Thurston County Planning Commissioners
2000 Lakeridge Drive SW
Olympia, WA 98502

Commissioners,

Following are a few of my observations as we move into Planning Commission Work Sessions on the draft SMP strike-thru version. For a very long time, years now, I have been very concerned with the near total lack of transparency in the process to date. When directing comments and questions to Staff, please ask about:

1. What specific efforts have been made by the CPED to notify the citizens of Thurston County about this new series of Work Sessions?

2. Will Community Stakeholder meetings resume? These meetings were suspended last spring with the adoption of the "pause" in public input, and there has been no indication that they will return.

Please, also, take a few minutes (about ten minutes) in the near future to view a portion of the video of the Board of County Commission Agenda Setting meeting on Tuesday, February 19, 2019...just a few days prior to the release of the draft SMP strike-thru documents. Go to https://www.youtube.com/watch?v=6uAbl0L2UQw. Fast forward to about 2:00:32 (the 2 hour, 32 second point) You will see Joshua Cummings, accompanied by Cynthia Wilson and Brad Murphy, present an update on the SMP progress. Mr. Cummings begins by stating that CPED has proceeded "as directed by the BoCC" in 2017 to:

- Reduce buffers where possible, and
- Increase flexibility for its citizens.

I will present more about buffers at a future Work Session; most of us shoreline residents have really only been concerned with buffer reductions in the Shoreline Residential Designation...because that's the way it has always been.

But I take serious exception to the second point. "Increased flexibility for its citizens" has neither been represented in the strike-thru nor the original September 2017 versions of the draft SMP. That statement is simply not true.

Thank you for your consideration,

John H. Woodford

cc. Brad Murphy
Thurston County Shoreline Stakeholder Coalition Key Issues

Updated March 14, 2019, following release of the SMP strike-thru version

Following are the Coalition's key issues with the current draft Shoreline Master Program (SMP):

1. All legally constructed homes and appurtenant structures should be considered "conforming" rather than "legally nonconforming" even if constructed in the buffer or setback. This interpretation is allowed per RCW 90.58.620 as amended on or after September 1, 2011.
   a. Residential structures and appurtenant structures that were legally established and are used for a conforming use, but that do not meet standards for the following to be considered a conforming structure: setbacks, buffers, or yards; area; bulk; height; or density; and
   b. "Classifying existing structures as legally conforming will not create a risk of degrading shoreline natural resources" [200 c 323 41.]
   c. Reconstruction in the same footprint is excluded from a Substantial Development Permit (SDP) in the SMP Chapter 19.500. Therefore, it should not be considered "nonconforming" because you can reconstruct in the same footprint.
   d. The Thurston County Legal Department says the Planning Department can go either with "Conforming" or "Nonconforming" and there would be no problem if the SMP if different than other regulations. Our position is that the label "nonconforming" has a negative impact on home values and permit process/resources.

Staff has actually doubled down on this issue, changing "legally nonconforming" to "nonconforming." Ecology has no issue with "conforming." "Conforming" has been used by many jurisdictions.

2. Maintenance, repair, remodel and/or reconstruction within the existing footprint must be exempt from SDPs. Under the new strike-thru draft SMP version this Key Point has been accommodated; see 19.400.100.B.1.b and e. However, this update has not been picked up in Chapter 19.500. Remodel and/or reconstruction have not been added to Ch 19.500.100.C.3.b...exemptions from SDPs.

3. Positive, as well as negative, impacts to shoreline ecological function should be considered. When considering mitigation for a development the County must consider more than just the negative impacts on shoreline ecological function. The proposed development may very well provide positive impacts or net gains to shoreline ecological function. This needs to be added to the SMP. If there is a positive impact, the development should be exempt from a SDP. Staff has not considered this issue.

