surface waters. I don't agree with that.

But let me then go a step further in saying even if I am mistaken that Ecology's rule should be the standard, there is a troubling issue that, well, while it was addressed by the petitioners, I still think causes a problem in this particular case, and that is that Ecology in coming up with rules, while they did say that the Attorney General's Opinion should be part of those rules, they also pointed out that these rules, which they then call guidelines, don't apply to jurisdictions that have master programs already in effect that are already approved. That's the case here. And so I don't believe that those guidelines specifically apply. I believe there's a reason for that, and that is because the

local jurisdiction has been given deference about coming up with particular plans that accomplish the purposes of the Shoreline Management Act. While I recognize that there may have to be a review of a particular jurisdiction's decisions in that regard, I believe that the purposes that were cited by Mr. Fancher, both in his brief and orally here today, really go a considerable distance to say that there's a reason for allowing local jurisdictions to make decisions in cases like this.

I do not find that the County Commissioners exceeded their authority by clearly and erroneously determining that this was a substantial development. Their reliance upon the decision by the hearings examiner was within their discretion. They did not have to find for that, and so I'm upholding the decision by the Board of County Commissioners.

Now, there are several other issues that I need to address even though you know where I'm going. First of all, it my determination that I am only looking at the first issue of the four issues that were originally addressed. The parties here agree that the fourth issue about whether or not there's potential interference with normal public use of the surface waters is reserved for another day anyway.

But the second and third issues as to whether or not the method of harvest would remove some amount of sand or other minerals from the seabed, and third, that the tubes and netting would be an obstruction on the beach, are simply not ripe. Actually, I hadn't considered an argument that this was a ripeness issue, but that made absolute sense when I heard the two attorneys address it in that respect. I believe that the hearings examiner did not specifically rule on those issues two and three. As a matter of fact, he indicated that he would need more facts before he decided either issue, specifically as to number two, the removal of sand or minerals, and as to number three, there was more information that needed to be considered.

I noted, as has been pointed out here both orally and in the briefs, that there was a clear agreement by the growers that's found at record page 1181, that summary judgment is appropriate on the three grounds, but it goes on to say that if there is an issue that needs more factual determination, that there would need to be a further hearing. That was never requested, and so I'm not even going to go behind the decision by the hearings examiner and actually the decision by the Board of County Commissioners that's

specifically here for review today because those two issues are not ripe.

Now finally, in regard to telling you why I'm ruling as I've told you I am, I need to address the constitutional issues. First of all, the constitutional attack has a standard that is probably greater than any other standard I can think of, and that is, a court would have to find that the decision was arbitrary and capricious. My understanding of that standard is that I would have to find that no person in their right mind could ever rule in such a way, totally arbitrary, totally capricious. It does not concern itself with what the law says or what the facts are. It simply is a ruling without explanation. I don't find that to be the case here.

The primary argument is, again, that the County Commissioners did not address the WAC, which I pointed out is only a guideline, it is only a recommendation, and it is specifically not applicable to the County, as I understand it. And then finally, as to the whole process, I've read with interest the process that occurred in this particular case from the two meetings, the public meetings. They were public, they were open to anyone that wanted to appear, they did not concern any of these three

projects, they were informational meetings, and while the County Commissioners may have indicated that the Department could move forward as they saw fit, they did not predetermine any of these issues.

I'll also note with some interest that the petitioners were given the specific opportunity to object to the Board of County Commissioners at the time of the hearing. That's in the record, page 7 and 8. They chose not to file any objection. Now, I realize that constitutional issues didn't have to be raised with the hearing examiner or with the Board of County Commissioners, they can be raised to this Court, but there was no challenge to the Board of County Commissioners as being inappropriately comprised or that the fact that one County Commissioner had, apparently, talked with a representative of one of the petitioners; that there had been these public meetings in which, apparently, there weren't any specific invitations that went out to the petitioner parties in this particular case. But as I said, I don't find that those meetings were specifically on the issue that would later come before the Board of County Commissioners.

Let me just point out that if the petitioners had won in a hearing before -- well, let's go back.

Let's say they'd won with the Department, then there wouldn't have been a reason to complain. If they had won with the hearings examiner, there wouldn't be a reason to complain and they wouldn't be filing any review by the Board of County Commissioners. Now, I understand that the Department might, in that regard, but it simply does not appear to this Court that there was any violation of fundamental fairness or due process in the fact that a County Commission wears a number of hats at a number of different times, and the fact that they were talking with one of their Departments about issues that, while similar and in general on the same subject, they were not predetermining how they would decide a case when it came before them in their administrative review capacity or judicial capacity, if you will. And so I do not find that there was a violation of due process in this particular case.

Again, perhaps this is dicta, interesting that at one point the petitioners felt that they might not pursue requesting the permits until there had been further rulings by the state. At some point, then, they determined that they were going to go forward with objecting to having to present or request permits in this regard. Perhaps, and I don't know

and that's why this is probably dicta, they saw the writing on the wall that the Department of Ecology was actually going to formulate plans that appear to be more onerous as far as the review that would take place.

In that regard, it's interesting to this Court that the argument was that while definitions apply, and thus the petitioners should win, the plan doesn't apply because it's not in effect yet because the County has not implemented the changes and has a time period to do that. I understood that was December of this year, but I also heard that there was a one-year time period that could be set out if that's requested. In any event, this whole procedure involved whether or not a particular requirement would be placed upon the petitioners which they indicate is quite burdensome, or had the matter not come along as it did, what would have been a more burdensome or onerous process after the guidelines that have now been spoken of are implemented.

Finally, let me say that while I understand this appeal was about words, it's really interesting to me, and I asked I guess both counsel about this, the legislature, and this is a statute, 28B.20.475 at subsection (5) specifically states that they want

more study about how structures should be addressed in these types of situations. Specifically, they said the environmental effects of structures commonly used in the aquaculture industry to protect juvenile geoducks from predation. It seems to me that the idea of structure has been an issue that reasonable minds could differ on all along in this particular case, and I do not find that the Department of Ecology and their definition of "structure" is so iron clad that there is not an opportunity for reasonable minds to differ and, thus, the standard that I pointed out earlier as clearly erroneous has not been met in this particular case, and, if push comes to shove, this Court would say Ecology's definition of "structure" was not appropriate, and that the plain meaning of the term "structure" is more appropriately found in the analysis of the hearing examiner.

And so having ruled, are there any issues that I need to address that I failed to cover?

MR. FANCHER: Not from the County, Your Honor.

THE COURT: Then you will prepare findings or an order. I don't know that there have been to be findings and conclusions in that we have a record here.

MR. FANCHER: That's correct. Usually in a LUPA we just do an order very simple, either -- well, in this case it would just be denying the petition and because any review further up is a de novo anyway, so that's how it usually works.

THE COURT: All right. Then I assume that you'll need some time to prepare that. What I would suggest is if the two attorneys or the parties in this case in consultation with one another can agree as to language, that's fine, just submit that ex parte. If there needs to be a hearing based upon a disagreement about language, then you would need to note that for a presentation hearing.

MR. FANCHER: Thank you, Your Honor.

THE COURT: I appreciate the hard work on both sides in this case. We'll be in recess.

MS. KISIELIUS: Thank you, Your Honor.

(A recess was had.)

CERTIFICATE OF REPORTER

STATE OF WASHINGTON)

COUNTY OF THURSTON)

I, PAMELA R. JONES, RMR, Official Reporter of the Superior Court of the State of Washington, in and for the County of Thurston, do hereby certify:

That I was authorized to and did stenographically report the foregoing proceedings held in the above-entitled matter, as designated by counsel to be included in the transcript, and that the transcript is a true and complete record of my stenographic notes.

Dated this the 28th day of October, 2011.

PAMELA R. JONES, RMR
Official Court Reporter
Certificate No. 2154

ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT OF THE HEARING EXAMINER FOR THURSTON COUNTY

CASE NOS: 2010100540, 2010100420, and 2010100421 (Appeal of three administrative determinations by Resource Stewardship Department)

APPELLANTS: Taylor Shellfish Co., Inc., d/b/a Taylor Shellfish Farms; and Blind Dog Enterprises LTD, d/b/a/ Arcadia Point Seafood.

SUMMARY OF APPEALS: Taylor Shellfish Farms and Arcadia Point Seafood appeal determinations by the Thurston County Resource Stewardship Department that certain proposed geoduck aquaculture operations are "developments" under the state Shoreline Management Act.

SUMMARY OF ORDER:

The Department's summary judgment motion that the proposed geoduck operations are a "development" under the SMA because they involve "construction of a structure" is granted. The Appellants' summary judgment motion on the same issue is denied.

The summary judgment motions by the parties on whether the proposed operations are a "development" under the SMA because they involve "removal of any sand, gravel, or minerals" are denied due to the presence of genuine issues of material fact.

On the third ground of the administrative determinations, whether the tubes and netting serve as an obstruction on the beach, summary judgment is granted in favor of the Appellants on the issue of sediment movement: the proposed operations are not developments due to their effect on the movement of sediment. Summary judgment is not entered at this time on the other issues relating to this third ground, due to the need for further examination of the public trust doctrine and review of whether any Shoreline Hearings Board decisions address whether the "placing of obstructions" includes obstructions to marine life.

RECORD:

The procedural history of these motions is described in the Order, below. The following documents are relevant to these motions and are admitted into the record:

Exhibit 1. Appeal dated July 6, 2010 by Taylor Shellfish Co., Inc., d/b/a Taylor Shellfish Farms of the administrative determination dated June 30, 2010 by the Thurston County Resource Stewardship Department relating to proposed geoduck aquaculture operation, Project No. 2010100540. This exhibit contains the Appeal of Administrative Decision form, the Notice of Appeal of Administrative Decision, and attachments.

Exhibit 2. Appeal dated July 8, 2010 (stamped as received by Development Services on July 9, 2010) by Blind Dog Enterprises LTD, d/b/a/ Arcadia Point Seafood of the administrative determination dated July 1, 2010 by the Thurston County Resource Stewardship Department relating to proposed geoduck aquaculture operation, Project No. 2010100420.
This exhibit contains the Appeal of Administrative Decision form, the Notice of Appeal of Administrative Decision, and attachments.

Exhibit 3. Appeal dated July 8, 2010 (stamped as received by Development Services on July 9, 2010) by Blind Dog Enterprises LTD, d/b/a/ Arcadia Point Seafood of the administrative determination dated July 1, 2010 by the Thurston County Resource Stewardship Department relating to proposed geoduck aquaculture operation, Project No. 2010100421.
This exhibit contains the Appeal of Administrative Decision form, the Notice of Appeal of Administrative Decision, and attachments.

Exhibit 4. E-mail sent August 23, 2010 from Thomas Bjorgen to the parties.

Exhibit 5. E-mail sent August 24, 2010 from Thomas Bjorgen to the parties (Prehearing order).

Exhibit 6. E-mail sent October 26, 2010 from Thomas Bjorgen to the parties (Second prehearing order).

Exhibit 7. E-mail sent November 2, 2010 from Thomas Bjorgen to the parties (Second prehearing order supplement).

Exhibit 8. E-mail sent November 24, 2010 from Laura Kisielius to Thomas Bjorgen.

Exhibit 9. Stipulated Facts Regarding Proposed Geoduck Farm Operations, dated December 3, 2010, and accompanying e-mail sent December 3, 2010 from Laura Kisielius to Thomas Bjorgen.

Exhibit 10. E-mail sent December 8, 2010 from Thomas Bjorgen to the parties (Third prehearing order).

Exhibit 11. Appellants' Motion in Limine, dated December 8, 2010, with attachments.

Exhibit 12. Thurston County's Response to Motion in Limine, dated December 15, 2010, with attachments.

Exhibit 13. Appellants' Reply in Support of Motion in Limine, dated December 22, 2010, with attachments.

Exhibit 14. E-mail sent January 3, 2011 from Thomas Bjorgen to the parties.

Exhibit 15. E-mail sent January 3, 2011 from Jeff Fancher to Thomas Bjorgen, and e-mail sent January 4, 2011 from Laura Kisielius to Thomas Bjorgen.
Exhibit 16. E-mail sent January 6, 2011 from Thomas Bjorgen to the parties.

No testimony was taken in deciding these motions.

ORDER

A. Nature and location of the proposed geoduck operations.

The Appellants desire to establish shellfish farms on tidelands along Henderson Inlet in unincorporated Thurston County. To that end, Appellant Taylor Shellfish leased tidelands on Thurston County Assessor's Parcel No. 11905230300, known as the Lockhart property. Appellant Arcadia Point leased two tideland parcels, Assessor's Parcel No. 11905330200 (the McClure property) and Assessor's Parcel No. 11905230400 (the Thiesen property). The Lockhart and Thiesen properties are adjacent. The McClure property is approximately 1/4 mile south of the Thiesen property. Ex. 9, Stipulated Facts, Section 1.

Arcadia Point intends to use the McClure and Thiesen properties for geoduck farming. Its proposed method of operation is set out in Sections 4, 5, 8 and 9 of the Stipulated Facts at Ex. 9. In summary, the area on which the geoduck operations would be located on the McClure property is from .60 to .75 acres in size. On the Thiesen property the area is approximately 1.0 to 1.5 acres. PVC tubes four inches in diameter and ten inches in length would be pushed vertically into the beach substrate at a density not to exceed one tube per square foot. Approximately four to six inches of each tube will be exposed at the surface of the sand when the tide is out. Juvenile geoduck clams will be inserted into each tube, which will then be covered with a mesh cap secured with a rubber band. The purpose of the tubes and mesh caps is to prevent predators from killing juvenile geoducks. In 12 months or less, the mesh caps will be removed and the tubes will be covered with area netting to contain the tubes as the geoducks grow and push the tubes from the sand and to protect them from predators. The net is secured using "U" shaped rebar, which will be pushed in flush with the sand. No later than 24 months after insertion, the tubes and area netting will be removed entirely, although the netting may be installed again depending on the level of benthic predators. Between five and seven years after planting, the geoducks will be removed. Harvesting will take place by loosening the sand around the geoduck using a pressurized hose and nozzle and a vessel-mounted high volume, low pressure water pump. The clams would be extracted one at a time by hand. Ex. 9, Stipulated Facts, Sections 4, 5, 8 and 9.

Taylor Shellfish intends to use the Lockhart property for geoduck farming. The area subject top the operations would be from .12 to .9 acres in size. Its proposed method of operation is the same as that described above, with the small differences noted in Section 6 of the Stipulated Facts. These differences are not relevant to the decision of these motions.

The parties stipulate that the purpose of the area or canopy nets "can be to contain loose tubes, to prevent predators from killing juvenile geoducks, or both." Ex. 9, Section 8.

B. Procedural history.

The Appellants and the County staff disagreed whether the proposed activities constituted "development" under RCW 90.58.030 (3), part of the state Shoreline Management Act (SMA). The Appellants and the County Staff agreed that the Appellants would submit information to the County for the sole purpose of allowing the Staff to administratively determine whether the proposals were "developments" under the SMA. The Appellants submitted this information. Ex. 9, Stipulated Facts, Sections 2 and 3.

On June 30, 2010 the Resource Stewardship Department issued an administrative determination for the proposal on the Lockhart property, found at Ex. 1. On July 1, 2010 the Department issued administrative determinations for the proposals on the Thiesen and McClure properties, found, respectively, at Ex. 2 and 3.

Each of these administrative determinations concluded that the proposed activities constituted "development" under the SMA.[1] Each determination rested on the same four grounds:

1. The placement of tubes and netting on the beach constitutes construction of a structure.

2. The method of harvest will remove some amount of sand and other minerals from the seabed.

3. The tubes and netting serve as an obstruction on the beach.

4. The tubes and netting, even though temporary, will potentially interfere with the normal public use of the surface waters, particularly during low tides.

See Ex. 1, 2 and 3.

On July 6, 2010 Taylor Shellfish Farms appealed the Department's determination relating to the proposed operations on the Lockhart property.
On July 9, 2010 Arcadia Point Seafood appealed the administrative determinations relating to the proposed operations on the Thiesen and McClure properties.

On December 3, 2010 the parties submitted a set of stipulated facts, found at Ex. 9.

On December 8, 2010 the Appellants submitted a motion in limine, found at Ex. 11, asking that issues related to the first three grounds of the administrative determinations set out above be determined as a matter of law on the basis of the stipulated facts, without the submission of testimony. The motion also asked that the fourth ground be determined after a hearing, with the opportunity to submit testimony and other evidence.

On December 15, 2010 the Department filed its response to the motion in limine, found at Ex. 12. The Department opposed the motion in limine and also asked that, based solely on

[1] Each of these determinations also concludes that the proposals are "substantial" developments, because they exceed the set monetary threshold. Their characterizations as "substantial" is not at issue in these appeals.

the stipulated facts, all three proposals be found to meet the definition of development, obviating the need for a hearing on the appeals.

On December 22, 2010 Appellants filed their reply in support of their motion in limine, found at Ex. 13. Among other matters, the Appellants characterized the Department's position as seeking to convert the motion in limine to a partial summary judgment motion requesting a decision on the first three grounds of the administrative determinations as a matter of law based on the stipulated facts. After receiving clarification from each party, the Hearing Examiner at Ex. 16 characterized the posture of the motions as follows:

> Each party requests summary judgment in its favor on each of the first three grounds on which the administrative determinations at issue are based. Each party asks that summary judgment be granted on the basis of the stipulated facts of December 3, 2010.
>
> Neither party asks to submit additional briefing on the summary judgment motions.
>
> Each party agrees that the fourth ground of the administrative determinations would be decided through an evidentiary hearing. The results of the summary judgment motions may affect whether that ground is reached.
>
> If any part of the motion in limine remains live after the summary judgment decision, it will be decided soon after.

C. <u>The summary judgment motions</u>.

1. <u>Authorization of summary judgment motions</u>.

Summary judgment in Superior Court is granted

> "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Superior Court Civil Rule (CR) 56.

Chapter II, Section 2.6 of the Hearing Examiner Rules imposes a page limitation for motions, plainly implying that motions are authorized. The heart of summary judgment is simply the determination that under agreed or uncontested facts, a party is entitled to prevail under applicable law. Since this determination would be made without an evidentiary hearing, it is suitable for decision by motion under the Hearing Examiner Rules, especially when all parties agree to it. Thus, summary judgment is one of the motions impliedly authorized by the Hearing Examiner Rules.

2. <u>Interpretation of relevant SMA provisions</u>.

