

To: Sharon Rice, Hearing Examiner
From: George Johnston

Re: Opposition to Project 2022103702
TaylorShellfish/Mazanti Geoduck SSDP Application

My name is George Johnston, I live at 9105 Otis Beach Street NE on the West side of Johnson Point. My wife and I have been property owners on Henderson Inlet for 14 years and in Thurston County for almost 30 years. We live approximately ¼ mile from the project site before us today.

In this letter I would like to present:

- 1) A short preface to why I'm speaking out,
- 2) Some evidence of how the shellfish growers are NOT making efforts to be in compliance with the Thurston County SMP (Shoreline Master Program), and why it doesn't matter to them,
- 3) Some evidence of being even further out of compliance with the just approved "New SMP" which will govern the industry as soon as it is signed off by the Department of Ecology.

My comments on various sections begin with (). Please excuse the formatting issues, I am no expert in this process.**

We all, everyone of us in the Henderson Inlet watershed, are required to pay for and participate in the clean water initiative for Henderson Inlet, which ensures clean and working septic systems, among other things. We pay the tax to administer the program, inspect and pump our systems, repair them as needed, and subject ourselves to inspections, dye tests, reports and vast amounts of permit regulations. **Our efforts have reportedly successfully brought back the clean and livable waters that once were common here. To think that all those efforts, countless hours and dollars, only went to further the cause of commercial enterprises taking advantage of OUR community efforts.** I would like to preserve and protect our shorelines and marine habitat so they may be healthy and viable for centuries to come.

In the late 1800s, the Bush and Callow Acts were enacted to sell intertidal property of the State for oyster farming. At the time, most of these plots were wild shorelines, undeveloped, with the residential landscape being entirely different. Residential population densities have increased exponentially since these acts selling this state's lands were enacted. The ecological, social, and political conditions prevailing currently around these permits need to be further examined and at the very least a moratorium on permits be installed. It's possible that these Acts should be repealed until we all understand the effects of high density shellfish industrialization.

I'd like to discuss a few references from various SMP guidelines and sources.

From State Shoreline Master Program Handbook:

Chapter 16, pg. 20

Aquaculture regulations in local SMPs should be carefully written so they are consistent with WAC 173-26-241(3)(b)(i)(C), which states:

“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. Aquaculture 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...**”

**** There has been insufficient study on the effects of species co-mingling. Aesthetics to follow.**

From the SMP Fact Sheet #5-Aquaculture states:

“Permit requirements include standards related to managing noise, lights, aesthetics, plastics, public access, and water quality.”

**** Although some of these processes have been modified, Little has been assessed as to aesthetics, plastics or water quality.**

From the Thurston County Comprehensive Plan:

Policies:

6. Aquacultural activities should be undertaken in a way that minimizes adverse impacts, such as views from upland property and general environmental quality.



****Not what could be considered either a nice view, navigable, or a quality environment. (West Henderson Inlet)**

From SMP-Section 1

III. PENALTIES AND ENFORCEMENT

The Shoreline Management Act imposes significant penalties for violation of the act, regulations and master programs. A violation constitutes a **gross misdemeanor, which is punishable by fine or imprisonment** (RCW 90.58.220). In addition to the criminal penalty, the Act imposes liability on any person violating the act or conditions of a permit for all damage to public or private property arising from the violation. Furthermore, the violator may have to restore an area affected by a violation, and pay the entire cost of restoration, including attorney's fees and court costs (RCW 90.58.230)

****I'm bringing this up because it needs to be known that there is really very little oversight of these regulations that go into these permits. There are 448 pages of regulations in the SMP and minimal control over the shellfish industry to enforce it. We should not be granting invasive projects when there is little in place to regulate the applicants' compliance. In an earlier hearing (Seattle Shellfish, July 25, 2023), one of the applicant's agents testified in that hearing that he estimates MAYBE 10% of the projects ever get looked at. There is really little deterrence for the growers to follow the rules.**

The growers will say they use the latest, best practices as detailed in their "Shellfish Growers Manual" but this manual is very outdated. The growers

mandated themselves to update the manual annually, but it's last update was in 2005, almost 20 years ago.

Here, I illustrate some of the ongoing problems going unchecked. These photos show a disregard for current science on plastics pollution of the environment.