4. Establish fresh water requirements for piers, floats, wharves and bulkheads to address the unique habitat characteristics associated with shoreline residential use: In the current draft SMP, the requirements for all piers, floats and wharves are formulated for marine and large lake environments. These do not apply to most of the lakes in Thurston County which are typically spring fed and are eutrophic. Thurston County Lakes are not habitat for Salmon. There is no need to utilize grating or transparent decking. This type of decking will provide a negative impact on bass, perch, sunfish, bluegill and minnows which are the main recreational fish in these lakes. Grating or transparent will also expose our vulnerable populations to an unsafe condition. The SMP must separate appropriate requirements based upon the existing shoreline environment...Marine, Lakes or Rivers. Although both WDFW and Ecology acknowledge that requirements for fresh and marine waters are different, CPED staff has not considered this point. Ch 19.600.160.C.1.r. (grating requirements) does not apply to lakes.

5. The dollar threshold exemption for wharves, piers and floats on fresh water should be increased: The draft SMP sets the dollar threshold for all docks in lakes at $10,000. Ecology's Shoreline Permitting Manual states, "In fresh waters, if the fair market value of the dock does not exceed: (1) $20,000 for docks that are constructed to replace existing docks, are of equal or lesser square footage than the existing dock being replaced,
and are located in a county, city, or town that has updated its SMP consistent with the master program guidelines (173-26 WAC); or (2) $10,000 for all other docks constructed in fresh waters." Staff has not considered this issue.

6. **Take action to exempt development, repair and maintenance of single-family residences and appurtenances from the County’s proposed new “written approvals” process.**
   a. As currently presented, the draft SMP would implement a new system of shoreline permitting to cover all actions a property owner might undertake anywhere within 200 feet of the shoreline (Ordinary High Water Mark).
   b. Activities, large and small, would require either a Substantial Development Permit (SDP) or a new “written approval” from the County’s Permitting Center. The draft SMP wording covers “all development” which, by definition in the SMP, covers any activity and is alarmingly broad.
   c. Basically, a “written approval” is a permit to get an exclusion. This would include replacing a rotting/broken board on your pier/float/wharf, weeding and planting in your natural area, planting native water plants on the shoreline, etc. We recommend a booklet, pamphlet, etc., as other governmental agencies do, that tells you what you can do without applying for a permit. The booklet/pamphlet becomes your permit.
   d. Also, please note, this new shoreline permitting is an overlay of existing building and site permitting...which still apply.

Staff has not considered this issue.

7. **Language should be added to the SMP to protect existing uses, as well as structures:** Residential use is a preferred use according the State’s Shoreline Master Act and the County’s SMP should reflect this fact in the mitigation requirements. Mitigation design standards should be written that continue the homeowner’s use and view as a preferred use. In addition, the lakes in Thurston County are eutrophic. By requiring mitigation that screens the near shore from parental view you create an unsafe condition for young swimmers, reduce the desirability for swimming in the near shore, reduce water clarity and available areas for fish spawning. The near shore is where the young learn to safely swim. Staff has not considered this issue.

8. **Mitigation Banking:** How can the shoreline property owners be motivated to voluntarily improve shoreline function without being forced to? Mitigation Options, Ch 19.400.110.B.5. seems to open the door a bit for voluntary mitigation, but with sever time limitations. "...where documented restoration activities have occurred within the previous three years, but after the effective date of this Program..." Why are these time restrictions included?

9. **Recognize the significant damage to shoreline ecological function on freshwater lakes due to higher water levels and 4-foot waves:** The SMP should allow the modification of bulkheads to protect the existing shoreline from erosion. Fresh water lake conditions are quite different from those in a marine environment. Staff has not considered this issue.

10. **Allow decks in the Buffer:** Decks and patios are currently allowed in the County building and land use codes. Further, Ecology’s representative to the STAG/Regulatory Group has agreed to the principle that decks are acceptable uses in the Buffer. Staff has not considered this issue.