Each party makes a number of arguments as to how the SMA should be interpreted in resolving the issues presented by this appeal. These more general points are addressed before reaching the specific issues on appeal.

The Department points out that RCW 90.58.900 states that the SMA

> "is exempted from the rule of strict construction, and it shall be liberally construed to give full effect to the objectives and purposes for which it was enacted."

The Department also notes that the Supreme Court has held that "the SMA is to be broadly construed in order to protect the state shorelines as fully as possible." Buechel v. Department of Ecology, 125 Wn.2d 196, 203 (1994).

The SMA serves both the purposes of protecting the natural and ecological functions of the shorelines and planning for and fostering all reasonable and appropriate uses. See 90.58.020. Therefore, the mandate of RCW 90.58.900 to liberally construe the Act to serve its purposes does not perceptibly push in either direction in construing the definition of development. The holding in Buechel, on the other hand, has much less of the protean about it. The Court's direction to broadly construe the Act to protect the shorelines as fully as possible leans in favor of a broader scope of the definition of "development", everything else being equal, since that will ensure a more thorough implementation of shoreline policies through the permitting process.

The Appellants contend that the broader scope of "development" argued by the Department is inconsistent with the policies of the SMA. The Appellants state that RCW 90.58.020 directs that preference be given to shoreline uses that, among other things, recognize and protect the statewide interest over local interest, result in long term over short term benefit, and protect the resources and ecology of the shoreline. The Appellants then cite to WAC 173-26-241 (3) (b) which states that shellfish aquaculture is of statewide interest and that, "properly managed, it can result in long-term over short-term benefit and can protect the resources and ecology of the shoreline." Therefore, Appellants argue, shellfish aquaculture is a preferred use under RCW 90.58.020, leaving the Department's broad reading of "development" inconsistent with the Act.

However, the statement in RCW 90.58.020 on which the Appellants rely applies to shorelines of statewide significance, and the sites at issue are not such shorelines under the definitions in RCW 90.58.030. On the other hand, the preferences in RCW 90.58.020 cited by the Appellants do seem consistent with the general purposes of the Act. This shows that the Appellants' argument retains its force, even if these are not shorelines of statewide significance.

Turning to the merits of that argument, RCW 90.58.020 states in pertinent part:

> "The department, in adopting guidelines for shorelines of statewide significance, and local government, in developing master programs for shorelines of statewide significance, shall give preference to uses in the following order of preference which:
>
> (1) Recognize and protect the statewide interest over local interest;

(2) Preserve the natural character of the shoreline;

(3) Result in long term over short term benefit;

(4) Protect the resources and ecology of the shoreline;

(5) Increase public access to publicly owned areas of the shorelines;

(6) Increase recreational opportunities for the public in the shoreline;

(7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary."

This, by its express terms, is a ranking of preference among different uses. It does not suggest that any use, no matter how highly ranked, should be preferred over no development by narrowing the scope of permitting requirements. Such a conclusion would ignore the status of the natural features of the shorelines as an element of the statewide interest and the highly ranked position of the natural character of the shorelines in the hierarchy of preferences in RCW 90.58.020. Thus, these policies do not favor either interpretation of "development" in these appeals.

The Appellants state also that shellfish beds are identified as both priority habitats and critical saltwater habitats by the state shoreline rules. They argue that the Department's attempt to regulate shellfish beds as developments is antithetical to the SMA's protection of critical saltwater habitats and that a similar argument was rejected by the Ninth Circuit in APHETI v. Taylor Resources, 299 F.3d 1007 (2002). The issue in that case, in the words of the Court, was

"whether the mussel shells, mussel feces and other biological materials emitted from mussels grown on harvesting rafts . . . constitute the discharge of pollutants from a point source without a permit in violation of the Clean Water Act."

APHETI, supra. The Court answered this question in the negative for a number of reasons. Most pertinently, the Court stated that

"Congress plainly and explicitly listed the “protection and *propagation* of . . . shellfish” as one of the goals of reduced pollution and cleaner water. 33 U.S.C. § 1251(a)(2) (emphasis added) . . . It would be anomalous to conclude that the living shellfish sought to be *protected* under the Act are, at the same time, “pollutants,” the discharge of which may be *proscribed* by the Act. Such a holding would contravene clear congressional intent, give unintended effect to the ambiguous language of the Act and undermine the integrity of its prohibitions."

Id. at 1016. The Applicant argues it is similarly anomalous to conclude that shellfish beds to be protected from encroaching development are also regulated as development under the SMA. Ex. 13, pp. 6-7.

The Appellants' argument is supported by the inference in APHETI that the Clean Water Act's goal of protecting and propagating shellfish means that the natural emissions of shellfish are not subject to NPDES permits. The shoreline rules have a similar goal of protecting

shellfish beds as critical saltwater habitats. The heart of the Court's reasoning, though, was the anomaly of deeming shellfish protected by the Act to be pollutants which can be proscribed under the Act. A similar contradiction is not present in requiring shellfish operations to obtain a permit under the SMA, since the more particular scrutiny afforded by the permit process should better reconcile potentially conflicting shoreline policies touching shellfish farming. Without deciding the issue, the rationale of APHETI could provide an argument against denial of a permit once the merits of the permit are reached. For the reasons given, though, I do not believe it supports any exemption from the permit process itself.

WAC 173.26.020 (24) defines priority habitat as "a habitat type with unique or significant value to one or more species." It states further that an area classified as priority habitat must have one or more of thirteen listed attributes, one of which is "shellfish bed". However, to say that a priority habitat may be a shellfish bed does not imply that all shellfish beds are priority habitats. To do so ignores the heart of the definition that a priority habitat must have unique or significant value to one or more species. The stipulated facts and cited legal authority are insufficient to show that the beds in question are priority habitats.

On the other hand, WAC 173-26-221 (2) (c) (iii) does plainly define critical saltwater habitats to include all commercial and recreational shellfish beds, among other items.[2] Master programs, according to WAC 173-26-221 (2) (c) (iii) (B), "shall include policies and regulations to protect critical saltwater habitats and should implement planning policies and programs to restore such habitats." This subsection states further that "all public and private tidelands or bedlands suitable for shellfish harvest shall be classified as critical areas", presumably critical saltwater habitats.

The designation of shellfish beds as a critical area, though, hardly implies a blanket exemption from shoreline permit requirements. On the contrary, the complexities of applying other shoreline policies in light of those protecting critical saltwater habitats, if anything, increases the worth of a principled permit process. Designation as a critical saltwater habitat does not support a narrower reading of "development" and a consequently narrower scope of the permit process.

3. The first ground of the administrative determinations: that the placement of tubes and netting on the beach constitutes construction of a structure.

By agreement of the parties, the facts on which summary judgment will be decided are those set out in the stipulation of facts at Ex. 9. Those facts relevant to decision of this first ground are set out in Sections 4, 5, 6 and 8 of the stipulation and are summarized above, although not necessarily comprehensively. Any factual allegations not set out in the stipulation will be considered, if at all, only in deciding whether genuine issues of material fact are present.

[2] WAC 173-26 comprises the 2003 shoreline rules, which govern the adoption of shoreline master programs. The County's current SMP was adopted before those rules were promulgated and therefore is not subject to their terms. WAC 173-26-010, however, states that "[t]he provisions of this chapter implement the requirements of [the SMA]." Therefore, I believe the Appellants are correct that these rules may be consulted in interpreting the SMA, even though the County's new master program is not yet adopted.

Factual allegations outside the stipulation will not be considered in establishing any matter of fact.

A substantial development permit (SDP) is required for a use or activity on the shorelines which is both "substantial" and a "development". RCW 90.58.140. Under RCW 90.58.030 (3) (e), a development is "substantial" if its total cost or fair market value exceeds $5718 or if it materially interferes with the normal public use of the water or shorelines of the state. It is not disputed that the cost or value of each proposed operation would exceed this monetary threshold. Thus, the validity of the administrative determinations turns on whether the proposed geoduck operations count as "development".

"Development" is defined by RCW 90.58.030 (3) (a) as

> "a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level;"

This definition is the same as that in WAC 173-27-030.

Under these definitions, the key question in the challenge to the first ground of the administrative determinations is whether the proposed operations will involve "construction" of a "structure".

The shoreline rules define "structure" as

> "a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except for vessels."

WAC 173-27-030 (15).

The Thurston Region Shoreline Master Program (SMP), on the other hand, defines "structure" as

> "[a]nything constructed in the ground, or anything erected which requires location on the ground or water, or is attached to something having location on or in the ground or water."

This definition, especially its reference to "anything erected which requires location on the ground or water", could, in this context, be substantially broader than the definition in WAC 173-27-030 (15).

Local master programs must be consistent with the shoreline rules found in the WAC. RCW 90.58.080 (1).[3] An ordinance improperly conflicts with a statute if it "permits or licenses

[3] See Footnote 2, above.

that which the statute forbids and prohibits, and vice versa." Weden v. San Juan County, 135 Wn.2d 678, 693 (1998); citing Bellingham v. Schampera, 57 Wn.2d 106, 111 (1960). The broader scope of the definition of "structure" in the SMP, above, does not prohibit that which the statute (or rule) permits, but rather it arguably requires an SDP for an activity for which the statute or rule would not. The requiring of a permit, though, could have just as severe consequences as a flat prohibition. Thus, the Weden/Schampera approach seems also suited to determining whether an SMP's broader definition of "development" would conflict with the WAC rule. Since the broader SMP definition would require an SDP for a use for which the WAC rule would not, it would raise an impermissible conflict by analogy to those decisions.

Perhaps an even more basic principle in determining whether a subordinate level of government may expand restrictions adopted at a superior level is legislative intent. See Ray v. ARCO, 435 U.S. 151 (1978). In that case the Supreme Court held that certain state regulations of oil tankers were preempted by federal law, because

> "[e]nforcement of the state requirements would at least frustrate what seems to us to be the evident congressional intention to establish a uniform federal regime controlling the design of oil tankers."

Ray, 435 U.S. at 165. Although the SMA is focused on local control, it does include detailed definitions as to what counts as a substantial development and establishes the permit for a substantial development as a centerpiece of shoreline regulation. This permitting scheme was adopted by the legislature in service of the sometimes jostling goals of protecting the natural and ecological functions of the shorelines, while planning for and fostering all reasonable and appropriate uses. See 90.58.020.

The adoption of detailed permit thresholds to serve potentially conflicting goals strongly suggests that the legislature intended they be followed. Although a county has ample scope in adopting the policies under which SDPs are judged, I think it must accept the state's call as to when they are required. Therefore, the definition of structure in WAC 173-27-030 (15) will control.

Returning to the examination of that definition, the geoduck activities described in the stipulation do not constitute "a permanent or temporary edifice or building". Thus, they do not involve a structure under the first element of the definition.

The second element is disjunctive: "any piece of work artificially built or composed of parts joined together in some definite manner . . ." Under this, a use involves a structure if it involves a "piece of work artificially built". Under customary definitions, the PVC tubes are pieces of work and are artificially built. This seems plainly to classify them as structures under WAC 173-27-030 (15). The Appellants argue to the contrary that although the tubes are artificial, the tubes and netting together are not a piece of work artificially built, since "built" is defined as "composed of pieces or parts joined systematically". Ex. 13, p. 10. Since the tubes are not joined together by the net, the Appellants argue, the use is not "built" under applicable definitions. Id.

Under this argument, a use could consist of different structures (pieces of work artificially built), but would not itself be a structure unless the constituent structures were "joined

systematically". This position taxes logic with the result that a use consisting exclusively of structures would itself not be a structure unless the constituent structures were satisfactorily joined. Similarly, it contradicts the definition of structure as "any piece of work artificially built". (Emph. mine.) It also would effectively remove the "or" from the definition of structure by requiring that constituent structures also be joined systematically. For these reasons, I don't believe this argument is consistent either with the text of the definitions or the purposes they serve. The proposed geoduck operations involve structures.

The second prong of the disjunctive definition noted above is "a piece of work . . . composed of parts joined together in some definite manner". Whether the proposal involves a structure under this definition is less certain. The only way in which the PVC tubes are arguably "joined together" in the proposed operations is through the area net which is spread over them. The net is not attached to the tubes, but is stretched over them and anchored to the sea bottom with rebar. The Appellants argue through a forceful analogy that if this is enough to make a structure, then every woodpile with a tarp over it is also a structure, since the tarp protects the pile from the elements as the net protects the geoducks from predators. If it be objected that the net also holds loose tubes together, the analogy could be modified to a tarp spread over a pile of leaves to keep them from blowing away. In either event, deeming the presence of the tarp sufficient to transform the pile into a structure seems counter to both ordinary usage and the building codes.

What may seem absurd under one set of laws, though, is not necessarily so under others. As far as process is concerned, the heart of the purpose of the SMA is the recognition that

> "coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefore, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines."

RCW 90.58.020.

Turning to substance, the legislature stated that

> "[i]t is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto."

RCW 90.58.020.

The SMA implements these policies in part through a permit system. The definition of development is in large part the litmus showing when a permit is required for a proposed use. Whether or not it is absurd to deem the tarp to make a structure, it is not irrational or absurd for the legislature to decide that having parts joined together in some definite manner makes a piece of work a "structure" in applying this prong of the definition of development. To fully serve the SMA policies just noted, interpretation should lean in the direction of the broader reading of these definitions. Inclusion of a doubtful case in the permit process better serves those policies, both procedural and substantive, than exclusion.

The PVC tubes, mesh caps and nets are pieces of work, individually or collectively. The tubes are parts of that work. Their array or configuration is in "a definite manner". The question, then, is whether they are "joined together" in that manner.

The area net is spread over and comes into contact with the tubes, but is not attached to them. The two purposes of the nets are to contain loose tubes and afford protection from predators. Ex. 9. Thus, the nets do not hold the tubes together or in place. Only when they come loose does the net contain them.

"Join" is not defined in the SMA, its implementing rules or the SMP. The principal dictionary definitions of "join" are

> "to put or bring together and fasten, connect or relate so as to form a single unit, a whole or continuity . . .
>
> to put or bring into close contact, association or relationship . . .
>
> to come into the company of . . ."

Webster's Third New International Dictionary (1976). The third of these entries, though, is likely not apt, since its examples all relate to persons.

The use of the terms "fasten" and "connect" in the first entry suggests that the net does not "join" the tubes, since the net is not attached to them and only holds them together if they come loose from the sea bottom. On the other hand, the facts that the net is anchored so as to close the area of the tubes to predators and that it is placed to contain the tubes as they are pushed from the sand suggests that it brings the parts into association or relationship, thus falling within the second entry. Ordinary English usage welcomes either reading.

The objective of statutory construction is "to ascertain legislative intent as expressed in the statute." Martin v. Meier, 111 Wn.2d 471, 479 (1988). More specifically,

> "[i]n determining the meaning of words used but not defined in a statute, a court must give careful consideration to the subject matter involved, the context in which the words are used, and the purpose of the statute [cit. om.] 'Language within a statute must be read in context with the entire statute and construed in a manner consistent with the general purposes of the statute.' [cit. om.]"

PUD of Lewis County v. WPPSS, 104 Wn.2d 353, 369 (1985). In short, the "paramount concern"

> "is to ensure that the statute is interpreted consistently with the underlying policy of the statute."

Safeco Insurance Co. v. Meyering, 102 Wn.2d 385, 392 (1984).

For the reasons expressed above, when the text of the law and available definitions leave the matter equally doubtful, the procedural and substantive polices of the SMA are better served by navigating the permit process. Therefore, the PVC tubes should be deemed "joined" for purposes of the definition of "structure".

The final step is to determine whether the use involves the "construction" of a structure, as stated in RCW 90.58.030 (3) (a), when none of the constituent parts of the operations is actually constructed in the shoreline. Although "construction" is not defined in the SMA, other definitions in it answer this question.

RCW 90.58.030 (3) (e) defines substantial development and exempts from its scope the "construction or modification of navigational aids such as channel markers and anchor buoy." Unless they are deemed "obstructions', navigational aids would only be deemed developments or substantial developments by virtue of involving construction of a structure. Buoys and the like are constructed on shore and placed in waters subject to the SMA. Thus, under the Act the placement of structures in the shorelines counts as construction. Therefore, placement of the tubes and nets involve "construction" of a structure.

These conclusions, however, are contradicted by Attorney General Opinion (AGO) 2007 No. 1. That opinion addressed, among others, the question whether shoreline substantial development permits are required for planting, growing and harvesting farm-raised geoducks by private parties. The method of geoduck operations examined by the AGO is virtually the same as that involved in these appeals. The AGO concluded that geoduck operations would fall within the definition of "development" in the SMA only if they caused substantial interference with normal public use of the surface waters, one of the elements of that definition. The AGO concluded that geoduck operations would not fall within any of the other elements of the definition of development.

The AGO cited the definition of structure from WAC 173-27-030 (15) as "a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner", the same definition analysed above. The AGO noted that the PVC tubes are not edifices or buildings and do not form an edifice or building taken together. The opinion stated also that the tubes are not parts joined together in a definite manner. Therefore, it concluded, geoduck operations do not involve structures.

This analysis, however, ignored without explanation the element of the definition including "any piece of work artificially built". In doing so, the AGO read the word "or" out of the definition in violation of the canon of construction that a legislative body is presumed not to have used superfluous words and that meaning, if possible, must be accorded to every word in a statute. See Applied Industrial Materials v. Melton, 74 Wn. App. 73 (1994). The only way of

according meaning to every word in the definition of "structure" is to deem it also to include "any piece of work artificially built". When that is done, as shown above, the proposed operations must be deemed to involve structures.

In addressing the "composed of parts joined together" prong of the definition, the AGO concluded that the tubes do not meet this description, but did not analyse the definition of "join" or the structure or function of the area net. Those analyses, as shown above, indicate that the tubes and net constitute a structure under this prong also.

The AGO states that its conclusion is reinforced by the decision in Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801 (1992), in which the Court rejected the argument that the removal of railroad trestles was a development, because it modified a structure. The Department argues at Ex. 12 that Cowiche Canyon has no application to this case, because it involves removal, not installation. The Appellants reply at Ex. 13 that the relevance of the case lies in its use of a common-sense approach in concluding that removal is not modification. The Appellants are correct, but the analysis above applies that common-sense approach in concluding that these operations are structures under the definition.