The first is showing a pile of PVC tubes just thrown up on the beach, uncovered, exposed to the UV light, decaying. (West Henderson Inlet)



The second illustrates a neglect of duty to clean up a grow site after harvesting, leaving the tubes and plastics to decay and be washed away or broken up. (Both West Henderson Inlet)



The third also shows disregard for the UV decay process of the tubes, leaving them fully exposed in the sun, uncovered. (West Henderson Inlet)



The fourth shows a TOTAL disregard for the storage practices preventing the UV deterioration of the planting tubes. A HUGE pile of uncovered plastic tubes stored upland. How can this be allowed by the “clean, green” shellfish companies? (West Henderson Inlet)

SMP-section 2

III. POLICIES

“...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...**”

“To implement this document, **the public's opportunity to enjoy the physical and aesthetic qualities of natural Shorelines of the State and Region shall be preserved to the greatest extent feasible consistent with the overall best interest of the people generally.**”

“...Permitted uses of the Shorelines of the State and Region shall be designed and conducted in a manner to **minimize, to the extent feasible, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.**”

IV. PRIORITIES

“In accordance with the Shoreline Management Act of 1971, the management of Shorelines of State-Wide Significance shall be given preference to uses, in the following order of priority, which:

1. Recognize and protect the state-wide 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 on the shoreline;**
7. Protect life and property from hazards of flood; and
8. Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary. (RCW 90.58.020)”

**** Aquaculture is not found above level 9 on this priority list, not even mentioned. The idea here is to NOT have Puget Sound 100% industrialized.**

**** These Sections of the Policy are not being given the weight they deserve. The decisions should be “in the best interest of the state and the people while minimizing damage and interference with the public’s use of the water.”**

V. REGIONAL CRITERIA

B. “Protection of water quality and aquatic habitat is recognized as a primary goal. All applications for development of shorelines and use of public waters shall be closely analyzed for their effect on the aquatic environment. Of particular concern will be the preservation of the larger ecological system when a change is proposed to a lesser part of the system, like a marshland or tideland”.

F. “Applicants for permits shall have the burden of proving that a proposed substantial development is consistent with the criteria which must be met before a Permit is granted. In any review of the granting or denial of an application for a permit as provided in RCW 90.58.18.180 (1), the person requesting the review shall have the burden of proof.”

G. “Shorelines of this Region, which are notable for their aesthetic, scenic, historic or ecological qualities shall be preserved. Any private or public development which would degrade such shoreline qualities shall be discouraged. Inappropriate shoreline uses and poor quality shoreline conditions shall be eliminated when a new shoreline development or activity is authorized.”

****The Examiner and other State authorities MUST consider the aesthetic, scenic and ecological impact of this application.**

Section 3-II. AQUACULTURAL ACTIVITIES

B. Policies

4. “Aquacultural enterprises should be operated in a manner that allows navigational access of shoreline owners and commercial traffic.”

****Washington statutes state:**

“All marine waters listed in Table 612 (includes us) are protected for the miscellaneous uses of aesthetics, boating, commerce/navigation, and wildlife habitat.”

WAC173-201A-612(2)

****These pictures illustrate that this rule in general is not being followed and these practices present a hazard to navigation. There is no way to access the shore from boats unless at very high tides. Tide levels during summer recreational activity times are extremely low and these practices will not allow access of shoreline owners, or vessels in distress or enjoying recreation.**



(West Henderson Inlet)



(Both Totten Inlet) Shellfish rafts barring navigation, extending well into the inlet



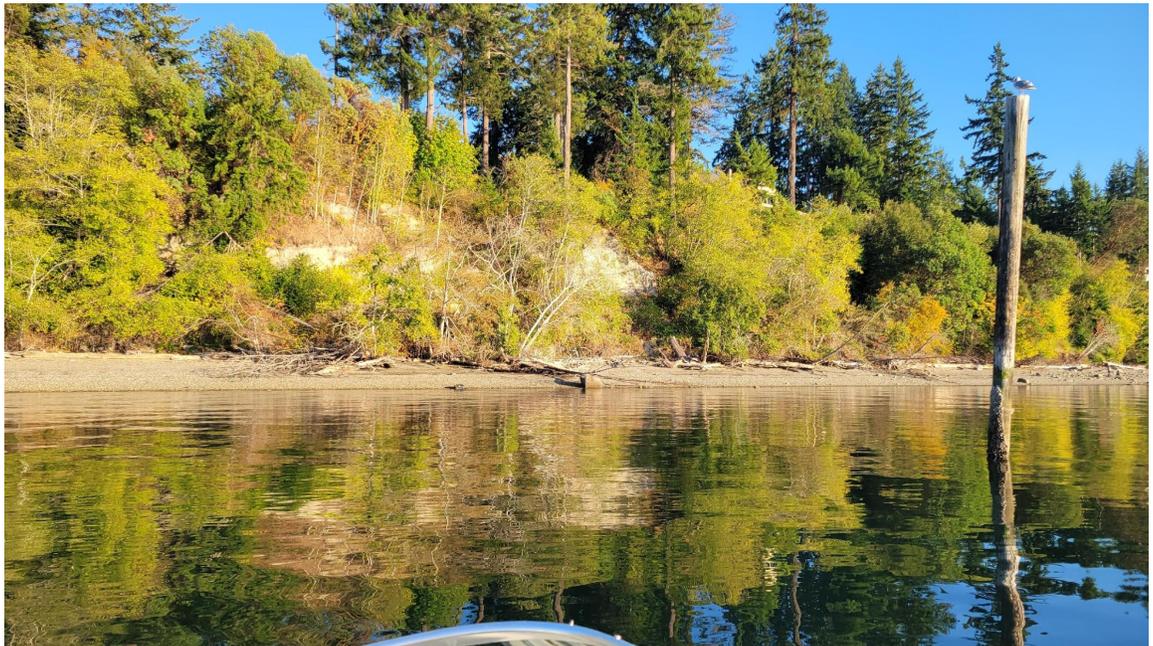
5. “Aquacultural development should consider and minimize the detrimental impact it might have on views from upland property”