11. **Allow landward development within the buffer across the entire width of a residence:** This is allowed by Ecology; there is no need for the County to limit this development to 500 square feet. See 19.400.100.B.1.d. Ecology has no such requirement. The 500 square foot limit was originally adopted by the city of Spokane, then arbitrarily picked-up and used by other jurisdictions.
Patrick and Kathryn Townsend
Protect Zangle Cove
7700 Earling Street NE
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March 19, 2019

Thurston County Commissioners
Thurston County Planning Commission
2000 Lakeridge Dr SW # 269
Olympia, WA 98502

Subject: Comments on Thurston County SMP

Dear Commissioners and members of the Planning Commission,

We are acutely concerned about the rapid expansion of industrial geoduck operations in Thurston County. These operations involve massive amounts of plastic PVC/HDPE and netting and destroy large areas of natural tideland in sensitive estuaries. We believe that the proposed SMP does not adequately address these losses to the ecosystem, losses that impact forage fish, salmon and the southern resident killer whales that depend on salmon.

We’d like to bring your attention to the Cumulative Impact Analysis written by the Army Corps of Engineers (ACOE) in 2017. It was not formally released but was obtained through a FOIA request by a local environmental organization. It clearly identifies the threat of these commercial operations to salmon and concludes that these operations likely violate the SMA and the ESA (see page 111 and related). Here is a link to that document from the Protect Zangle Cove website:


Also we would like to bring your attention to the Bjorgen and Tabor decisions that concluded that geoduck operations are “developments” because they involve “structures.” In 2006 Thurston County determined that geoduck operations required a Shoreline Substantial Development Permit (SSDP). In 2010 this was appealed by the shellfish industry to hearing examiner Thomas Bjorgen who did an extensive analysis and ruled in favor of Thurston County and against the geoduck operators. The Bjorgen ruling was appealed to Superior Court and heard by Judge Tabor. In 2011, Judge Tabor confirmed Bjorgen’s analysis that geoduck operations are developments because the PVC tubes and nets are structures. In the current version of the new SMP, without reference to or acknowledgement of these decisions, Thurston County is simply eliminating this requirement to obtain an SSDP and substituting the less stringent Conditional Use Permit.

Here are the links to the Bjorgen and Tabor rulings:
To our knowledge, there was no public process or discussion about eliminating the requirement for an SSDP and the action to do so appears to be arbitrary and capricious. We would hope that the County Commissioners and the Planning Commission would call this out as an unacceptable relaxation of regulations that are intended to protect Puget Sound.

Additionally, it is hard to understand how such massive structures on the tidelands (some 43,560 PVC pipes per acre, approximately 7 miles of PVC weighing approximately 16 tons covered with plastic netting) would escape setback and permitting requirements that are mandatory for any development on the shorelands.

Finally, we would like to bring your attention to the extreme disparity in language and concepts between Section 300 (General Goals and Policy)/Appendix C (Restoration) and Section 600 (Aquaculture). Section 300 appears to be written by Thurston County personnel who genuinely regard the protection of our shorelines as an important and worthy goal. Appendix C on Restoration also promotes protection of natural functions, prohibition of Net Loss, and recognition of the primacy of ecological functions.

Section 600 - Aquaculture, however, appears to be written by the proponents of the shellfish industry who have a different agenda. As one example, Section 19.600.115(B)(3)(i) allows the use of “herbicides, antibiotics, vaccines, growth stimulants, antifouling agents, and other chemicals ...”. At a time when these pollutants are threatening endangered species in Puget Sound, this is extremely risky and therefore insupportable. Numerous other provisions of Section 600 - Aquaculture are also of major concern. The disparity between wording in Section 300 and Appendix C on the one hand and Section 600 on the other hand, is striking.

Kathryn and I hope that the County Commissioners will address this disparity and the other points we raise regarding the ACOE cumulative impact study and the legal foundation for requiring a Shoreline Substantial Development Permit for geoduck aquaculture.

Thank you for your attention to these issues in the draft SMP.

Patrick and Kathryn Townsend
Protect Zangle Cove

Cc: Phyllis Farrell, Anne Van Sweringen, Thurston County Planners