As the Appellants point out in Ex. 13, Attorney General Opinions are not controlling, but are entitled to great weight. Thurston County v. City of Olympia, 151 Wn.2d 171, 177 (2004). As also pointed out by Appellants, greater weight attaches to an agency interpretation when the legislature acquiesces in that interpretation, and the legislature has not overturned this AGO, even though it has adopted legislation concerning geoducks since its issuance. Legislative acquiescence, however, "is not conclusive, but is merely one factor to consider." Meyering, 102 Wn.2d at 392.

These rules, I believe, mean that an Attorney General Opinion is something more than a tiebreaker if a decision cannot be made on other grounds. They mean, at least, that an AGO must play a prominent and weighty role in making the decision. It is not, however, conclusive.

Here the AGO failed to consider part of the definition which it was construing, the element deeming "any piece of work artificially built" to be a structure. Nor did it offer any analysis construing the definition to exclude that element. This decision, therefore, does not so much disagree with the AGO's analysis, as fill in an element not treated in it. This decision does disagree with the AGO's conclusions, but, for the reasons above, I believe that disagreement is well founded.

The other element of the definition, "piece of work . . . composed of parts joined together in some definite manner . . ." is, as noted, a much closer call. As such, the deference accorded Attorney General Opinions becomes more important. However, as noted the AGO does not analyse the definition of "join" or the structure or function of the area net. When that is done, and the policies of the SMA and the canons of construction are examined, the discussion above shows, I believe, that the better interpretation is that this counts as a structure. Following the AGO in spite of this would elevate "great weight" to conclusiveness, which is not the role of an AGO.

4. The second ground of the administrative determinations: that the proposal will involve the removal of sand, gravel or minerals.

As noted, "development" is defined by RCW 90.58.030 (3) (a) to include "removal of any sand, gravel, or minerals".

The Department states at Ex. 12, pp. 9-10, that proposed operations will remove sand from the site, will generate a turbid plume which transports sediment off the site, will result in loss of elevation at the site due to sand removal, and will increase erosion during storms. The Department bases these factual allegations on a consultant statement and the Washington Geoduck Growers Environmental Codes of Practice, part of Ex. 12.

None of these factual allegations are included in the stipulation of facts at Ex. 9. The principal stipulated facts concerning harvesting are that the sand around the geoduck will be loosened using a pressurized hose and nozzle and a vessel-mounted high volume, low pressure water pump. The clams will then be extracted one at a time by hand. See Ex. 9, Sections 4 and 9.

The parties have stipulated that the summary judgment motions will be decided on the basis of the stipulated facts. This is consistent with the nature of summary judgment, which can only rely on facts which are agreed or which raise no material issue. See CR 56. The Appellants make clear at Ex. 13, p. 2 that they dispute the factual allegations made by the Department in Ex. 12 and are ready to offer contrary evidence.

For these reasons, the factual allegations in Ex. 12 cannot be relied on for the truth of the matters asserted. Only the facts stipulated in Ex. 9 may play that role. The allegations in Ex. 12, however, along with the Appellants' statement at Ex. 13, p. 2, show that the amount and nature of sand or sediment removal is a genuine issue of fact.

The Department points out also that the definition of development includes "removal of **any** sand, gravel, or minerals" (emph. added) and argues that by their nature these operations will result in some removal of sand and sediment through injection of pressurized water and loosening of the geoducks. Based on the stipulation only, I expect the Department is correct in this factual assertion. However, I do not believe the Department is correct in the implied corollary, that the disturbance of the minutest amount of sediment counts as removal under the definition. If that were the case, as the Appellants argue, walking on the beach at low tide would be a "development", since some sand or mud would be removed on shoes. To avoid this strained or absurd consequence, some minimal amount or type of removal of beach material must be allowed without triggering characterization as a development. The nature of that threshold need not be determined here. Its presence, though, means that the Department's argument cannot be accepted.

The Appellants invoke in their favor the canon of construction providing that the meaning of words may be indicated or controlled by those with which they are associated. See State v. Roggenkamp, 153 Wn.2d 614, 623 (2005). They argue that since sand, gravel, and minerals are all materials that are mined in the shorelines, this prong of the definition is intended only to capture the mining of those materials. The purpose of the canons of construction, as with all statutory construction, is to identify and serve legislative intent. Martin, supra. To determine that intent, a court will look first to the language of the statute. Where statutory language is plain and unambiguous, a statute's meaning must be derived from its wording. SEIU v. Superintendent of Public Instruction, 104 Wn.2d 344, 348 (1985).

The use of the word "any" in this definition signals a plain intent to include actions beyond mining. The ambiguity in the *de minimus* threshold just discussed is best dissolved by judicial implication of a reasonable minimum level, not through narrowing the definition's scope to contradict its terms. Further, the inclusion of "dredging" in the definition of development, an activity commonly associated with seabed mining, suggests that the prong of the definition under consideration was intended to reach beyond mining. The reference to "removal of any sand, gravel, or minerals" is not restricted to mining.

The Appellants' principal argument on this point rests on the AGO discussed above and the adherence of the Department of Ecology and Department of Natural Resources to it. The AGO characterized geoduck harvesting as incidentally releasing silt and sediment which may temporarily be found in the surrounding water. AGO 2007 No. 1, p. 2. The AGO concluded that this did not involve the "removal of any sand, gravel, or minerals" for two reasons. First, the disruption of substrate around a geoduck cannot legally be distinguished from clam digging or raking and it would be too burdensome to require substantial development permits for all significant clam beds. Id. at 7. Second, only a "minimal" amount of materials would be removed.

The Attorney General is authorized to give written opinions "upon constitutional or legal questions." RCW 43.10.030 (7). The conclusion that a specific set of facts falls within a statutory definition is an opinion on a legal question. Thus, this AGO's analysis of whether described geoduck operations constituted a structure was an authorized role of an AGO. Here, in contrast, without citing any evidence, the AGO concludes that the geoduck operations will only remove a "minimal" amount of materials and thus do not meet this prong of the definition of development. This conclusion is announced, no matter what the consistency of the substrate, what the pressure of the water used, what the length of water injection, or what the characteristics of water or current; and without any consideration of how much sand or sediment might in fact be removed under these varying conditions. These are factual determinations and, as the assertions of the Appellants and Department suggest, likely highly contested factual determinations. As such, they are not amenable to determination as a matter of law or by definition. The AGO's attempt to do so, I believe, was beyond the authority of RCW 43.10.030 (7).

The AGO also expresses concern that a contrary interpretation would have the unintended consequence of requiring other clam operations to obtain a substantial development permit. This would be persuasive if it were established that geoduck and other clam harvesting disrupts a similar amount of substrate and that other clam harvesting is exempt from obtaining a substantial development permit. The first point is a matter of fact which is assumed by the AGO. The second is a legal issue which is touched only through the statement: "We find no indication that the SMA has ever treated clam harvesting, alone, as development." AGO 2007 No. 1, p. 2. The lack of such an indication, however, doe not necessarily show that all clam harvesting is in fact exempt under the SMA.

Whether these geoduck proposals constitute development through the removal of any sand, gravel, or minerals raises a number of issues of material fact and is not amenable to resolution through this AGO. Therefore, the summary judgment motions by Appellants and the Department on this issue are denied.

5. The third ground of the administrative determinations: that the tubes and netting serve as an obstruction on the beach.

RCW 90.58.030 (3) (a) defines development to include "placing of obstructions". Because the definition also includes "any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters", the obstructions referred to seem intended to be other than those interfering with normal public use of the surface of the waters. The administrative determination on appeal is consistent with this view, finding that the tubes and netting are an obstruction "on the beach".

The tidelands on which these operations are proposed are privately owned. See Ex. 9, Section 1. Under general principles of property law, the private owners could exclude the public from walking on their beaches. See Presbytery of Seattle v. King County, 114 Wn.2d 320 (1990) (the right to exclude others is one of the fundamental attributes of property ownership). The AGO discussed above concluded that tubes could obstruct one walking on the beach, but that would only be relevant if the public had a right to use the tidelands. Thus, the AGO concluded, a geoduck operation on private tidelands would not constitute development through the placing of obstructions. Implicit in this holding is the view that "obstructions" refers to the impeding of human passage, not that of fish, shellfish or sediment.

The AGO's conclusion that tubes and nets cannot obstruct public passage on beaches which the public has no right to use is sound in both logic and policy. Before resting in that conclusion, though, the public trust doctrine must be examined.

Our Supreme Court outlined the public trust doctrine in the following holdings from Caminiti v. Boyle, 107 Wn.2d 662 (1987):

> ". . . the State's ownership of tidelands and shorelands is not limited to the ordinary incidents of legal title, but is comprised of two distinct aspects.
>
> The first aspect of such state ownership is historically referred to as the jus privatum or private property interest. As owner, the state holds full proprietary rights in tidelands and shorelands and has fee simple title to such lands. Thus, the state may convey title to tidelands and shorelands in any manner and for any purpose not forbidden by the state or federal constitutions and its grantees take title as absolutely as if the transaction were between private individuals . . .
>
> The second aspect of the state's ownership of tidelands and shorelands is historically referred to as the jus publicum or public authority interest . . . More recently, this jus publicum interest was more particularly expressed by this court in WILBOUR v. GALLAGHER, 77 Wn.2d 306, 316, 462 P.2d 232, 40 A.L.R.3d 760 (1969), CERT. DENIED, 400 U.S. 878 (1970) as the right
>
> > 'of navigation, together with its incidental rights of fishing, boating, swimming, water skiing, and other related recreational purposes generally regarded as corollary to the right of navigation and the use of public waters.'
>
> The state can no more convey or give away this jus publicum interest than it can "abdicate its police powers in the administration of government and the preservation of the peace . . . Thus it is that the sovereignty and dominion over this state's tidelands and

> shorelands, as distinguished from TITLE, always remains in the State, and the State holds such dominion in trust for the public. It is this principle which is referred to as the 'public trust doctrine'. "

Caminiti, 107 Wn.2d at 668-670 (footnotes and citations omitted). See also Wilbour v. Gallagher, 77 Wn.2d 366 (1969), State v. Longshore, 141 Wn.2d 414 (2000), and Washington State Geoduck Harvest Assoc. v. DNR, 124 Wn. App. 441 (2004).

The requirements of the public trust doctrine, the Court held, "are fully met by the legislatively drawn controls imposed by the Shoreline Management Act . . ." Caminiti, 107 Wn.2d at 670.

As stated in the excerpt from Wilbour v. Gallagher, above, the public trust doctrine protects the right of navigation,

> "together with its incidental rights of fishing, boating, swimming, water skiing, and other related recreational purposes generally regarded as corollary to the right of navigation and the use of public waters."

In the unpublished opinion of Bainbridge Island v. Brennan, No. 31816-4-II, (2005), Division II of the Court of Appeals held that under the public trust doctrine, the public may use tidelands when covered by water, but the public has no right to walk across private property when the tide is out.

The Supreme Court approached the same issue in State v. Longshore, above, when it decided that the public trust doctrine does not give the public the right to gather naturally growing shellfish on private property. The Court expressly stated, though, that it did not determine whether the public has a right to cross over private tidelands on foot. Longshore, 141 Wn.2d at 429, n. 9.

With the unpublished status of Brennan and the express "non-decision" of Longshore, the fairest conclusion is that our appellate courts have not yet decided whether the public trust doctrine gives the public the right to walk across private tidelands. Consistently with the AGO, whether the PVC tubes are obstructions on the beach and hence "developments" depends on whether the public has that right. Given the complexities of the application of the public trust doctrine, this is not an issue that should be decided without briefing. Therefore, the summary judgment motions on this issue should not be decided at this time.

The remaining issue is the Department's contention that the tubes and nets constitute obstructions on the beach, because they impede the passage of fish and other sea creatures or the flow of sediment.

"Obstruction" is not defined in either the SMA, its implementing rules, or the SMP. No case law or Shoreline Hearings Board decisions on the meaning of obstruction were cited. As noted, the AGO takes the position that obstruction applies only to human passage. The Department argues that the mandate to construe the SMA broadly to protect the state shorelines as fully as possible means that obstructions to marine life must also be considered. The Appellants cite the AGO, point out that the Department's consultants conclude that the effect of the tubes on sediment movement is likely negligible, point out that requiring marine

animals to move around the tubes does not comport with the accepted definition of obstruction, and raise a number of factual issues.

With none of the arguments being definitive, I would normally defer to the view expressed in the AGO, because it is a rational way of implementing the purposes of the SMA. However, because the issue might be treated in the decisions of the Shoreline Hearings Board, it makes most sense to allow the parties to research that, if desired, before deciding whether obstructions of marine life count as obstructions under the definition of development. The one holding that can be made at this time is that the proposed operations do not meet the definition of development due to their effect on sediment flow. Even if the obstruction of sediment flow fell within the definition of development, the facts alleged by the Department, if considered, would show only that the proposals' effect on sediment movement would be negligible. Thus, assuming all pertinent legal and factual issues favorably to the Department, no obstruction of sediment would be shown.

D. Summary of order.

1. The Department's summary judgment motion that the proposed geoduck operations are a "development" under the SMA because they involve "construction of a structure" is granted. The Appellants' summary judgment motion on the same issue is denied. The first ground of the administrative determinations on appeal, that the placement of tubes and netting on the beach constitutes construction of a structure and consequently a development, is upheld.

2. The summary judgment motions by the parties on whether the proposed operations are a "development" under the SMA because they involve "removal of any sand, gravel, or minerals" are denied due to the presence of genuine issues of material fact.

3. On the third ground of the administrative determinations, whether the tubes and netting serve as an obstruction on the beach, summary judgment is granted in favor of the Appellants on the issue of sediment movement: the proposed operations are not developments due to their effect on the movement of sediment. Summary judgment is not entered at this time on the other issues relating to this third ground, due to the need for further examination of the public trust doctrine and review of whether any Shoreline Hearings Board decisions address whether the "placing of obstructions" includes obstructions to marine life.

4. The effect of the above decisions is that the proposed operations are deemed "developments" under the SMA under the first ground of the administrative determinations, requiring a substantial development permit for the proposals. Thus, unless this determination is reversed, a hearing on a substantial development permit is required for the proposed operations, and the appeals of the other grounds of the administrative determinations are mooted, as well as the motion in limine.

Dated this 21st day of January, 2011.

_____
Thomas R. Bjorgen

Thurston County Planning Commission

October 2, 2019

Comments by Patrick and Kathryn Townsend

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Protect Our Shoreline News – Burley Lagoon aquaculture die-off.

Protect Our Shoreline News – Taylor Shellfish Says Clam Die-off in Burley Lagoon from Toxic Algae.

Case Inlet Shoreline Association – FAQ: Industrial Shellfish Aquaculture in Puget Sound.

For more information go to:

ProtectZangleCove.org
CoalitionToProtectPugetSoundHabitat.org
CaseInlet.org
ProtectOurShorelineNews.blogspot.com

Chapter 19.600 Shoreline Use and Modification Development Standards

The following are comments from Patrick and Kathryn Townsend, 7700 Earling Street NE, Olympia WA 98605, on the Aquaculture Section of Chapter 19.600 of the Draft SMP for Thurston County.

19.600.115 Aquaculture

A. Environment Designations Permit Requirements

PT/KT: Things have changed since 1971 when the Shoreline Management Act was written. What existed in the way of shellfish aquaculture in 1971 is a far cry from what exists today.

In 1991, Joan Thomas, one of the original drafters of the Shoreline Management Act stated: ***"When the SMA was written in 1971, aquaculture meant oysters and clams and one salmon raising operation. This activity was recognized and protected as water-dependent. I do not read the original intent or the original guidelines to promote the industry as we know it today."*** Ms. Thomas passed away in 2011. What would she say today?

If there was that big a difference between what existed in the way of industrial shellfish aquaculture in 1971 and 1991, please consider how different it is today in 2019, 28 years AFTER 1991. Yet the County is willing to permit literally acres of PVC tubes on Thurston County tidelands, acres of netting and clam bags, raking of the tidelands, removal of native species and water jet harvest of geoduck. As in North Puget Sound, will we also find tractors on our tidelands? This is not in alignment with the goals to protect salmon and orcas. It is a complete contradiction.

It would appear that county personnel are so afraid of the shellfish industry that they can't ever say "no" to the industry and they are doing their best to comply with the industry demand to reduce monitoring and regulation. Or perhaps they so aligned with the shellfish industry's vision of turning Puget Sound into an unregulated, massive working waterfront that they choose to view ordinary citizens who present a different perspective as irrelevant.

Many of the claims of the shellfish industry are tall tales, for example the claim that the geoduck tubes are hardly ever visible. That is bunk, pure and simple. It is even bigger bunk when geoduck tubes, as in the current geoduck operation in Zangle Cove, are planted well above the beach elevation permitted by the Thurston County Planning Department. The County has not yet responded to our letters about this issue. We would ask the Planning Commission to read our letter to the County listing the permit violations of the ChangMook Sohn geoduck operation as the violations are undoubtedly not unique to this operation. We ask the Planning Commission to give guidance to the County Planners to deal appropriately with the permit violations and if operators refuse to remedy their permit violations, their permits must be terminated.

With 85% of Totten Inlet tidelands filled with shellfish aquaculture on all levels of the beach, we would ask County officials and planners to look at what is currently happening in Burley Lagoon and Rocky Bay in Pierce County. We've attached two articles about the die-off of clams in these waterways and the consequent persistence of the bacteria and long-term horrific stench. The shellfish industry can attribute this to a toxic algae bloom, but everybody knows that illness occurs most easily in a system out of balance. Here is the link to the online source:

https://protectourshorelinenews.blogspot.com
Articles:
9/16/19: Taylor Shellfish Says Clam Die-off in Burley Lagoon from Toxic Algae
9/15/19: Burley Lagoon Residents Complain of Putrid Smell, Clams Die Off: A "Preferred Use" of the tidelands?

We would ask the planning commissioners to review the history of citizen and local organization efforts to bring reason to the shellfish industry's attempt to take over Puget Sound tidelands. It is especially concerning that the primary areas that the industry covets are the estuaries—some of the most fragile areas of the shoreline.

https://protectourshorelinenews.blogspot.com/
http://coalitiontoprotectpugetsoundhabitat.org
http://caseinlet.org
http://protectzanglecove.org
http://apheti.org
https://www.centerforfoodsafety.org/issues/312/aquaculture

We request that the County put all applications for renewal of shellfish aquaculture operations and new shellfish aquaculture operations on hold and work with citizen and environmental groups to formulate appropriate regulations for the shellfish industry that take into consideration the goals to protect native species, salmon and orcas. Use of plastics in Puget Sound by the shellfish industry should be phased out.