(West Henderson Inlet)

****Any pipes or predator exclusion devices are inherently NOT appealing to upland observers. They are unsightly blemishes on the beautiful, natural beaches of our county.**

****This is what the subject beach looks like now:**



****This is what the same beach could look like under production:**



****These developments have the visual appeal similar to looking out your backyard and seeing a strip mine just beyond your chain link fence.**

RCW 90.58.100 Programs as constituting use regulations—Duties
when preparing programs and amendments thereto—Program contents.

(1). (f) Employ, when feasible, all appropriate **MODERN, SCIENTIFIC DATA** processing and computer techniques to store, index, analyze, and manage the information gathered.

(2) The master programs shall include, when appropriate, the following:

(f) A conservation element for the preservation of natural resources, including but not limited to scenic vistas, aesthetics, and vital estuarine areas for fisheries and wildlife protection.



Beautiful scenic vistas at the beach. (East Henderson Inlet)



(East Henderson Inlet)

****There are Herring and Smelt spawning grounds all along this East side of Henderson Inlet. We see balls of them all throughout that beachline which suggests more study is needed on this factor. If salmon recovery is a State and County priority, this project should be halted for just this item alone.**

(4) Master programs will reflect that state-owned shorelines of the state are particularly adapted to providing wilderness beaches, ecological study areas, and other recreational activities for the public and will give appropriate special consideration to same.



(subject project location)

RCW 90.58.020 Legislative findings—State policy enunciated—Use preference.

“...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.”



(West Henderson Inlet)

****The new revised SMP just approved by the county will be approved by the Department of Ecology. It dives deeper into some of the aquaculture issues that have arisen. There are now new and more comprehensive requirements to be met by the applicants.**

New SMP excerpts:

19.200.125 Rural Conservancy – This project area designation

C. Management Policies

1. Uses should be limited to those which sustain the shoreline area's physical and biological resources, and those of a non-permanent nature that do not substantially degrade ecological functions or the rural or natural character of the shoreline area. Developments or uses that would substantially degrade or permanently deplete the physical and biological resources of the area should not be allowed.

****The permits being reviewed currently are neither non-permanent nor non-degrading of the ecological function. All should be paused for further study.**

19.300.105 Critical Areas and Ecological Protection

Goal: Protect and conserve shoreline natural resources, including protection of critical areas (Title 24 and Chapter 17.15 TCC, as referenced in 19.400.115), while accommodating reasonable and appropriate uses which will assure, at a minimum, no net loss to shoreline ecological functions and processes.

****This can not be proven under this application.**

D. Policy SH-10 Permitted uses and developments should be designed and conducted in a manner that protects the current ecological condition, and prevents or mitigates adverse impacts. In order to reduce the amount of plastic debris entering water bodies in Thurston County, permitted uses and developments are encouraged to limit the use of plastics.

****The shellfish industry uses almost entirely plastics in all their shoreline practices. These samples are from just a couple walks down the beach maybe a half mile:**



Mitigation measures shall be applied in the following sequence of steps listed in order of priority:

1. Avoid the impact altogether by not taking a certain action or parts of an action:

****FIRST CHOICE! This is almost NEVER done.**

6. Monitor the impact and the mitigation projects and take appropriate corrective measures.

****This is not done consistently, if at all.**

F. Policy SH-13 In assessing the potential for new uses and developments to impact ecological functions and processes, the following should be taken into account:

1. On-site and off-site impacts;
2. Immediate and long-term impacts;
3. Cumulative impacts, from both current and reasonably foreseeable future actions, resulting from the project; and
4. Any mitigation measures or beneficial effects of established regulatory programs to offset impacts.

