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**COMMUNITY PLANNING &
ECONOMIC DEVELOPMENT DEPARTMENT**

Joshua Cummings, Director

Creating Solutions for Our Future

MEMORANDUM

TO: Planning Commission
FROM: Andy Deffobis, Associate Planner
DATE: July 3, 2019
SUBJECT: Aquaculture – Follow Up from June 19 Work Session

Introduction

As part of the overall Shoreline Master Program (SMP) update, staff have been gathering and analyzing information about various issues that are of interest to the public and other stakeholders. This memorandum is intended to provide a follow up to the Planning Commission's June 19, 2019 work session on aquaculture.

Upland Aquaculture

The Planning Commission discussed proposed SMP regulations as they relate to upland aquaculture. The SMP generally governs land uses and activities within 200 feet of the ordinary high-water mark (OHWM), and in the Aquatic designation (lands below the OHWM). Tideland aquaculture is a preferred use under the Shoreline Management Act, and jurisdictions are required to accommodate and review permits for this use.

Streamlining Federal, State, and Local Regulations

At the June 19 Planning Commission meeting, the Washington State Department of Ecology (Ecology) presented an overview of state and federal permits or approvals required for aquaculture operations. Several Planning Commissioners made comments supportive of streamlining proposed aquaculture regulations and avoiding duplicate requirements in the draft SMP. While Ecology has several requirements for aquaculture that must be incorporated in local SMPs, including the types of shoreline permits needed, the proposed draft does allow for some streamlining.

The draft SMP requires applicants to submit a master application, the information required by the County in section 20.60.030 TCC based on the type of permit, a JARPA application and state JARPA form,

and SEPA checklist, as applicable (19.500.105(C)). Proposed section 19.600.115(B) describes application requirements specific to aquaculture, and includes a provision that enables the Department to waive certain information, if it is already provided in other local, state, or federal permit applications. Proposed section 19.600.115(B)(3) requires an operational plan if the listed information is already included for another state or federal permit.

Once an operation is permitted and operating, it does not require further shoreline permits from Thurston County. However, changes to the species cultivated does trigger applicable standards of the SMP.

One option is to include policy language in the draft SMP regarding the layers of permit requirements for aquaculture. The Ecology SMP Handbook provides an example of such language:

SMP regulations should not confound state and federal regulations and preclude an applicant's ability to comply with state and federal permits and the local SMP.

Regulation Based on Scale of Aquaculture Operation

The Planning Commission discussed the concept of scaling regulations to the size of a proposed aquaculture operation. This concept is embodied in the SMP by proposed Policy SH-37:

Non-commercial or small scale aquaculture projects should be encouraged through the shoreline exemption process [Section 19.500.100(C)].

The draft SMP includes some substantial development permit (SDP) exemptions that are provided for in state law (primarily in WAC 173-27-040 and RCW 90.58.030(3)(e)). See proposed section 19.500.100(C)(3). An exemption from the substantial development permit process is not an exemption from compliance with the act or the local master program, nor from any other regulatory requirements.

Aquaculture operations with a total cost below \$7,047 may be exempt from a SDP if they do not materially interfere with normal public use of water or shorelines. However, new geoduck aquaculture requires a Conditional Use Permit (CUP) – this is an Ecology requirement (see 173-26-241(3)(b)(iii) and (iv)). New geoduck aquaculture also requires a SDP if it substantially interferes with normal public use of surface waters.

Growth Management Hearings Board – Pierce County SMP

At the June 19 Planning Commission meeting, Ecology mentioned a recent Growth Management Hearings Board (GMHB) decision regarding the Pierce County SMP. An electronic copy of that decision has been forwarded to the Planning Commission to supplement the mail-out for the July 10, 2019 Planning Commission meeting.

The GMHB concluded that some aspects of Pierce County's action (adopting the SMP update) failed to comply with RCW 90.58.020, RCW 90.58.100, and applicable guidelines because of failures to give preference to aquaculture as a preferred use and failures to base the actions on scientific and technological information and management recommendations.

In general, the GMHB found that Ecology's approval of Pierce County's SMP, to the extent that it was based on an apparent determination that Pierce County could adopt restrictions on aquaculture to balance preferences of local citizens against the statewide interest in fostering aquaculture provided proof of Ecology's failure to comply with RCW 90.58.020 and the applicable guidelines.

Staff are reviewing the draft SMP to ensure consistency with applicable portions of the recent GMHB ruling. This topic will be revisited during the Planning Commission's review of proposed Chapter 19.600.

Length of Aquaculture Shoreline Permit Approval

Staff have re-reviewed proposed standards for aquaculture permitting. The draft SMP states that once issued, a shoreline permit allows the permittee five years to complete initial siting, construction, planting, and stocking of an aquaculture operation. After an aquaculture use or development is established under a shoreline permit, continued operation of the use or development does not require a new or renewed permit. Changing of species cultivated is still subject to SMP standards (proposed 19.600.115(C)(1)(b) TCC).

Net Pen Regulation

The current draft states that new floating net pens are not permitted until updates to Ecology guidance on finfish aquaculture are completed. At the June 19 Planning Commission meeting, Ecology stated the Legislature recently adopted new rules for finfish aquaculture. Staff will review this information and provide the Planning Commission with suggested amendments to the draft as the Commission begins its review of proposed Chapter 600 of the SMP.

Engrossed House Bill 2957, effective June 2018, prohibited the Department of Natural Resources from authorizing new nonnative marine finfish aquaculture operations, or from renewing or extending any existing leases or other use authorizations where the use includes nonnative marine finfish aquaculture. The bill also directed marine finfish aquaculture operators to hire a marine engineering firm to conduct inspections every two years.

Aquaculture in Thurston County

The Planning Commission had questions about what proportion of potentially cultivatable shorelines were currently in operation. Staff reached out to Ecology for further information on this question; Ecology will work with the Army Corps of Engineers to retrieve data for Thurston County.

Cost of Shoreline Permits

The Planning Commission asked about the cost of shoreline permits for aquaculture. County permit fees are based on a cost-recovery model; they pay for staff time to review permit applications. The fee schedule is adopted by the Board of County Commissioners. Shoreline fees include review by CPED, Environmental Health, and Public Works Development Review.

Adopted fees for 2019 are as follows. Staff will also be reviewing cost options for administrative CUPs for conversions to geoduck aquaculture.

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| JARPA (fee applies to each application type) -Conditional Use -Shoreline Substantial Development Permit -Variance Hearing Examiner | \$2,580 |
| JARPA -Conditional Use (when combined with SSDP) | \$1,800 |
| JARPA -Exemption | \$1,215 |
| Shoreline Administrative Variance | \$2,190 |
| Plan Amendment | \$2,970 |
| Administrative Time Extension | \$1,020 |