Following are comments related to specific items in the Draft Chapter 19.600-SMP Update:

KT: The shellfish industry and has been given too many allowances. Geoduck aquaculture "in all designations" needs to be removed. Shellfish aquaculture should not be allowed in Natural areas. It is clear that this draft would significantly allow for more geoduck operations by the industry.

KT: The wording of this section puts the onus on the landowners to prove "substantial interference with normal public use of the surface waters." This means individual homeowners going up against the shellfish industry and their significant lawyers and lobbyists. This wording fails to protect individual homeowners.

Where aquaculture is proposed in the following upland designations, the identified permit requirements shall apply. Where proposed in the adjacent aquatic designation, the corresponding upland designation shall be used to determine permit requirements:

1. ~~Mining,~~ Shoreline Residential, Urban Conservancy, Rural Conservancy, and Natural: Except as otherwise stated in this section, an SDP shall be required for new aquaculture activities that meet the definition of substantial development under the Shoreline Management Act and this Shoreline Master Program. Exempt if definition of substantial development is not met.

KT: What is definition of substantial development. There should be a reference here to where that is defined.

2. Natural: A CUP shall be required where the proposal requires new structure or facilities.

3. Geoduck aquaculture in all designations:

KT: Geoduck aquaculture, using 7 miles/16 tons of PVC plastics along with netting PER ACRE of tideland, has been given extraordinary license to change the habitat of Puget Sound. It is actually a tiny industry that makes most of its money on the overseas market, selling to a population who believes that consuming geoducks will enhance their virility. Massive alternation of the tidelands of Puget Sound for this craven money making purpose. What does the County actually receive in recompense for giving away the tidelands of Puget Sound to the shellfish industry. Does anyone in Thurston County actually want to save the salmon and the orcas? Geoduck aquaculture "in all designations" needs to be removed.

   a. A CUP shall be required for all new commercial geoduck aquaculture and an administrative CUP for existing aquaculture being converted to commercial geoduck aquaculture;
   b. An SDP shall be required for the planting, growing and harvesting of farm-raised geoducks only if the specific project or practice causes substantial interference with normal public use of the surface waters.
   c. Wildstock geoduck harvest associated with the state and tribal co-managed geoduck fishery is not aquaculture. Since a fishery does not constitute development under this Program, it is not subject to its regulations.

PT: What is the rationale for creating a separate set of regulations for geoduck?

PT: After expending substantial taxpayer resources requiring and defending the need for an SSDP why is the new SMP proposing CUPs? What are the differences between the two?

PT: Existing non-geoduck aquaculture is substantially different that geoduck aquaculture. The preparation, planting, structures, and harvest are very different from oyster operations, as one example. There should be no shortcut via an "administrative CUP" for switching from one to the other.

PT: Thurston County has already determined, and defended in court, that an SDP is required for geoduck operations because of the presence of structures. The court's decision had nothing to do with public use of the waters. This section (b) should be deleted.

4. Certain aquaculture developments and supplemental wild stock seeding may be exempt from SDP requirements pursuant to the exemption criteria at Section 19.500.100(C) of this Program. Such activities shall also comply with all state and federal requirements, including but not limited to Department of Health certification and license, or Shellfish Import or Shellfish Transfer permits, where applicable.

PT: "Certain aquaculture developments" needs to be defined clearly. Unless clearly defined, this item should be deleted. That such activities must comply with all state and federal requirements is an oxymoron. This is, of course, always the case.

KT: If there is "seeding", then the activity has nothing to do with "wild stock." "Seeding" means "planting", means aquaculture farming. Thus wherever "seeding" occurs, that must be designated aquaculture.

B. Application Requirements

In addition to the minimum application requirements in Section 19.500.105(C), aquaculture applications shall include the following information if not already provided in the local, state or federal permit applications. Where requested information is not applicable to a specific proposal, the application shall not be required to include all items listed under this section as long as it is demonstrated why the information does not apply, with concurrence from the Department.

KT: What is the specific process for demonstrating and/or determining why requested information is not applicable to a specific proposal and thus why the information does not apply? Is there a specific form and if so, where is it located? WHO makes the determination about whether requested information is applicable to a specific proposal and is there a process for citizen/community input on the specific claim? Are neighboring citizens/community members notified that requested information has been waived and is there a process for anyone to object to this apparently arbitrary decision by an unknown party? I agree with PT comment below: the last sentence in the above paragraph should be stricken.

1. A site plan, including:

   a. The perimeter of the proposed aquaculture operation area;
   b. Existing bathymetry depths based on mean lower low water (MLLW datum);
   c. Adjacent upland use, vegetation, presence of structures, docks, bulkheads and other modifications;
   d. Areas where specific substrate modification will take place or structures will be constructed or installed;
   e. Access provisions for marine or vehicle traffic, processing structures or facilities; and
   f. Location of storage or processing structures or facilities.

   PT: The last sentence under (B) should be deleted. The site plan should always include information for (a) through (f).

   KT: The term "structures" and "other modifications" should be either be defined or stricken as meaningless terms..

2. A baseline description of existing and seasonal conditions, including best available information. Where applicable to the subject proposal, the following should ~~shall~~ be included if already part of information submitted for another federal or state agency. ~~Note: information regarding wind conditions, current flows and flushing rates (items 3-5) will generally not be applicable to shellfish aquaculture applications.~~

   a. Water quality;
   b. Tidal variations;
   ~~c. Prevailing storm wind conditions;~~
   ~~d. Current flows at each tidal cycle;~~
   ~~e. Flushing rates;~~
   f. Littoral drift;

g. Sediment dispersal, including areas of differing substrate composition;
h. Areas of aquatic, intertidal and upland vegetation complexes; a vegetation habitat survey (see Section 8.10, Biological and Habitat Surveys) must be conducted according to the most current WDFW eelgrass and macroalgae survey guidelines;
i. Aquatic and benthic organisms present, including forage fish, and spawning and other lifecycle use of, or adjacent to, the site;
j. Probable direct, indirect and cumulative impacts to items B.1. - B.9. above; and
k. Visual assessment, including photo analysis / simulation of the proposed activity demonstrating visual impacts within 1,500 feet of the proposed project site. Where predator exclusion devices are proposed, the assessment shall include an analysis of visual impacts of proposed predator exclusion devices at mean high and mean low tides.

PT: Items (c), (d) and ("e) should not be stricken. Prevailing wind storm conditions, current flows at tidal cycles, and flushing rates are relevant to potential impacts on tideland ecosystems, including the impact of siltation by aquaculture operations, and vary from one site to another. These must remain in the specification.

KT: The re-wording in the 2nd sentence ("…should be included if already part of information submitted for another federal of state agency.") should be stricken.

1. The word "should" (rather than "shall") gives complete leeway to the applicant to provide the information or not based on their own interests (IF it was "submitted to another federal or state agency.")
2. The logic of the sentence implies that if the information is not already on a state or federal form, it is not required and the "should" implies logically that even if it is on a state or federal form, it is not required.
3. Providing this information must be a requirement for ALL applications without dithering around trying to put in language that excuses the applicant from supplying relevant information about the site.
4. The second sentence of this section is both garbled and inaccurate.

3. An operational plan, which includes the following, when applicable should be included if already part of information submitted for another federal or state agency.:

a. Species, and quantity to be reared;
b. Source of aquatic product;
c. Implementation methods, including density, schedule, phasing options, time of day, and anticipated lighting and noise levels;
d. Number of employees/workers necessary for the project, including average and peak employment;
e. Methods and location of waste disposal and sanitation facilities;
f. Methods for planting and harvest;
g. Methods for predation control, including types of predator exclusion devices;
h. Food and equipment storage;
i. Anticipated use of any feed, herbicides, antibiotics, vaccines, growth stimulants, antifouling agents, or other chemicals and an assessment of predicted impacts;
j. Methods to address pollutant loading, including biological oxygen demand (BOD);
k. A schedule for water quality monitoring, where required; and
l. Other measures to achieve no net loss of ecological functions consistent with the mitigation sequence described in WAC173-26-201(2)(e).

PT: These items should not be excluded if already provided as a part of a submission to another federal or state agency. The intent of Thurston County SMP regulations does not

duplicate all of the other state and federal regulations, and the specified information is relevant. If the information has been submitted as a part of other regulations, it would not be unreasonably difficult to provide it to Thurston County.

KT: Once again—this is a highly confusing addition. It appears to imply that "an operational plan" may or may not be (should) included if it was included on a federal or state submission, logically implying that it is not required to be included at all. This is garbled at best. Simply say that the following items MUST be included (a-l). The County does not need to run interference with the state and federal requirements. Somebody is obviously trying to say something in a very backward (hidden?) way.

4. Other applications and reports, when applicable or requested depending on site specific details determined during permit review, to ensure compliance with permit conditions, which may include:

a. An accepted Washington Department of Natural Resources lease application, including a waiver of preference rights to access for navigation from the upland property owner, if applicable;
b. An accepted Washington Department of Ecology National Pollutant Discharge Elimination System (NPDES) permit, if applicable;
c. An accepted Washington Department of Health beach certification number;
d. An accepted WDFW aquatic farm permit, and/or fish transport permit;
e. Water quality studies;
f. Reports on solids accumulation on the bottom resulting from the permitted activity along with its biological effects;
g. Report on growth, productivity, and chemical contamination of shoreline plants and animals within or adjacent to the proposed site;
h. Noise level assessments, including mitigation measures to ensure compliance with Chapter 10.36 & 10.38 TCC; and/or
i. Monitoring and Adaptive Management Plan for introduction of aquatic species not previously cultivated in Washington State.

PT: The redline addition should be deleted. All of the subject reports (a) through (h) are relevant to local SMP regulations and should be provided.

KT: I agree with PT. Strike the red-line wording. All that wording does is create confusion and questions about who will make the decision about whether these items are required or not, i.e, who is in charge of the "permit review". There should be a standard set of requirements for all permit applications without having someone in the department able to pick and choose what is required from an individual applicant.

C. Development Standards

1. General Standards.

a. Aquaculture is dependent on the use of the water area and, when consistent with control of pollution and prevention of damage to the environment, shall be a preferred use.

PT: "Shall be a preferred use" has no basis in WA state law or regulations. The recent Growth Management Hearings Board ruling confirms this. Change this to "is one preferred use among others".

KT: I agree with PT.

b. Proposed residential subdivisions and other land uses and developments which may

impact aquaculture operations shall provide facilities to prevent any adverse water quality impacts to such operations.

PT: This section probably has no basis in any Washington state law. It should be stricken.

c. Site preparation and construction in the vicinity of aquaculture operations shall not result in off-site erosion, siltation, or other reductions in water quality.

PT: This probably has no basis in any Washington state law, other than the HPA. It should be stricken. It is also so vaguely defined as to be unenforceable.

KT: Also it is more than bizarre that Thurston County would want to enshrine in this document the one-way street that upland development may impact aquaculture operations. What about the fact that aquaculture operations have high impact on entire neighborhoods of shoreline property owners? Do you actually think that 7 miles of PVC weighing 16 tons per tideland acre, covered with plastic netting, does NOT impact upland owners? Do you actually think that boats, barges, workers on what once were pristine tidelands, raking, dredging, tractors, etc. do NOT impact upland property owners? We know that geoduck harvesting causes extensive siltation, which will impact any eelgrass in the vicinity and impact water quality.

KT: The shellfish industry claims that geoducks "clean the water." In other words, geoducks remove phytoplankton from the water, which is NOT "cleaning" the water. Shellfish and geoducks filter and consume phytoplankton and detritus. Phytoplankton is an important aquatic plant and nutrient for a number of other aquatic species and is naturally present in the marine environment. Like all creatures, geoducks "poop"--they produce feces and pseudofeces and as the industry plants 3 seeds to the tube and one tube per square foot, that equates to 43,560 (if one seed per tube survives) to a maximum of 120,680 geoducks in one acre. That's a lot of geoduck poop.

KT: Clams and oysters also poop. See excerpt below from:
https://protectourshorelinenews.blogspot.com/2019/09/burley-lagoon-residents-complain-of.html

It's not rocket science. It's "Ecosystem Services".

AUGUST 2017

DUANE FAGERGREN

Under this mat of green macro algae (Enteromorpha spl lies this year's crop of yearling single Pacifics. The oysters consume phytoplankton, and excrete feces, pseudo feces, and ammonia in a mixture that serves to fertilize this luxurious crop of seaweed. The lush crop also provides habitat for crab (graceful crabs mostly) and fish (shiner perch, stag horn sculpin, and bay pipefish).

The downside of this heavy growth is a mat that makes oysters grow slower, clams come to the surface of the beach and can't dig themselves back in, and likely oxygen debt as the algae naturally dies and decomposes.

Oysters poop, seaweed grows, clams die. Ecosystem services at work.

As noted in an August 2017 "Ecosystem Services" winning picture, one source of the problem is directly related to oyster feces, their pseudo feces, associated ammonia, and shell surface area provided by high density planting of oysters. Oysters poop and provide "fertilizer". On the surface of those shells macro algae attaches and thrives on the "nutrients" expelled by the nonnative Pacific oysters. That growth is so intense oyster growth slows and clams rise to the surface. Summertime low tides and summertime heat promote decay and death. Smells emanate. Because of aquaculture. It's not rocket science. Calling it "ecosystem services" deflects attention from dealing with the problem created.

KT: With the above two (new) standards (b and c), obviously written by and for the shellfish industry, you are looking from the perspective of that tiny industry which doesn't provide much money to the County, rather than from the perspective of property owners who are probably your biggest source of income. Why is the County so enamored of the shellfish industry? What do you get form them? This is a specific question that deserves a specific answer.

b. When a shoreline substantial development or conditional use permit is issued for a new aquaculture use or development, that permit shall apply to the initial siting, construction, and planting or stocking of the facility or farm. Authorization to conduct such activities shall be valid for a period of five years with a possible extension per Section 19.500.105(H) of this Program. After an aquaculture use or development is established under a shoreline permit, continued operation of the use or development, including, but not limited to, maintenance, harvest, replanting, restocking or changing the culture technique shall not require a new or renewed permit unless otherwise provided in the conditions of approval, or if required pursuant to permit revision criteria in WAC 173-27-100 or this Program. Changing of the species cultivated shall be subject to applicable

standards of this Program, including, but not limited to, monitoring and adaptive management in accordance with standard g, below.

PT: Due to the extreme risk to endangered and threatened species, such as Southern Resident Killer Wales and salmon, this item should be stricken. There is no current justification for automatic extension of permits. No business should be exempt from periodic review of permit requirements.

c. Aquaculture shall not be permitted in areas where it would result in a net loss of shoreline ecological functions, or where adverse impacts to critical saltwater and freshwater habitats cannot be mitigated according to the mitigation sequencing requirements of this Program (see Section 19.400.100(A)).

PT: This statement ignores the requirement under the general No Net Loss policy for monitoring and adjustment based on results. Research has shown that the large majority of mitigated projects fail to meet No Net Loss requirements. This item should be changed to "Aquaculture shall not be permitted in areas where it would result in a net loss of shoreline ecological functions, or where adverse impacts to critical saltwater and freshwater habitats cannot be monitored and reviewed on a periodic basis based on scientific best practices. In such circumstances the principles of the precautionary principle shall be applied."

KT: Please remind yourselves that county planners have explicitly stated that the County does not have the money or the personnel to monitor these aquaculture operations, that they rely on citizens to monitor for County. Given this fact, it is questionable whether permits should be given at all.

d. Aquaculture shall not significantly conflict with navigation and other water-dependent uses.

e. Aquaculture activities proposed within Shorelines of statewide significance shall first be subject to the policies for shorelines of statewide significance contained in Chapter 19.300 (General Goals and Policies) of this Program, and then the policies and regulations contained in this section, in that order of preference.

PT: This is an unnecessary specification. It should be deleted.

f. In general, when considering new aquaculture activities, refer to policies at Section 19.300.130(E-K) for siting and design preferences.

PT: This is an unnecessary specification at this section. Recommend that this item be deleted.

g. Project applicants proposing to introduce aquatic species that have not previously been cultivated in Washington State are responsible for pursuing required state and federal approvals relating to the introduction of such species, as determined by applicable state and federal agencies. A plan for monitoring and adaptive management shall also be submitted for County review, unless the operation is conducted in a fully contained system with no water exchange to the shoreline. The County shall provide notice and time to comment for appropriate agencies in accordance with County procedural requirements, and shall circulate the monitoring and adaptive management plan. Upon approval, the plan shall become a condition of project approval.

KT: The County should provide notice and time for comment from neighboring landowners and environmental organizations. Who does the County "circulate the monitoring and adaptive management plan to?" It should be specifically stated that the immediate community received written notice and copies of the monitoring and adaptive management plan.

KT: Unless the County will commit to actual monitoring on a regular basis, "g" should be stricken. County personnel have stated to us that they do not have the personnel or the money to do any monitoring of aquaculture operations and that they rely on community members to do it for them.

h. Over-water structures and/or equipment, and any items stored upon such structures such as materials, garbage, tools, or apparatus, shall be designed and maintained to minimize visual impacts. The maximum height for items stored upon such structures shall be limited to three feet, as measured from the surface of the raft or the dock, unless shoreline conditions serve to minimize visual impacts (for example: high bank environments, shorelines without residential development), but in no case shall the height exceed six feet. Height limitations do not apply to materials and apparatus removed from the site on a daily basis. Materials that are not necessary for the immediate and regular operation of the facility shall not be stored waterward of the OHWM.

PT: Suggest changing the first sentence to: "Over-water structures and/or equipment, including barges and similar vessels…."

KT: Last sentence is confusing. It implies that materials that ARE necessary for immediate and regular operation of the facility can be stored waterward of the OHWM. This means that half the time, (and most of daylight hours in the summer), these storage items will be on the beach. Please explain to us what you envision here and how you will monitor these equipment/over-water structures. One of the operators on Dana Passage, has a barge well over 6 feet that he leaves in view of the entire neighborhood of Zangle Cove most of the time. When we complained related to the 3 day limit for such barges, he move his barge every 3 days from one side of the Cove to the other. And this is an operation that, last we checked with the County, doesn't even have a County permit, a fact we have complained about in writing in the past. So any items such as "Item H" appear to be nothing more than nice sounding words, meaning nothing.

i. Aquaculture structures and equipment used on tidelands below ordinary high water shall be of sound construction, with the owners' identifying marks where feasible, and shall be so maintained. Abandoned or unsafe structures and/or equipment shall be promptly removed or repaired by the owner.