**** Long term and cumulative impacts have not been studied thoroughly at this time.**

19.600.115 Aquaculture

****New requirements. All of the below will help protect our waters and shorelines but will only be effective if there are oversights in place to monitor compliance:**

B. Application Requirements

2. A baseline description of existing and seasonal conditions, including best available information. Where applicable to the subject proposal, the following should be included.

f. Aquatic and benthic organisms present, including forage fish, and spawning and other lifecycle use of, or adjacent to, the site;

g. **Probable direct, indirect and cumulative impacts** to items 2.a.-f. above; and

h. **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.**

**** It will be impossible to prove that this process is not offensive to the visual landscape:**



(West Henderson Inlet)



(West Henderson Inlet)

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

- 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;
- l. For geoduck aquaculture, management practices that address impacts from mooring, parking, noise, lights, litter, and other activities associated with geoduck planting and harvesting operations.**
- m. Other measures to achieve **no net loss of ecological function** consistent with the mitigation sequence described in WAC173-26-201(2)(e).

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:

- e. Water quality studies;**
- f. Reports on solids accumulation on the bottom resulting from the permitted activity along with its biological effects;**
- h. Noise level assessments,** including mitigation measures to ensure compliance with Chapter 10.36 & 10.38 TCC;

C. Development Standards

1. General Standards.

g. 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)).

h. Aquaculture shall not significantly conflict with navigation and other water-dependent uses.

****There is an entire chapter dedicated to the very important factor of cumulative effects of many growing operations in the limited shorelines. Much more study is needed:**

19.700.130 Cumulative Impacts Report

Approach

1. Considerations:

- a. The proximity of the projects to other similar projects either geographically or temporally;
- b. The probability of actions affecting the same environmental system, especially systems that are susceptible to development pressures; and
- c. The likelihood that the project will lead to a wide range of effects or lead to a number of associated projects

2. Resources and Ecosystem Components. To determine which resources are cumulatively affected, consider:

- a. Whether the resource is especially vulnerable to incremental effects;
- b. Whether the proposed action is one of several similar action in the same geographical area;
- c. Whether other activities in the area have similar effects on the resource;
- d. Whether the effects have been historically significant for this resource; and
- e. Whether other analyses in the area have identified a cumulative effects concern.

3. Geographic Boundaries and Time Period. An appropriate spatial scope of the cumulative impacts analysis is determined by:

- a. Identifying a geographic area that includes resources potentially affected by the proposed project;
- b. Extending that area, where necessary, to include resources affected by the combined impacts of the project and other actions; and
- c. Combining ecological boundaries with political boundaries when necessary to adequately delineate the assessment area.

4. Past, Present and Reasonably Foreseeable Future Actions. Consider:

- a. Whether the environment has been degraded, and if so, to what extent,
- b. Whether ongoing activities in the area are causing impacts, and
- c. The trends of activities and impacts in the area.

RCW 90.58.020 states:

“....Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public’s use of the water.”



****There is obviously 100 percent chance of interfering with the public's use of the water and shoreline. (West Henderson Inlet)**



****These are some of the things we get to deal with from the shellfish growers.**



(Both East Henderson Inlet)

****Washington Statutes state:**

"Aesthetic values must not be impaired by the presence of materials or their effects, excluding those of natural origin, which offend the senses of sight, smell, touch, or taste." (WAC 173-201A-260)

****Additionally, any review of a project such as this should incorporate the findings of this case before Judge Lasnik as recently as 2019:**

In his [October 2019 ruling](#), Judge Lasnik concluded that the Corps of Engineers had failed to show that individual shellfish farms would have “no more than minimal adverse effects” on the environment, as required for a nationwide permit. He also concluded that the agency failed to undertake a review of the full “cumulative effects” that could result from the nationwide permit, as required by law.

“In this case, the Corps acknowledged that re-issuance of (the nationwide permit) would have foreseeable environmental impacts on the biotic and abiotic components of coastal waters; the intertidal and subtidal habitats of fish, eelgrass and birds; the marine substrate; the balance between native and non-native species; pollution and water quality; chemistry and structure; but failed to describe, much less quantify, these consequences,” Lasnik wrote.

In June 2020, U.S. District Judge Robert Lasnik invalidated permits for an estimated 900 shellfish farms, saying the environmental impacts had not been adequately studied.

Lasnik wrote. “This failure goes to the heart of the CWA(Clean Water Act) and NEPA(National Environmental Policy Act). As a consequence of this failure, the environmental impacts of commercial shellfish aquaculture operations, individually and cumulatively, are largely unknown.”

In summary, there are so many areas of concern with this application that the applicants have failed to prove to be resolved that there can be no possibility of approving this request for permit. Even under the current outdated SMP, there are several areas of failure. When taking the new SMP rules into account, which will undoubtedly be the governing document in the near future, issues with this application get much murkier, pardon the pun.

When the citizens of Thurston County work so hard for a clean, beautiful, inviting, living environment and a large portion of that is given up and soured for the sole purpose of a few companies to pad their corporate pockets, then we as citizens and you as administrators have failed the common good.

**For the future of our beautiful, clean shorelines
and the health of Puget Sound please do not approve
this permit.**

**Thank you.
George Johnston**