PT: Remove "where feasible" from "with the owners' identifying marks where feasible…". It is not clear when this is not feasible, and has been a requirement for a number of years.

j. No processing of any aquaculture product, except for the sorting and culling of the cultured organism and the washing or removal of surface materials or organisms after harvest, shall occur in or over the water unless specifically approved by permit. All other processing and related facilities shall be located on land and shall be subject to the regulations for Commercial) and Industrial Uses (Section 24.10.100), in addition to the provisions of this section.

k. No garbage, wastes or debris shall be allowed to accumulate at the site of any aquaculture operation, except for in proper receptacles.

KT: What is a "proper receptable?" Please give example.

l. All floating and submerged aquaculture structures and facilities in navigable waters shall be marked in accordance with U.S. Coast Guard requirements.

PT: Suggest modifying: "... aquaculture structures, including barges and other marine vehicles, structures and facilities.... "

m. The rights of treaty tribes to aquatic resources within their usual and accustomed areas are addressed through direct coordination between the applicant/proponent and the affected tribe(s). Thurston County will notify affected tribes of new shoreline permit applications utilizing the applicable notification process in Title 20.60 TCC.

n. In order to avoid or limit the ecological and aesthetic impacts from aquaculture siting and operations, the following shall apply:

i. Predator exclusion devices shall be firmly attached or secured so as not become dislodged.

PT: Please describe how this will be monitored. Recent projects have already failed in this regard. If this cannot be monitored there should not be any permitting until it can..

ii. Predator exclusion devices shall blend with the natural environment.

PT: Please describe what this means. Currently this is not possible.

iii. Aquaculture operators shall routinely inspect and maintain predator exclusion devices.

iii. Predator exclusion devices such as rubber bands, small nets, and area netting can be dislodged and pose a hazard to birds, marine mammals, and other wildlife and domestic animals, and thus are subject to Thurston County Public Nuisance regulations (Chapter 10 TCC).

PT: Nuisance regulations are ineffective in relation to operations that are routinely permitted.

KT: What outside agency will monitor this? The County has already stated that it does not have the money or the personnel to monitor aquaculture installations.

iv. Predator exclusion devices shall be removed as soon as they are no longer needed to perform protective functions.

PT: This is meaningless unless there is a definition of "protective functions" and their intended need.

v. Predator exclusion methods shall not be designed to intentionally kill or injure wildlife. Predator exclusion methods shall comply with federal and state regulations as determined by applicable federal and state agencies.

PT: "Predator exclusion" is an industry term. It has no place in a regulatory definition. 'Predators", in this case are native, naturally occurring wildlife species. This should be deleted, or changed to refer to native wildlife.

KT: I agree with PT. The term "predator exclusion" is a negatively biased term that reflects only the point of view of the proponents of commercial aquaculture. It is inaccurate from any other point of view. To be accurate this section should read: Wildlife exclusion methods shall not be designed to intentionally kill or injure wildlife. Wildlife exclusion methods shall comply with federal and state regulations as determined by applicable federal and state agencies.

vi. When determined necessary to minimize aesthetic and habitat impacts of large-scale projects, the County may require a phased approach to operation. This includes planting and harvesting areas on a rotational basis within the same tideland parcel.

PT: Rotational planting may aggravate environmental impacts due to increase occurrence of siltation, etc. Please provide the scientific rational for the statement that rotational planting and harvesting may minimize aesthetic and habitat impacts. This is questionable.

o. Where aquaculture occurs on state owned aquatic lands, the project proponent shall contact and adhere to Washington Department of Natural Resources requirements.

2. Additional Standards for Commercial Geoduck Aquaculture.

a. In addition to the general development standards above, commercial geoduck aquaculture shall only be allowed where sediments, topography, land and water access support geoduck aquaculture operations without significant clearing or grading.

PT: This conflicts with current requirements related to tribal rights. A geoduck aquaculture operation must allow tribes to harvest (clear) appropriate amounts of native geoducks.

KT: We recommend excluding estuaries as appropriate for commercial geoduck aquaculture or any kind of aquaculture. Estuaries are the most sensitive of tidelands and should be preserved in their natural state. So many have already been used for aquaculture, there may not be many left. For example, 85% of Totten Inlet is in tideland aquaculture.

b. All permits shall take into account that commercial geoduck operators have the right to harvest geoduck once planted.

PT: What is the point of this statement? This appears to be an attempt to prohibit future constraints on geoduck operations. It should be deleted.

c. All subsequent cycles of planting and harvest shall not require a new CUP, subject to WAC 173-27-100.

PT: This WAC is specific to revisions to permits where environmental conditions do not change. Aquaculture operations occur in highly changeable environments. It should be obvious that permits should be renewed at the end of predictable planting/harvest cycles.

KT: Aquaculture, especially geoduck aquaculture using 7 mile/16 tons of PVC plastic per acre, along with tons of plastic netting, as well as clam culture using plastic net clam bags, are high intensity operations. Because there is no monitoring by the County (as stated to us by County employees), there must be requirements for re-submission of applications after the planting/harvest cycle, which is 5-7 years. This is not unreasonable, as conditions can dramatically change, especially in our era of global warming. It is not reasonable to just write a "blank check for the tidelands" to the industrial shellfish industry, when we, as a culture, are attempting to understand the issues with depletion of salmon and the dwindling pods of Orcas.

KT: It is also unclear why the County is not requiring an SDP for industrial aquaculture after the rulings by Judge Bjorgen and Judge Tabor related to geoduck PVC pipes as "structures." Is this just an example of the County caving in to the industry's attempt to minimize the impacts of their operations? Please explain the difference between the SDP and the CUP in terms of regulation and monitoring required under each along with community participation in the process under each.

d. A single CUP may be submitted for multiple sites within an inlet, bay or other defined feature, provided the sites are all under control of the same applicant and within the Program's jurisdiction.

PT: Multiple sites within an environmentally significate inlet, bay or other marine environment, may be significantly different. This item should be deleted.

e. Commercial geoduck aquaculture workers shall be allowed to accomplish on-site work during low-tides, which may occur at night or on weekends. Where such activities are necessary, noise and light impacts to nearby residents shall be mitigated to the greatest extent practicable.

PT: No night or weekend activity should be allowed within 2,000 feet of a residential area. The term "greatest extent practicable" has no meaning.

3. Additional Standards for Net Pens. Fish net pens and rafts shall meet the following criteria:

PT: Net pen operations have provably demonstrated their environmental damage to Puget Sound. This entire section should be deleted.

a. Fish net pens shall meet, at a minimum, state approved administrative guidelines for the management of net pen cultures. In the event there is a conflict in requirements, the more restrictive shall prevail.
b. Alternative facilities and technologies that reduce ecological and aesthetic impacts shall be preferred to traditional floating net pens.
c. Anchors that minimize disturbance to substrate, such as helical anchors, shall be employed.
d. Net pen facilities shall be located no closer than 1,500 feet from the OHWM, unless a specific lesser distance is determined to be appropriate based upon a visual impact analysis or due to potential impacts to navigational lines.
e. Net cleaning activities shall be conducted on a frequent enough basis so as not to violate state water quality standards.
f. In the event of a significant fish kill at the site of the net pen facility, the facility operator shall submit a timely report to the Thurston County Environmental Health Section and

the Thurston County Department of Resource Stewardship stating the cause of death and shall detail remedial action(s) to be implemented to prevent reoccurrence.

g. New floating net pens shall be prohibited in Thurston County's South Puget Sound jurisdictional area until updates to Ecology's guidance on *Recommendations for Managing Commercial Finfish Aquaculture* is completed and can be reviewed by county staff to evaluate possible environmental benefits and impacts.

19.600.130 Commercial Development

A. Environment Designations Permit Requirements

Where commercial development is proposed in the following upland or aquatic designations, the identified permit requirements shall apply:

1. Natural- Prohibited

2. Urban Conservancy, Rural Conservancy, and Shoreline Residential ~~Mining~~:

   a. SDP for water-oriented commercial activities;

   b. Prohibited for non-water-oriented uses, except CUP for uses described in Section 19.600.130(B)(8)

3. Aquatic: Prohibited, unless the activity is water-dependent or a necessary appurtenance to a use allowed in the adjoining upland designation, then a CUP.

B. Development Standards

1. Commercial development shall result in no net loss of shoreline ecological functions or have significant adverse impact to other shoreline uses, resources and values provided for in RCW 90.58.020, such as navigation, recreation and public access.

2. Commercial developments shall be permitted on the shoreline in descending order of preference. The applicant shall demonstrate that a more preferred use is not feasible when proposing a less preferred use.

   a. Water-dependent uses;
   b. Water-related uses;
   c. Water-enjoyment uses;
   d. Non-water-oriented uses that include substantial opportunities for public access and subject to a CUP.

   PT: What is the basis for this order of preference? And what is the basis for the requirement to demonstrate that a more preferred use is not feasible? Is it even possible to demonstrate this?

3. Commercial development shall not significantly impact views from upland properties, public roadways, or from the water

KT: How do you define "significant impact?" Readers deserve to know if what county officials have in their minds at this moment in history as a definition is adequate or inadequate. Please read description of changes in shellfish aquaculture at the beginning of the Aquaculture section, from the perspective of one of the original drafters of the Shoreline Management Act of 1971.

4. The design and scale of a commercial development shall be compatible with the shoreline environment. The following criteria will be used to assess compatibility:

   a. Building materials
   b. Site coverage
   c. Height
   d. Density
   e. Lighting, signage, and landscaping
   f. Public access
   g. Visual assessment

5. The County shall consider public access and ecological restoration as potential mitigation of impacts to shoreline resources and values for all water-related or water-dependent commercial development, unless such improvements are demonstrated to be infeasible or inappropriate. Public access shall be provided consistent with Section 19.400.145 of this Master Program. In-kind mitigation shall be determined infeasible prior to utilizing out-of-kind mitigation.

PT: Such mitigations must be site-specific.

6. Non-water-dependent commercial uses shall not be allowed over water except in existing structures or in the limited instances where they are auxiliary to and necessary in support of water-dependent uses.

7. Parking shall be located upland of the commercial use and designed to minimize adverse visual impacts to the shoreline. Over-water parking is prohibited.

8. Non-water-oriented commercial uses are prohibited unless:

   a. The use is on land designated commercial by the Thurston County Comprehensive Plan and existing on the effective date of this Program;
   b. The use is on land designated commercial by the Thurston County Comprehensive Plan and is physically separated from the shoreline by another property or public right-of-way;
   c. The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Act's objectives, such as providing ecological restoration and public access. Water-dependent components of the project and ecological restoration and access shall be improved prior to occupancy;
   d. The use is on a site where navigability is severely limited and the use would provide a significant public benefit with respect to the Act's objectives, such as providing public access and ecological restoration.

   Non-water-oriented commercial uses meeting these criteria must obtain a CUP.

C. Redevelopment

1. When commercial redevelopment involves relocating or expanding the existing structure, shoreline restoration or mitigation shall be a condition of approval (see Appendix B). Restoration may include, but is not limited to:

   a. Moving the structure away from the shoreline;
   b. Removing any shoreline armoring or replacing hard with soft armoring;
   c. Riparian vegetation restoration, including removing invasive and planting natives;
   d. Stormwater retrofits to implement Low Impact Development.

2. When commercial redevelopment involves relocating or expanding the structure, public access shall be a condition of approval, unless infeasible due to health or safety issues. Public access may include, but is not limited to:

   a. Maintaining current public access, if existing;
   b. Connecting a trail to existing public access on adjacent property;
   c. Providing for visual access to the shoreline.

Email from Patrick and Kathryn Townsend to Brad Murphy and Kraig Chalem of Thurston County Planning Department.

Includes Survey by Hatton Godat Pantier, Surveyors on September 9, 2019, of the ChangMook Sohn geoduck operation on Zangle Cove with reference to the beach height of the operation.

The ChangMook Sohn geoduck operation, installed by Taylor Shellfish, is well above the allowed +3 beach height permitted to ChangMook Sohn.

From: Patrick Townsend <patrick.townsend@townsendsecurity.com>
Date: Mon, 9 Sep 2019 12:32:38 -0700
Subject: Changmook Sohn permit violation (please confirm)
To: chalemk@co.thurston.wa.us, Brad Murphy <brad.murphy@co.thurston.wa.us>
Cc: Kathryn Townsend <kath.townsend@gmail.com>

Dear Kraig and Brad,

Please find attached a land survey of the ChangMook Sohn tideland geoduck operation located at 930 76th Avenue Northeast on Zangle Cove in Thurston County, Washington. This survey, produced by Hatton Godat Pantier, establishes the tidal elevations of all areas of the Sohn geoduck planting and is a binding, professionally certified document that precisely states the tidal elevation of the PVC tubes and geoduck seed on the tideland.

It is clear from the Hatton Godat Pantier survey that the geoduck operator has violated the Sohn permit restriction by planting well above the +3 tidal elevation. The plantings of PVC, netting and geoduck are as high as +5.9 tidal elevation. The mitigations outlined in the permit are designed to implement a No Net Loss policy and protect endangered species and the forage fish they depend on. Compliance with the mitigation strategy is expected by other regulating agencies such as the Department of Ecology and the Army Corps of Engineers. It is critical that immediate action be taken to bring this operation into compliance by removing all plantings of PVC, netting and geoduck seed above the +3 tidal elevation. If ChangMook Sohn and his operator are unwilling to come into compliance with their permit, the permit should be withdrawn and fines imposed.

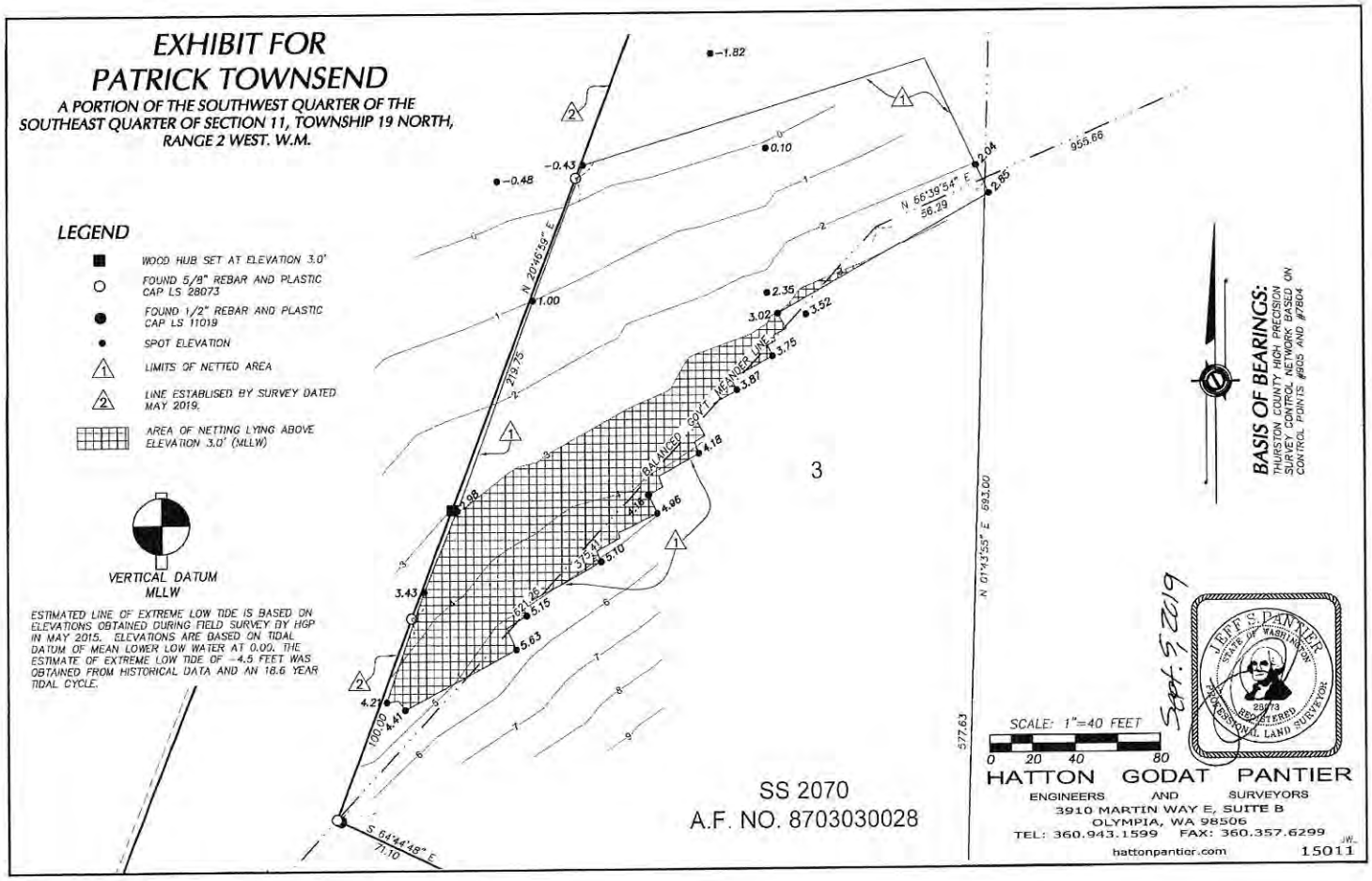
Sincerely,

Patrick and Kathryn Townsend


Netting Survey2.pdf
Hatton Godat Pantier Survey of ChangMookSohn geoduck operation tideland/beach elevation

EXHIBIT FOR
PATRICK TOWNSEND

A PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 11, TOWNSHIP 19 NORTH, RANGE 2 WEST. W.M.



SS 2070
A.F. NO. 8703030028

HATTON GODAT PANTIER
ENGINEERS AND SURVEYORS
3910 MARTIN WAY E, SUITE B
OLYMPIA, WA 98506
TEL: 360.943.1599 FAX: 360.357.6299
hattonpantier.com

JW
15011

Patrick and Kathryn Townsend
7700 Earling Street NE
Olympia, WA 98506
360-357-9082

July 9, 2019

Kraig Chalem, Supervisor, Thurston County Compliance Unit
Brad Murphy, Senior Planner, Thurston County Planning Department
John Hutchings, Thurston County Commissioner
Gary Edwards, Thurston County Commissioner
Tye Menser, Thurston County Commissioner
Thurston County Planning Commission
2000 Lakeridge Drive SW
Olympia, WA 98502-6045

Subject: ChangMook Sohn Commercial Geoduck Farm Shoreline Substantial Development Permit Violations
Project Number : 2014108800
Applicant: ChangMook Sohn Industrial Geoduck Farm Application
Property: Parcel Number 12911440102

Dear Messrs. Chalem and Murphy, and Commissioners Hutchings, Edwards and Menser and Thurston County Planning Commission:

The ChangMook Sohn commercial geoduck operation was authorized by Thurston County's Resource Stewardship Department on May 3, 2016 under Project No. 201408800. The required Shoreline Substantial Development Permit was issued based upon a Mitigated Determination of Nonsignificance (MDNS) under the State's Environmental Policy Act (SEPA) . There were 18 separate Mitigating Conditions imposed by the County upon Mr. Sohn's proposed commercial geoduck farm in order for it to be approved for operation. The farm was fully installed on May 7, 2019. It was preceded by a very small sample area that was planted on April 16, 2018. Our tideland property is immediately adjacent to the ChangMook Sohn tideland property.

It has recently come to our attention that the current large planting of geoducks on the ChangMook Sohn tideland violates several of the Mitigating Conditions of the "Determination of Non-Significance" 2014108800 – Sohn Geoduck MDNS.

Following are the permit violations noted to date:

1. #2 of the MDNS states: "An unobtrusive but visible sign shall be placed at the aquaculture bed listing the name and contact information for a person designated to immediately address problems associated with the aquaculture bed when discovered by citizens or agency representatives."

No such sign exists.

2. #4 of the MDNS states: "All tubes, mesh bags, and nets used on the tidelands below the ordinary high water mark (OHWM) shall be clearly, indelibly, and permanently marked to identify the permittee name and contact information (e.g., telephone number, email address and mailing address). On area nets, if used, identification markers will be placed with a minimum of one identification marker for each 100 square feet of net."

There are no identifying markings on any tubes or nets. There is nothing that identifies Sohn and his contact information or Taylor Shellfish (Sohn's aquaculture operations contractor) and their contact information. There are no identification markers on any of the nets, much less every 100 square feet of net. The tubes are old, obviously previously used tubes, quite a few cracked or chipped.

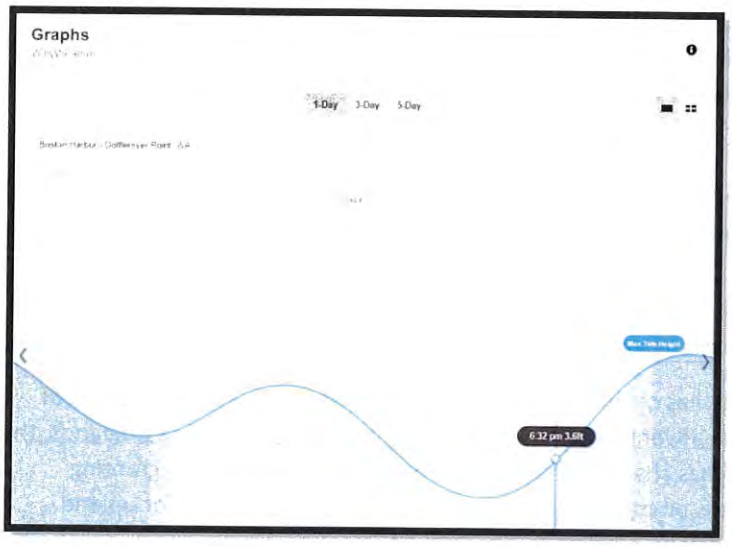
3. #11 of the MDNS states: "Shellfish culturing shall not be placed above the tidal elevation of +3 MLLW in order to minimize potential impacts to forage fish habitat. If herring spawn is observed, then those areas shall be avoided until the eggs have hatched."

1) It appears that the Sohn geoduck operation has been planted well above the permitted tidal elevation of +3 MLLW. See photo below taken on June 26, 2019, 8:17 am at low tide of +3.6.

- The above photo shows the ChangMook Sohn geoduck operation at low tide of +3.6 MLLW at 8:17 am (lowest tide of the day), Wednesday, June 26, 2019.
- Sohn's tubes are placed well above the +3.6 MLLW to at least +4 .3 or higher.
- Based on permit compliance, the Sohn geoduck operation with a maximum tidal elevation of +3 MLLW should not have been visible on this low tide, because the tide never went below +3.6 MLLW.
-

2) The photo below shows the ChangMook Sohn geoduck operation at a low tide of +3.6 at 6:32 pm on July 7, 2019. It is obvious that the tubes were placed well above the tidal height of +3 allowed by the permit.

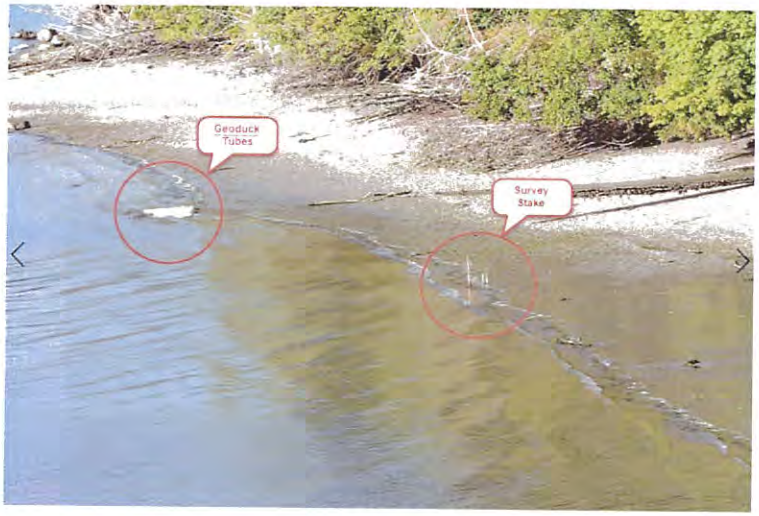
- ChangMook Sohn geoduck operation at tidal elevation of +3.6 on July 7, 2019 at 6:32 pm
- WillyWeather chart for 6:32 pm on July 7, 2019 shows the tidal elevation at Dofflemeyer Pt. at +3.6.



- The Sohn planting is at a tidal elevation well over +3.6. Again, if planted to a +3, the planting should not be visible at this tidal elevation.

3) Tide table statistics were taken from the NOAA Tide Charts for Dofflemeyer Point, https://tidesandcurrents.noaa.gov/noaatidepredictions.html?id=9446800

- In the photo below taken on Tuesday, June 25, 2019, at approximately 7:20 pm, when the tidal elevation was approximately +4.3 MLLW, the tubes could still be seen (tidal elevation statistics based on Willyweather tide chart for that date). The Sohn operation was planted to at least a +4.3 tidal elevation. Their permit allows planting to +3.



- Tubes of Sohn geoduck operation seen at approximately the same elevation as the survey stake, which is at least +4.3 MLLW tidal elevation or higher.

The above facts lead us to the conclusion that the Sohn operation was planted well above the permitted tidal elevation of +3 MLLW to at least a tidal elevation of +4.3 MLLW or higher. None of the planting should have been visible during the daylight low tides of June 25 and June 26, 2019 because the lowest tides were +3.6 on those two days.

We request that the County confirm these findings and if they are found to be accurate, require ChangMook Sohn to pull back his planting to the stated tidal elevation allowed by his Thurston County permit.

4. **#7 of the MDNS states:** "Weekly patrols of tidelands within a half mile of the geoduck farm shall be conducted. During those patrols, all geoduck debris must be collected regardless of its source."

Access to private tidelands in Thurston County has often been shared within neighborhood communities of shoreline property owners. However, with the advent of commercial shellfish farming on private tidelands, the community sharing of access to the tidelands has changed. The County, as in the Sohn MDNS, is granting access to unknown parties to routinely trespass on private property. This would be unheard of for upland properties and it should be no different for tideland properties. Shellfish aquaculture employees must refrain from trespassing on tidelands belonging to owners who do not choose to allow access. For owners who do choose to allow access, the County should get a signed letter of agreement from each participating property owner stating that unknown parties will be coming on to their private property and waiving any liability of the property owner. The County should also sign this agreement. On request of anyone in the tideland community within a half mile of the operation, the County should do background checks and train all such persons who will be going onto private property to the satisfaction of each individual property owner. This also presumes that Thurston County knows specifically where tideland property lines occur and can transmit that specific information to those it is granting access to so that those grantees will not be in danger of trespassing on non-participating property owners.

5. Paragraph Two of the Description of Proposal of the MDNS state: "...4-6 inch diameter PVC pipe will be placed on end and buried in the substrate with 2-3 inches exposed."

Although a few of the tubes on the Sohn operation are only 2-3 inches above the sediment, the vast majority of tubes average 5-6 inches above the sediment and many are higher, a few as much as 8-9 inches. Please see photos below taken with a measuring tape in view.

June 18, 2019. Photos of PVC tube heights on ChangMook Sohn geoduck operation in Zangle Cove.

There may be additional violations of the permit requirements related to this operation, however, we believe the above violations are sufficiently flagrant to require that the operation be stopped, and all tubes pulled until the violations are remedied.

Thurston County issued the permit for this operation and is responsible for its enforcement. Therefore, we request that Thurston County take immediate action to ensure compliance with every requirement of the permit and that the County engage in ongoing inspection to ensure compliance not only of Mr. Sohn's operation, but all commercial geoduck and other shellfish operations within the County for similar lack of compliance with permit requirements.

We look forward to your response.

Sincerely,
Kathryn and Patrick Townsend
Olympia, Washington

Attachments:
5/3/2016 Thurston County Mitigated Determination of Nonsignificance, Project Number 2014108800, ChangMook Sohn, 930 76th Avenue NE, Olympia, WA 98506

PROTECT OUR SHORELINE NEWS

Our mission is to protect the habitat of Puget Sound tidelands from the underregulated expansion of new and intensive shellfish aquaculture methods. These methods were never anticipated when the Shoreline Management Act was passed. They are transforming the natural tideland ecosystems in Puget Sound and are resulting in a fractured shoreline habitat. In South Puget Sound much of this has been done with few if any meaningful shoreline permits and with limited public input. It is exactly what the Shoreline Management Act was intended to prevent.

Get involved and contact your elected officials to let them you do not support aquaculture's industrial transformation of Puget Sound's tidelands.

Governor Inslee:
http://www.governor.wa.gov/contact/contact/send-gov-inslee-e-message
Legislative and Congressional contacts:
http://app.leg.wa.gov/DistrictFinder/

Additional information
Twitter: http://www.twitter.com/protectourshore
Facebook: https://www.facebook.com/ProtectOurShore/

SUNDAY, SEPTEMBER 15, 2019

Burley Lagoon Residents Complain of Putrid Smell, Clams Die Off: A "Preferred Use" of the tidelands?

"Particularly pungent smells

may come from the beach when a common type of seaweed

known as sea lettuce decays

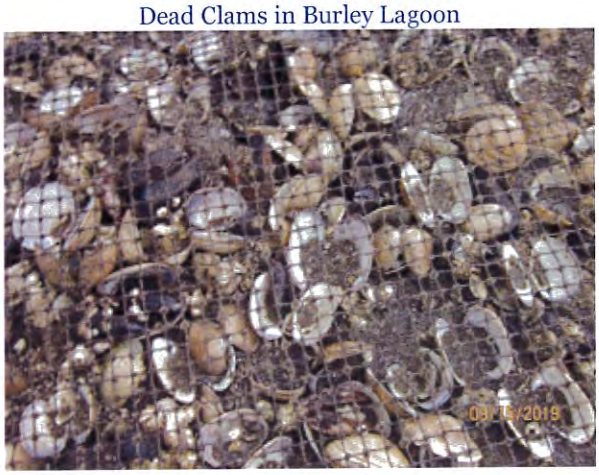
in an environment with low dissolved oxygen."

(Department of Ecology, "Focus on Saltwater Beach Odors")

Promoting and enhancing the public interest or industrial scale aquaculture?

After weeks of residents along the shoreline of Burley Lagoon complaining about a putrid smell so strong it has prevented many from enjoying the air outside of their homes, it appears there has been a clam die off to go along with it. To hear Taylor Shellfish discuss their "rights" under the Shoreline Management Act, the state and counties are to do nothing but promote and enhance aquaculture, prioritizing it over all other water dependent uses, believing it is in the statewide interest to do so. Even if it means what Burley Lagoon is experiencing.

Dead Clams in Burley Lagoon



Clean net placed too late?

The smell of politics.

Pierce County responded sources of the smell could be "Ulva" (aka Sea Lettuce, a native vegetative seaweed) so thick it smells of rotten eggs as it decays. Another source mentioned could be leaking septic fields. Not mentioned is that it could also be the carrying capacity of Burley Lagoon has been exceeded by Taylor Shellfish's intensive and industrial level of planting of clams and oysters, resulting in shellfish rotting as they die off, unable to survive due to the density of planting. Or it could be a combination of these or other things. Whatever it is, the stench is overwhelming and impacts enjoyment and use of the shoreline, whether a resident or a member of the public trying to enjoy the aquatic environment in Pierce County.

Maybe the nets just need

a "good industrial scraping".

(Samish Bay, WA)

Do structures in the tidelands need bigger machines on the tidelands?

Long time residents of Burley Lagoon have stated they do not recall a stench so intense in all of their years living there, some for decades. What they also do not recall are the number of "predator nets" which Taylor Shellfish uses to keep native species from feeding off of the sediments, or the expansive area covered. Nor do they recall the intensity of planting which is occurring, whether it be clams or nonnative Pacific oysters. As seen in the Samish Bay photo above, in order to deal with the heavy growth on their predator nets, Taylor partnered with New Holland and implemented the use of a tractor and a "street sweeper" to clear the nets there of Sea Lettuce so thick it prevents clams below from surviving. Algae which apparently exists in higher densities due to this artificial structure which has been placed over the tidelands of Burley Lagoon and on oysters planted in high densities.

It's not rocket science. It's "Ecosystem Services".

AUGUST 2017

DUANE FAGERGREN

Under this mat of green macro algae (Enteromorpha sp) lies this year's crop of yearling single Pacifics. The oysters consume phytoplankton, and excrete feces, pseudo feces, and ammonia in a mixture that serves to fertilize this luxurious crop of seaweed. The lush crop also provides habitat for crab (graceful crabs mostly) and fish (shiner perch, stag horn sculpin, and bay pipefish). The downside of this heavy growth is a mat that makes oysters grow slower, clams come to the surface of the beach and can't dig themselves back in, and likely oxygen debt as the algae naturally dies and decomposes.

Oysters poop, seaweed grows, clams die. Ecosystem services at work.

As noted in an August 2017 "Ecosystem Services" winning picture, one source of the problem is directly related to oyster feces, their pseudo feces, associated ammonia, and shell surface area provided by high density planting of oysters. Oysters poop and provide "fertilizer". On the surface of those shells macro algae attaches and thrives on the "nutrients" expelled by the nonnative Pacific oysters. That growth is so intense oyster growth slows and clams rise to the surface. Summertime low tides and summertime heat

promote decay and death. Smells emanate. Because of aquaculture. It's not rocket science. Calling it "ecosystem services" deflects attention from dealing with the problem created.

This is not "enhancing" the public interest
and is exactly what the Shoreline Management Act
was designed to prevent from happening
to Puget Sound tidelands.

(Read **RCW 98.58.020** to see
intended preferences of the SMA)

"promote and enhance the public interest" - not industrial aquaculture

The Shoreline Management Act was created in response to industrial levels of activities impacting the shorelines of Puget Sound. It was not created to promote the industrial level of activities the shellfish industry has since evolved into. Activities and impacts which lower the statewide ability to enjoy the shorelines of Washington State. The Pierce County Council, in reluctantly passing their updated Shoreline Master Program, listened to Taylor Shellfish complain, even after additional changes were made to accommodate their industry, that more needs to be done in order for their industry to profit from tidelands and public waters.

(Read August 28 letter from attorneys for Taylor Shellfish and the Foss family's North Bay Partners here: https://app.box.com/s/na0wpgwm4mjp7b41toj1iaf533iecij2)

Yes - Washington needs to change its laws.

"Maddening": Banning plastic straws and promoting PVC tubes in Puget Sound.

Most of what is noted in the Taylor/North Bay letter was addressed by Pierce County, yet still, Diane Cooper rose to state before the public and the council, not enough had been done for them. In response, most council members agreed, the state needs to change the law if, in fact, that is what Taylor Shellfish and others are relying on to promote their industry over other water dependent uses. [Read what the legislators who passed the SMA intended, here:

https://app.leg.wa.gov/RCW/default.aspx?cite=90.58.020, where it states counties, in developing their Shoreline Master Programs:

"shall give preference to uses in the following order of preference which:

(1) Recognize and protect the statewide interest over local interest;

(2) Preserve the natural character of the shoreline;

(3) Result in long term over short term benefit;

(4) Protect the resources and ecology of the shoreline;

(5) Increase public access to publicly owned areas of the shorelines;

(6) Increase recreational opportunities for the public in the shoreline;

(7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary."]

Get involved.

Use of structures and methods which create an environment from which odors emanate that are so strong as to prevent the public's enjoyment of the tidelands and shorelines is only one example showing how this industry is out of control. Pierce County agrees that laws promoting this need to change and will become active in the state to change this lopsided interpretation of a law intended benefit all in the state, not just a few corporations.

POSTED BY PROTECT OUR SHORELINE AT 4:55 PM

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LABELS: GEODUCK, PIERCE COUNTY SHORELINE MASTER PROGRAM UPDATE, PVC, SHORELINE MANAGEMENT ACT, TAYLOR SHELLFISH

PROTECT OUR SHORELINE NEWS

Our mission is to protect the habitat of Puget Sound tidelands from the underregulated expansion of new and intensive shellfish aquaculture methods. These methods were never anticipated when the Shoreline Management Act was passed. They are transforming the natural tideland ecosystems in Puget Sound and are resulting in a fractured shoreline habitat. In South Puget Sound much of this has been done with few if any meaningful shoreline permits and with limited public input. It is exactly what the Shoreline Management Act was intended to prevent.

Get involved and contact your elected officials to let them you do not support aquaculture's industrial transformation of Puget Sound's tidelands.

Governor Inslee:
http://www.governor.wa.gov/contact/contact/send-gov-inslee-e-message
Legislative and Congressional contacts:
http://app.leg.wa.gov/DistrictFinder/

Additional information
Twitter: http://www.twitter.com/protectourshore
Facebook: https://www.facebook.com/ProtectOurShore/

MONDAY, SEPTEMBER 16, 2019

Taylor Shellfish Says Clam Die-off in Burley Lagoon from Toxic Algae

"Based on recent water samples,

there is a toxic algae bloom in Burley Lagoon."

Taylor Shellfish, September 15

Testing and reporting to...?

After weeks of complaints over a putrid smell in Burley Lagoon and large areas of dead clams rising found on the surface of sediments, an email was sent to Taylor Shellfish asking if perhaps the cause may be that Burley Lagoon's carrying capacity has been exceeded. In response, Taylor Shellfish stated water samples had shown there was a toxic algae bloom occurring in Burley Lagoon. It did not appear from the email any residents had been notified of the toxic algae.

"The stench of dead clams
nearly knocked him over," he said.

In July.

Burley Lagoon? No, Rocky Bay.

The stench of dead clams.

Toxic algae blooms have impacted high density clam plantings by Taylor Shellfish elsewhere in Puget Sound this year. In July, residents near Rocky Bay also complained of a similar "stench". In the case of Rocky Bay, it was found large areas with clams planted in high densities by Taylor Shellfish had also risen to the surface and died. The Key Peninsula News wrote about the event August 1. (Read article here: https://keypennews.com/rocky-bay-algae-bloom-suspected-in-clam-die-off

This looks and smells very familiar.

This canary flew around for a long time.

In the September 15 email, Taylor noted the toxic algae is a "canary" of some sort, indicating something. That sampling shows the algae is still present months later, and shellfish planted in high densities in the tidelands of Puget Sound are still dying, should motivate health officials to do something more than they are. Before shellfish with toxins make their way from tidelands to the public.

POSTED BY PROTECT OUR SHORELINE AT 8:18 AM
LABELS: BURLEY LAGOON, PUGET SOUND, SHELLFISH, TOXIC ALGAE

To view the online posting of September 16, 2019, go to this link:

https://protectourshorelinenews.blogspot.com/2019/09/taylor-shellfish-says-clam-die-off-in.html

CASE INLET SHORELINE ASSOCIATION
3919 51st Ave Ct NW
Gig Harbor, WA 98335

Frequently Asked Questions: Industrial Shellfish Aquaculture in Puget Sound

http://www.caseinlet.org/FAQ_s.php

Q. The shellfish aquaculture industry claims that shellfish and geoduck aquaculture is good for the environment. Is this true?

A. No, this is not true. In reality, the shellfish industry is responsible for damage to the environment. Depletion of native species, introduction of harmful invasives and the spread of alien organisms, the killing and hazing of shorebirds, the use of chemical poisons to kill native burrowing shrimp and disruption to fish habitat are just a few examples of environmental damage. The shellfish industry commonly uses out of context self serving pseudo science to justify its harmful practices.

Q. Is shellfish aquaculture sustainable?

A. It depends on the practice and scale of the operation. Based on the rapid expansion and intensity of techniques of shellfish aquaculture in South Puget Sound, many new techniques are probably not sustainable by any definition. Generally, 'sustainable' means that the activity is capable of being continued without damage to the environment. Other definitions relate to environmental stewardship, but also to the social implications. Does the activity interfere with the commercial or recreational use of others? Does the activity reduce the scope for future users to benefit from the commercial, environmental or recreational use of the area? Does the activity alter or diminish the environment and biodiversity? These questions also relate to the issue of sustainability.

95 percent of geoducks are shipped via air freight to Asian markets. This carbon footprint precludes these commercial activities as "green" or "sustainable".

From The Association for Responsible Shellfish Farming, Definition of Sustainability:

"There are various forms of sustainability but, in essence, these condense around concepts relating to stewardship. It is perfectly acceptable to exploit the environment, provided it is done in a way which:

a. does not significantly interfere with the commercial or amenity use of that environment by others (although those others must also utilize the environment in a sustainable manner to preserve equity);
b. does not reduce the scope for future users to benefit from the environmental resource; and
c. does not significantly alter or diminish environmental quality and biodiversity per se."

Excerpt from: K.D. Black, 2001. "Sustainability of Aquaculture" in K. Black (ed.), *Environmental Impacts of Aquaculture*. CRC Press. Pg. 199.

Q. The shellfish industry claims that shellfish aquaculture "provides ecological functions" and "improves water quality". Is this true?

A. No, this is false and misleading industry propaganda and public relations fraud. Shellfish and geoducks filter and consume phytoplankton and detritus, and excrete feces and pseudofeces as waste. Phytoplankton is an important aquatic plant and nutrient for a number of other aquatic species and is naturally present in the marine environment. The shellfish industry actually wants to install their operations in areas of planktonic abundance. In the wild, geoduck and other shellfish are stimulated to spawn due to increased water temperature and increased plankton blooms. So the argument: *"shellfish clean the water"* or *"shellfish provide ecological services"* are totally false and misleading statements. Removing phytoplankton from the water column is not "cleaning" the water at all. Shellfish filter everything out of the water column, including crab zoeas and fish eggs, and although this may temporarily clarify the water in the area of the shellfish farm, this can be harmful to other species.

The shellfish industry's own scientific studies (Totten mussel raft EIS) indicate that shellfish aquaculture actually adds nitrogen to the water column, thereby increasing phytoplankton production and substantially decreasing dissolved oxygen by as far as 200 meters away, so the industry's claim of improving water quality is utterly false. Mussel rafts, for example, actually contribute to nitrogen loading and increased phytoplankton blooms and anoxic/hypoxic or eutrophic/low oxygen conditions that can lead to fish kills.

According to a study by Pietros and Rice, in order for farmed shellfish to *"clean the water"*, filtration rates must exceed phytoplankton regeneration. In this particular mesocosm study, this does not occur. In fact, phytoplankton production is actually

stimulated from the wastes produced from shellfish farming.

No studies currently exist specific to South Puget Sound to corroborate the shellfish industry claim that farmed shellfish "clean" the water or are beneficial in any way. In Willapa Bay, the shellfish industry has historically used Carbaryl, a chemical pesticide, to kill native burrowing shrimp to enhance oyster production. Spraying Carbaryl on the tidelands also negatively affects salmon, steelhead and crab populations, and negatively impacts water quality.

The shellfish industry here in Puget Sound commonly uses studies by Roger Newell in Chesapeake Bay to claim that shellfish aquaculture is beneficial. In Chesapeake Bay, an entirely different ecosystem than Puget Sound, the oyster reefs have been over harvested to less than one percent of historic levels. Newell's studies address restoration of the oyster reefs in Chesapeake Bay, where reserves are set up and harvest is restricted. Newell does not address aquaculture in Puget Sound. The shellfish industry uses these studies disingenuously to mislead and manipulate government agencies and legislators to affect policy decisions in favor of the shellfish industry.

Q. Then why does the shellfish aquaculture industry claim themselves as champions of clean water?

A. The shellfish industry is referring to pathogens, such as fecal coliform bacteria. The shellfish industry cannot sell shellfish infected with pathogens from runoff or sewage contamination and is thus required to help monitor water quality regularly. Typically, the shellfish industry establishes shellfish aquaculture districts with local governments requiring taxpayers to fund sewer systems or runoff containment and maintenance to protect their commercial interests.

Q. The shellfish and geoduck industry promotes themselves as environmental heroes. Are they considerate of fish and bird habitat?

A. No, absolutely not. They're interested in making money as a business by exploiting Puget Sound's tidelands. If they were interested in fish, bird and other wildlife habitat of the intertidal, they would have waited to expand operations until baseline studies had been completed. The shellfish industry removes and destroys eelgrass, sand dollars, starfish, and many other important native species and organisms that get in the way of their profits. The shellfish industry is lying when they assert that they are environmentalists. They're only interested in the environment to the extent that it benefits them.

Q. Why do some environmental groups refuse to condemn the harmful practices of the shellfish industry?

A. Many NGO's, or so called "non-profit environmental groups" accept money and large donations from the shellfish industry. Groups such as People for Puget Sound, Puget Soundkeepers Alliance, Surfrider, Futurewise, the Nature Conservancy and the Puget Sound Restoration Fund all regularly take money or free shellfish from the shellfish industry. Some groups, such as the Skagit Conservation Education Alliance, were started by the shellfish industry to promote shellfish interests. Others, like the Puget Sound Restoration Fund, operate essentially as a public relations tool of the shellfish industry.

From the document "A Challenge to Conservationists": *"...NGO's entrusted with the enormous responsibility of defending the planet's natural ecosystems against the encroachment of the modern world in its most destructive manifestations have increasingly partnered with -- and become dependent on -- many of the corporations and governments that are most aggressively making this encroachment..."*

Q. What about Endangered Species Listed salmon and steelhead?

A. The South Puget Sound Salmon Recovery Group lists shellfish aquaculture as a "stressor" to salmon populations. The National Marine Fisheries Service (NMFS) and the Army Corps. of Engineers state that shellfish aquaculture is likely to adversely affect essential fish habitat for all fish, and to adversely affect critical habitat for endangered Puget Sound Chinook salmon and Hood Canal Summer-run Chum salmon. Steelhead habitat has not yet been determined. Ironically, the NMFS is a division of NOAA, a branch of the Department of Commerce, which is actively engaged in promoting aquaculture and funding various research and development projects that benefit the shellfish aquaculture industry.

Q. Is geoduck aquaculture consistent with the Endangered Species Act?

A. No, intertidal geoduck aquaculture is not consistent with the federal Endangered Species Act of 1973. As stated in section 2 of the act, it was designed to protect critically imperiled species from extinction as a consequence of economic growth and development untendered by adequate concern and conservation, and to protect the ecosystems on which these species depend. Chinook, Coho and Steelhead are all listed under the ESA in Puget Sound. American bald eagles are still listed as a species of concern. The Puget Sound orca is also ESA listed and is dependent on increased salmon runs.

Q. Is geoduck aquaculture consistent with the Magnuson-Stevens Act?

A. No, intertidal geoduck aquaculture is not consistent with the federal Magnuson-

Stevens Fishery Conservation and Management Act of 1996. The underlying principle of the act is to promote the long term protection of essential fish habitat and to ensure the effective conservation and scientific understanding of recreational and commercial fishery resources. It is documented that some methods of shellfish aquaculture negatively impact Essential Fish Habitat (EFH) for salmon. It is documented that geoduck aquaculture negatively impacts eelgrass. We also know that shellfish farmers have removed eelgrass and sand dollars to establish geoduck sites, and that once these sites have been established for geoducks, the eelgrass and sand dollars will not return and can no longer survive in these areas. Eelgrass is EFH and is federally protected, and the Washington State Department of Ecology has a 'no net loss' policy on eelgrass.

Q. Is geoduck aquaculture consistent with the Shoreline Management Act?

A. No, intertidal geoduck aquaculture is not consistent with Washington State's Shoreline Management Act of 1971. The overarching policy of the SMA is that the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible. One of the primary goals of the SMA is to preserve the natural character of the shoreline. Priority is to be given to developments that provide opportunities for substantial numbers of people to enjoy the shorelines of the state. The SMA also implements the Public Trust Doctrine, limiting the public and private use of tidelands to protect the public's right to use the water. Last year, the Pierce County Hearings Examiner (Taylor/Foss vs. Pierce County) concluded that geoduck farms are indeed a structure, that they obstruct public use of the water, and that they cause habitat disruption. According to the SMA, aquaculture should not be permitted in areas where it would result in a net loss of ecological functions, adversely impact eelgrass and macroalgae, significantly conflict with navigation and other water-dependent uses or significantly impact the aesthetic qualities of the shoreline.

Q. How does shellfish aquaculture impact salmon and fish habitat.

A. The shellfish industry uses plastic mesh bags, PVC pipes, and large anti-predator canopy nets to cover intertidal substrata areas. Salmon, sole, flounder, and a large number of other aquatic species use the natural functions of this habitat for feeding. Endangered Chinook salmon and flounder both have similar benthic diets, and some of these prey taxa are depressed by tubes and nets. Conversely, tubes and nets can provide a surface for algae growth and production of epibenthic prey, but it is not known if salmon will feed over geoduck sites. It is also not known how geoduck structures affect migration patterns of salmon, or the effects of the constant ongoing removal/replacement of tubes, nets and bags.

Q. Is intertidal shellfish aquaculture legal in Puget Sound?

A. No, technically most methods that we see today, including geoduck aquaculture, are not legal. But because of the industry's long economic and cultural history, decades without regulations, corruption, feeble administration and misinterpretation of the Shoreline Management Act (SMA), plus very little enforcement efforts, it has been allowed to perpetuate largely unchecked.

The SMA is state law. The over-arching policy of the SMA is to preserve the physical and aesthetic qualities of natural shorelines. The SMA gives priority to developments related to residential and recreational uses over aquaculture as a preferred use. Aquaculture may only be considered a preferred use if it does not interfere with residential and recreational uses, and if it does not interfere with the natural functions of the ecosystem.

The Shoreline Management Act also states:

"*Alterations of the natural conditions of the shorelines of the state, in those limited instances when authorized, shall be given priority for…development that will provide an opportunity for substantial numbers of people to enjoy the shorelines of the state.*"

This statement clearly indicates that shoreline alterations will be (1), limited in instance, and (2), prioritized toward recreational uses.

In 1971 when the SMA was drafted and approved by voters, shellfish aquaculture in Puget Sound was localized and confined primarily to bottom oyster culture. Today, it's millions of plastic tubes, plastic mesh bags, huge canopy predator exclusion nets, barges, pumps, hoses and nozzles, an unprecedented amount of anthropogenic activity and disturbances to the ecosystem. This is not consistent with the SMA on several levels. It does not preserve the natural character of the shoreline. It does not protect the resources and ecology of the shoreline. It decreases recreational opportunities for the public in the shoreline area. The public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines is not being preserved. It is an alteration of the natural condition of the shoreline.

It is clear that intertidal geoduck aquaculture is in violation of the Shoreline Management Act. It is not a "reasonable or appropriate use". It does not "promote and enhance the public interest". It is contrary to the state's policy of "protecting against adverse effects to the waters of the state and their aquatic life". It is not a preferred use consistent with prevention of damage to the environment. It does not meet the "no net loss of ecosystem function" criterion.

Intertidal geoduck aquaculture adversely impacts eelgrass, depresses key prey invertebrates important to endangered salmon, disrupts resident and migratory birds including bald eagles, and significantly impacts the aesthetic qualities of the shoreline.

The Public Trust Doctrine is not statutory law, but is an ancient legal principle that certain resources are for public use, and that the government is required to maintain those resources for the public's reasonable use. The doctrine holds that the land between the tides and under navigable water is inalienably dedicated to public use. This includes the biological resources contained within and dependent on that water. A whole string of court decisions, both at the federal and state levels, have confirmed its validity for the present day.

Intertidal shellfish aquaculture negatively impacts public resources and restricts navigation and public access in violation of the Public Trust Doctrine.

The Precautionary Principle is a moral principle which states that if an action or policy might cause severe or irreversible harm to the public or to the environment, in the absence of a scientific consensus that harm would not ensue, the burden of proof falls on those who would advocate taking the action, and that a lack of full scientific certainty should not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

Shellfish aquaculture is also outside the moral compass of the Precautionary Principle.

Q. The shellfish industry claims that shellfish aquaculture is a *'preferred use'* of the shoreline according to the Shoreline Management Act. Is this true?

A. No, most shellfish aquaculture techniques are not a *'preferred use'*. The activity must be environmentally neutral to qualify as preferred under state guidelines. This is not the case with geoduck tubes, predator exclusion nets, grow bags, off bottom culture and 'kiddie pool' geoduck incubators. Most other techniques also disrupt ecological processes to some extent.

The SMA states: "The interests of all the people shall be paramount in the management of shorelines of statewide significance." *"Preferred"* uses include single family residences, ports, shoreline recreational uses, water dependent industrial and commercial developments and other developments that provide public access opportunities. To the maximum extent possible, the shorelines should be reserved for "water-oriented" uses, including "water-dependent", "water-related" and "water-enjoyment" uses. Preferred uses for Shorelines of Statewide Significance, in order of priority, are to "recognize and protect the state wide

interest over local interest; preserve the natural character of the shoreline; result in long term over short term benefit; protect the resources and ecology of the shoreline; increase public access to publicly owned shoreline areas; and increase recreational opportunities for the public in the shoreline area." The overarching policy is that "the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. "Alterations of the natural conditions of the shorelines of the state, in those limited instances when authorized, shall be given priority for...development that will provide an opportunity for substantial numbers of people to enjoy the shorelines of the state." The SMA also implements the common law Public Trust Doctrine. The essence of this court doctrine is that the waters of the state are a public resource for the purposes of navigation, conducting commerce, fishing, recreation and similar uses and that this trust is not invalidated by private ownership of the underlying land. The doctrine limits public and private use of tidelands and other shorelands to protect to public's right to use the waters of the state.

The SMA guidelines address aquaculture generally but do not have provisions related to geoduck specifically, as the SMA was drafted before the advent of intertidal geoduck aquaculture techniques. The guidelines state: "Aquaculture is the culture or farming of food fish, shellfish, or other aquatic plants and animals. This activity is of statewide interest. Properly managed, it can result in long-term over short-term benefit and can protect the resources and ecology of the shoreline. Aquaculture is dependent on the use of the water area and, *when consistent with control of pollution and prevention of damage to the environment, is a preferred use of the water area.* Local government should consider local ecological conditions and provide limits and conditions to assure appropriate compatible types of aquaculture for the local conditions as necessary to assure no net loss of ecological functions. Potential locations for aquaculture are relatively restricted due to specific requirements for water quality, temperature, flows, oxygen content, adjacent land uses, wind protection, commercial navigation, and, in marine waters, salinity. The technology associated with some forms of present-day aquaculture is still in its formative stages and experimental. Local shoreline master programs should therefore recognize the necessity for some latitude in the development of this use as well as its potential impact on existing uses and natural systems. Aquaculture should not be permitted in areas where it would result in a net loss of ecological functions, adversely impact eelgrass and macroalgae, or significantly conflict with navigation and other water-dependent uses. Aquacultural facilities should be designed and located so as not to spread disease to native aquatic life, establish new nonnative species which cause significant ecological impacts, or significantly impact the aesthetic qualities of the shoreline. Impacts to ecological functions shall be mitigated according to the mitigation sequence described in WAC 173-26-020." WAC 173-26-241(3)(b)

Joan K. Thomas, of the Washington Environmental Council (WEC) and one of the drafters of the SMA, spoke on the history of the act (page 16) at the 1991 SMA Symposium. The WEC, along with citizen and environmental groups, were instrumental in the passage of the SMA, and in getting the SMA on the ballot. In 1970, these groups had gathered over 160,000 signatures in 10 weeks. The earlier versions of the act also provided for direct citizen enforcement.

Joan K. Thomas stated at the 1991 symposium:

"I have thought about this carefully over the years as I have seen my expectations frustrated. We have lost the full potential of the SMA to protect a valuable resource through fainthearted administration."

"When the SMA was written in 1971, aquaculture meant oysters and clams and one salmon raising operation. This activity was recognized and protected as water-dependent. I do not read the original intent or the original guidelines to promote the industry as we know it today. In fact, the guidelines specified that navigational access not be restricted and that visual access of upland owners be considered. Aquaculture has become a sore point between local governments and the Department of Ecology – a fraying of the partnership."

Brian Boyle, 1991 Public Lands Commissioner, spoke on the Public Trust Doctrine (page 111):

"For the average family, a walk on the beach is a free and easy amusement. It's something most of us take quite for granted. To a public land manager, however, that same walk represents the exercise of a right with roots that can be traced back through the foundation of our state, to the foundation of our republic, and beyond that to the laws of England and the statutes of the Roman Empire."

"Our walk on the beach is, in fact, defended by a legal doctrine more than 1,500 years old – a doctrine that holds that the land between the tides and under navigable water is inalienably dedicated to public use. This is the famous public trust doctrine, and a whole string of court decisions, both at the federal and state levels, have confirmed its validity for the present day."

"Our stewardship has two separate but related goals. The first is the preservation of values inherent in the public trust – waters where we can fish and swim and ecologically healthy bottom lands and beaches. Although much of this effort is carried out by other state agencies, including the departments of Ecology and Fisheries and Wildlife, there is an important difference in emphasis and authority. Those agencies rely on the police power of the state, which is subject to a

number of constraints when it affects private property."

"For example, when the state limits what private property owners can do with their property, as in zoning restrictions, property owners may object that the state has taken some part of the values of their property without compensation, which is a violation of the constitution. But the situation is very different when the state acts to protect its own property, or the property rights it holds in trust for the people under the public trust doctrine. Potentially, this is a much more powerful means of securing public rights, against which the "taking" argument has no effect. The Washington Supreme Court held in the Orion case that private owners can expect no economic benefit from their lands if obtaining that benefit deprives the public of rights it holds under the public trust doctrine."

Q. Is shellfish aquaculture documented as a stressor to fish habitat and salmon populations?

A. Yes. For one example please: Click here.

Q. What about the social disruptions caused by shellfish aquaculture expanding into non traditional and residential areas?

A. Profits are the primary goal of the expanding shellfish/geoduck industry in Puget Sound.

Q. What about the loss of traditional and recreational sport fishing grounds? Does the shellfish industry respond to this issue?

A. No. There has not been any consideration given to this issue by the shellfish aquaculture industry. The industry uses non-scientific opinion as propaganda to suggest shellfish aquaculture enhances sport fishing.

Q. Does the plastic tubes (PVC - polyvinyl chloride) used in geoduck aquaculture contain Bisphenol A (BPA) or Phthalates?

A. Yes, the plastic PVC pipes used in geoduck aquaculture contain Phthalates. According to a University of Washington study: 'Plastics: Possible Impacts on Children's Health', Pediatric Environmental Health Specialty Units: "Phthalates are man-made chemicals used as a 'plasticizer' in a variety of industrial and commonly used products. These chemicals are anti-androgenic, and can adversely impact androgen sensitive tissues during specific windows of development."

The use of PVC is banned in New York State and elsewhere because of it's negative

environmental impacts. Yet the shellfish industry places eight miles, or 150,000 pounds (75 tons) of PVC plastic PER ACRE of Puget Sound tidelands for geoduck aquaculture. It then weathers and wears away directly into the environment. PVC pipe was designed for indoor or underground construction use, not for outdoor use in the aquatic environment where it is exposed to UV light, wind and wave erosion. No studies have been done to assess the long or short term impacts of this unprecedented amount of PVC plastics, literally millions of pounds, into the nearshore environment of Puget Sound.

In 1987, Congress enacted the 'Marine Plastic Pollution Research and Control Act', which is intended to reduce plastics in the marine environment.

Throughout its entire life cycle, from manufacturing to disposal, PVC has high environmental costs. It contains a high percentage of chlorine, is made with the carcinogen vinyl chloride, plus dioxin and ethylene dichloride are by-products of its manufacture. PVC is not readily recyclable and when incinerated releases both the carcinogen dioxin and hydrogen chloride gas.

Q. How many companies are pursuing geoduck aquaculture in South Puget Sound?

A. Primarily five: Taylor Shellfish, Seattle Shellfish, Allen Shellfish, Arcadia Shellfish and Chelsea Shellfish. Additionally, the Pacific Coast Shellfish Growers Association, the Washington State Department of Natural Resources, and various other private, state, county and federal agencies work to assist the shellfish aquaculture industry in expanding into inappropriate areas of South Puget Sound.

Q. Is geoduck farmed in its natural habitat?

A. No, geoduck is mainly a subtidal animal. Geoduck is farmed in the intertidal zone using plastic PVC pipes and nylon nets for predator exclusion. Geoducks cannot grow in the intertidal without pipes or nets.

Q. What about natural densities? Are geoduck farmed in natural densities as they occur in the subtidal?

A. No, absolutely not. Not only are geoducks farmed in the intertidal, which is not their natural habitat, they are farmed in densities that are many times their densities in the wild.

Q. Has the Washington State Department of Natural Resources done a good job of

managing the subtidal geoduck harvest?

A. No. Areas have been overfished and harvest boundaries have been violated on a number of subtidal tracts.

Q. Are geoducks an aphrodisiac or do they have properties of male enhancement?

A. No, absolutely not. Some Asian cultures believe this is the case because of the geoduck's profound phallic appearance.

Q. Are geoducks a valuable food source.

A. No. Salmon has three times the calories, twice the protein, and five times the healthy Omega 3's as geoduck, but at one third the price.

Q. Why is geoduck so expensive?

A. The demand is driven by the false cultural belief that geoducks have properties of aphrodisia. More than 95% of geoduck is sold to Asian markets.

Q. The shellfish aquaculture industry claims that geoduck farming is good for the economy. Is this true?

A. No, this statement has not been quantified or substantiated. Because geoduck are largely exported, sales and excise taxes are avoided, depriving Washington state and Puget Sound counties of significant revenues. Since tidelands are taxed at only $3. per acre, substantial tax revenues to Puget Sound counties are avoided. Yet the shellfish industry's clean water initiatives, in which they gain financially, cause great expenses to be incurred by taxpayers in lieu of other programs. The truth is: only a handful of individuals stand to gain substantially from geoduck aquaculture.

Q. What about jobs?

A. The shellfish industry claims to provide about 2,000 family wage jobs in Washington State. For some perspective, the tourism industry in Washington State provides about 150,000 jobs.

Q. Does shellfish aquaculture help balance the seafood trade imbalance and the overall trade deficit.

A. The U.S. exports over 70% of its seafood products to other countries while importing about 80% of seafood from foreign countries; primarily

China. We export our high quality seafood and import cheaper farmed seafood products to consume here. This is a business and policy issue/problem that cannot ever be solved by exporting our shellfish overseas. Click here for video.

Q. What about the shellfish industry claim that shellfish aquaculture provides heathy protein for a growing population?

A. This is typical false propaganda. Shellfish are a luxury food, and as such will never be a staple protein source. Six medium sized oysters contain about the same amount of protein as one egg. Six medium oysters retail for about $5. or $6. dollars, compared to about .23 cents for one egg - a difference in price of about 95 percent. Oysters and other shellfish are a luxury item that will never be found at the local food bank, nor will they ever be a viable protein source for feeding the masses. The shellfish industry is not about an altruistic desire for clean water or feeding hungry people. The shellfish industry wants to expand for the purposes of increasing profits at the expense of the nearshore ecosystem and public rights.

Shellfish are not necessarily a "healthy" food either. Outbreaks of paralytic shellfish poisoning are relatively common, as is vibrio vulnificus in oysters. Vibrio is one of the most deadly food borne illnesses known, killing half of all people that come into contact with it. Oysters are number 4 on the FDA's top ten list of riskiest foods.

Q. Why is the shellfish aquaculture industry moving into traditional and historic recreational and residential areas of South Sound?

A. Money and greed. The South Sound has optimum conditions for geoduck aquaculture: clean pristine waters, abundance of planktonic nutrients, suitable intertidal substrate, proper salinity and proximity to processing facilities.

Q. Has the government of British Columbia, Canada, banned new intertidal geoduck aquaculture?

A. Yes. The B.C. Ministry of Agriculture and Lands used to state that this was: "due to the lack of understanding on the effects of geoduck aquaculture techniques to fish habitat". Because of pressure from the shellfish aquaculture industry, this now says: "while the policy for intertidal geoduck culture is under review".

Q. What is hypoxia?

A. 'Hypoxia' is low dissolved oxygen, or 'anoxia': absence of oxygen. It is caused by a number of factors, including an over-abundance of shellfish. Other causes: algal or plankton blooms, decaying plant and animal matter and riparian

loss. Plankton blooms can occur naturally and can be exacerbated by septic and fertilizer runoff.

Q. The shellfish aquaculture industry claims that geoduck farming improves hypoxia (low dissolved oxygen) in Puget Sound. Is this true?

A. No, this is not true and cannot be scientifically substantiated. In fact, too much geoduck can contribute to hypoxia in two ways: geoduck as aerobic consumers of oxygen, and from feces deposition increasing organic carbon levels and hence, sediment oxygen demand. Mussel rafts significantly contribute to the hypoxia problem according to the shellfish industry's own environmental assessments.

Q. Is hypoxia caused by upland development?

A. In Hood Canal, the hypoxic conditions are primarily caused by the nitrogen leached from decaying alder leaves and other deciduous trees, a result of massive clearcutting of native evergreens. Reforestation to native conifers would be the best solution to hypoxia in Hood Canal. Residential upland development (septic and fertilizer runoff) accounts for about 10% of the hypoxia problem in Hood Canal.

Q. What about oysters? Are they good for the environment?

A. Yes. A natural abundance of shellfish are important to the ecosystem. Oysters are particularly beneficial. One oyster can filter about 30 gallons of water per day. Oysters are superior at sequestering carbon and provide natural habitat to crab and other filter feeders, such as barnacles.

Q. What about invasive species?

A. The shellfish industry has introduced a number of harmful invasive species, while contributing to the near extinction of the native Olympia oyster. The Pacific oyster is an invasive species, as is the oyster drill from Japan. Mediterranean mussels are invasive, as are Manila clams. Aquaculture is the number one method of introduction of invasive species in Puget Sound. Marine invasive species are a major threat to biodiversity and have profound ecological and economic impacts.

Various forms of the Vibrio bacteria are most likely spread through human activity. In Puget Sound, some shellfish diseases can be distributed through aquaculture activities from the spread of seed from hatcheries in California or outside the Puget Sound area. Hatcheries are generally not regulated. Parasites such as Orthione griffenis are distributed through human activities and may initially take root from ballast water. Griffen's parasite threatens native mud shrimp with extinction, yet the shellfish industry continues to spray Carbaryl in

Willapa Bay to kill mud shrimp and other burrowing shrimp.

Q. Does CISA oppose all shellfish aquaculture?

A. CISA supports reasonable scale, properly sited eco-friendly shellfish culture techniques such as on bottom triploid oyster culture harvested by hand. CISA does not support the use of carbaryl or other pesticides, nor will we support culture methods that negatively impact salmon and other valuable species. CISA does not support further shellfish aquaculture expansion in Puget Sound without site specific unbiased scientific review and stakeholder participation.

Q. How can I help?

A. Call or write or email your local and state representatives. Tell them that you do not want aquaculture expanding into Puget Sound without strict environmental regulations, public participation in the regulatory process, and exhaustive and unbiased scientific review. Or email us at info@caseinlet.org with questions or comments.

CISA

www.caseinlet.org
Case Inlet Shoreline Association
3919 51st Ave Ct NW
Gig Harbor, WA 98335

To access links in this document, go to the online version at:
http://www.caseinlet.org/FAQ_s.php

Andrew Deffobis

From: Ian Lefcourte
Sent: Monday, December 9, 2019 1:27 PM
To: SMP
Subject: FW: Judge Bjorgen and Judge Tabor rulings
Attachments: 20110121_ThurstonCnty_HearingExaminer_Order_SDP.pdf; 20111021 _TaylorArcadia_vs_ThursCnty_Superior_Tabor.pdf

FWD

From: Brad Murphy <brad.murphy@co.thurston.wa.us>
Sent: Wednesday, December 4, 2019 12:03 PM
To: Andrew Deffobis <andrew.deffobis@co.thurston.wa.us>
Cc: Ian Lefcourte <ian.lefcourte@co.thurston.wa.us>; Polly Stoker <polly.stoker@co.thurston.wa.us>
Subject: FW: Judge Bjorgen and Judge Tabor rulings

Hi Andy,

Comments from Kathryn and Patrick Townsend.

Thanks,
Brad

From: Kathryn Townsend <kath.townsend@gmail.com>
Sent: Wednesday, December 4, 2019 10:24 AM
To: Brad Murphy <brad.murphy@co.thurston.wa.us>; Kraig Chalem <kraig.chalem@co.thurston.wa.us>
Cc: Patrick.Townsend@townsendsecurity.com; Anne Van Sweringen <avansw2@gmail.com>; Phyllis Farrell <phyllisfarrell681@hotmail.com>
Subject: Fwd: Judge Bjorgen and Judge Tabor rulings

Dear Brad and Kraig,

Since Andrew Deffobis let us know that he is out of the office until December 6, 2019, on his advice we are forwarding this message to you.

Please confirm receipt and let us know that you will post the attached rulings on the Thurston County SMP website.

Sincerely,
Kathryn and Patrick Townsend

> Date: Wed, 04 Dec 2019 09:08:24 -0800
> To: andrew.deffobis@co.thurston.wa.us, PlanningCommission@co.thurston.wa.us
> From: Kathryn Townsend <kath.townsend@gmail.com>
> Subject: Judge Bjorgen and Judge Tabor rulings
> Cc: Patrick.Townsend@townsendsecurity.com, Anne Van Sweringen <avansw2@gmail.com>, Phyllis Farrell <phyllisfarrell681@hotmail.com>
>
> Hi Andrew,

Attached are the rulings by Judge Thomas Bjorgen and Judge Gary Tabor related to the AG Opinion that you posted on the SMP website.

We suggest that it would be honest and principled to include these rulings in your list of important documents for tonight's meeting. Ironically, Thurston County prosecuting attorney, Jeff Fancher, argued these cases and won against the shellfish industry. Now the County appears to support the shellfish industry. Please explain.

Please add the following Power Point to citizen concerns related to shellfish aquaculture.
https://protectourshoreline.org/slideshow/POS_ShellfishAquacultureConcerns.pdf

Kathryn and Patrick Townsend

From:	John Woodford
To:	Jennifer Davis; Polly Stoker; Andrew Deffobis
Subject:	April 15, 2020, virtual Planning Commission meeting
Date:	Friday, April 17, 2020 1:53:35 PM

Ms. Davis, Ms. Stoker, Mr. Deffobis and Commissioners,

As a non-participating observer of last Wednesday's meeting I would like to add my comments. First, please do not make virtual meetings the "new normal" for the long term…for the short term-okay. Return to live meetings in Room 152 when the governor and BoCC say we're ready. And, please do not ever consider holding Open Houses or Public Hearings in a virtual format; the public has to be able to participate in person.

Now…the things that I liked and appreciated with the virtual format. I could see all of you participants very well. And I could actually HEAR all of your comments…something that is most often very "iffy" in a live meeting. The visual material presented by Shannon Shula and Andrew Deffobis was vastly more visible and useful than images projected on the screen in Room 152. And, I could sit at home at my desk, spread out my notes/my copy of Ch 19.600 and easily make new notes.

One thing missing from the virtual meeting, that I would have liked hearing, was the Public Comments/Communication. I know that you received five written comments and that they are already posted on your web page, but I would have liked to hear at least a very brief summary of the subject matter of each comment during the meeting.

Now, Andy, I would like to raise some SMP items that were not discussed Wednesday evening.

1) Why were Water Oriented Industrial Uses in Shoreline Residential SEDs changed from "Prohibited" to "Conditional Use Permit"? See Table 19.600.105…the Matrix, 19.600.150.A.2 and 19.600.150.B.3.a. Where in a Thurston County Shoreline Residential SED could you find a place where any industrial use would be compatible with residential use? Everyone, please take a close look at the SED map. Other than the Boston Harbor area and a sizable portion the west coast of Eld Inlet (Steamboat Island), all other marine water Shoreline Residential stretches are very limited. The vast majority of Shoreline Residential properties are adjacent the County's fresh water lakes. Allowing any industrial use in an existing residential neighborhood seems counter to any reasonable planning standards.

2) These comments deal with 19.600.160 Mooring Structures and Activities.

a) 19.600.160.C.1.p and f plus 19.600.160.C.5.e through h deal with covers and grating requirements for boat houses, piers and floats. While this has been discussed in the past, it did not come up on Wednesday. None of this applies to the fresh water lakes of Thurston County.

b) 19.600.160.C.4.c states, "Piers shall have a north-south orientation…" And it goes on to say that the pier height must be raised for every degree that the pier departs from this n-s orientation. I assume that this has something to to do with salmon/juvenile salmonids; the requirement should not apply to lakes…where

most of the residential properties occur. I live on Long Lake which has a predominately north-south bearing. Therefore, for most Long Lake residents to have a pier perpendicular to their shoreline (an east-west orientation), they would have to raise it far above the water level.

c) 19.600.160.C.4.d states, “New or replacement piers must be oriented in a straight line.” Does this prohibit an L or T or even a curved configuration? If so, why?

3) On your web site the SMP Draft-Chapter-19.700-update-Strike-thru-WM.pdf that appears on the Meeting Agenda for April 15, 2020, contains no strikes-through or change of any kind. This is exactly the same Chapter 19.700 that was first presented to the Planning Commission in the late summer of 2017. Or, am I missing something here? Will 19.700 be on the agenda for the next Planning Commission meeting?

Thank you all for your efforts during these difficult times.

Stay Safe,

John Woodford, AIA,
Chair
Thurston County Shoreline Stakeholder Coalition