



December 21<sup>st</sup> 2007

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Subject: Leasing of Tidelands for Geoduck Aquaculture

Dear [REDACTED]

Thank you for your letter dated November 26, 2007 to a member of my staff, Jeff Schreck. Your letter expressed concern over the Washington State Department of Natural Resources' (DNR's) planned geoduck aquaculture lease on Hartstene Island, known as Fudge South. I would like to provide you with some background on DNR's geoduck aquaculture program, and also respond to specific points raised in your correspondence. I hope this letter and its attachments are helpful.

In summary, the attached numbered documents are:

1. **Geoduck Program Update**—this is a bulleted list providing highlights of the project since DNR's first involvement in 2003, when the State Legislature directed DNR to conduct a feasibility study on geoduck aquaculture. (This was titled the 'Geoduck Aquaculture Pilot Project Phase I'.)
2. **DNR Geoduck Aquaculture Background and History**—this document provides information on the Geoduck Aquaculture Pilot Project Phase I feasibility study, on the 2006 and 2007 Requests for Offers to lease state-owned lands for geoduck aquaculture, along with some information on science and the recent House Bill 2220.
3. **Geoduck Aquaculture Program Fact Sheet.**
4. **2007 Best Management Practices**—the geoduck aquaculture program's Best Management Practices (BMPs), which are adaptively managed as DNR learns more about the activity. These are the updated 2006 BMPs, which were amended with new information learned in the last year.
5. **Draft Environmental Monitoring Scoping Paper**—detailing DNR's proposed plan for environmental monitoring on its three two-acre monitoring leases. The monitoring work will be a lease requirement; the work will be directed by DNR scientists, but paid for by the lessee.
6. **2007 Lease Area 6—Fudge South**—Aerial and shoreline photographs and an aquatic plate map of the proposed Fudge South geoduck aquaculture lease area.

#### **Aquaculture on State- Owned Lands**

Aquaculture has been occurring in Washington since before statehood. It occurs today on both privately owned and state-owned aquatic lands, although no *geoduck* aquaculture currently occurs on state-owned lands. DNR is in the early stages of implementing a limited leasing program for geoduck aquaculture, although it is unlikely that any leases will be issued for twelve to eighteen months.

Washington State Law, Revised Code of Washington (RCW) provides strong support for aquaculture. For example:

**(1971) RCW 79.105.010**

*"The DNR shall foster the commercial and recreational use of the aquatic environment for production of food, fibre, income, and public enjoyment from state- owned aquatic lands and from associated waters..."*

**(1985) RCW 15.85.010**

*"The legislature finds that many areas of the state of Washington are scientifically and biologically suitable for aquaculture development, and therefore the legislature encourages promotion of aquacultural activities, programs, and development with the same status as other agricultural activities, programs, and development within the state."*

State law directs DNR to manage state-owned aquatic lands to provide the following benefits:

**RCW 79.105.030**

*"The management of state-owned aquatic lands shall be in conformance with constitutional and statutory requirements. The manager of state-owned aquatic lands shall strive to provide a balance of public benefits for all citizens of the state. The public benefits provided by state-owned aquatic lands are varied and include:*

- (1) Encouraging direct public use and access;*
- (2) Fostering water-dependent uses;*
- (3) Ensuring environmental protection;*
- (4) Utilizing renewable resources.*

*Generating revenue in a manner consistent with subsections (1) through (4) of this section is a public benefit."*

Aquaculture, as a use of state-owned aquatic lands, meets these management guidelines. Aquaculture is a water-dependent use that utilizes renewable resources. DNR, through its leasing process, encourages all its lessees to provide for public access. DNR ensures environmental protection through active lease enforcement activities, careful siting and Best Management Practices (BMPs). DNR Land Managers regularly visit leaseholds to ensure that lease conditions, BMPs and Plans of Operation (attached by reference to the lease) are enforced.

(Attachment number 2 provides more detail on the regulatory framework for aquaculture activities in Washington. Please see Section 3.)

Revenue generated by aquaculture leasing is deposited into two accounts controlled by the State Legislature—the Resource Management Cost Account (RMCA) and the Aquatic Lands Enhancement Account (ALEA). The funds are used to manage and restore aquatic lands and to expand public access opportunities statewide. DNR's management of state-owned aquatic lands throughout the state is funded by RMCA and some ALEA money. This work includes contaminated sediment clean up, aquatic restoration, aquatic reserves, scientific research, fishery management, compliance of leases and other

agreements, derelict vessel removal, invasive species control, and special projects mandated by the Legislature, to name a few. Seventy five percent of the revenue goes into ALEA, which funds a number of agencies' aquatic land management work. Some examples of other state agencies receiving ALEA funds are:

- *Washington Department Fish and Wildlife (~\$7.4 million)*—for fishery management, enforcement and research; salmon recovery; shellfish enhancement projects
- *Washington Department of Health (~\$600,000)*—for shellfish consumption/human health testing
- *Washington State Parks and Recreation (~\$183,000)*—for boating safety courses to the public
- *Washington Department of Agriculture (~\$2 million)*—for invasive species control
- *Recreation and Conservation Office, formerly IAC (~\$9 million)*—for its grant program to local governments for community public access and aquatic habitat restoration projects

**2007 Request for Offers (RFOs) to Lease State-Owned Aquatic Lands for Geoduck Aquaculture**

The geoduck aquaculture program uses a competitive bidding process called RFOs to identify the best shellfish growing company for each lease site. Only the successful bidder for each site can move forward by applying for a lease. DNR advertised its first RFOs to lease state-owned aquatic lands for geoduck aquaculture in June 2006. The second RFOs, which lists the Fudge South site, was open on October 15<sup>th</sup> 2007 at the following website: <http://www.dnr.wa.gov/htdocs/aqr/aquaculture/appendix.html#offer>. (This website will be updated with the confirmed Successful Offerors in late December.)

Offers were submitted to DNR on November 30<sup>th</sup> 2007. Offers were received for six of the eight sites published. DNR has scored the offers and will award the right to apply for a lease to the successful candidate for each of the eight lease sites by December 28<sup>th</sup> 2007. The 'award by the end of the year' is not the lease itself, but the right to *apply* for a lease. This is the end point of just the RFOs process. After that, the applicant must acquire all permits, licenses and registrations and pay for land and biological surveys before DNR will even offer a lease. It is unlikely that the site will be planted for eighteen months to two years, due to permit acquisition and other pre-leasing requirements.

The RFOs process determines which company will meet the requirements to lease state-owned aquatic lands for geoduck aquaculture. Companies submitting proposals must fully document their proposed culture methods and they must sign compliance with a number of DNR prerequisites in order to be considered. Key factors DNR will use in its evaluation of proposals are:

- The company's proposed management structure;
- The company's experience in geoduck aquaculture;
- Their plans for neighborhood outreach;
- Whether they will plan for public access at the site;
- Their proposed site preparation, planting, maintenance and harvest methods;
- Their plan for debris monitoring and onsite and offsite clean ups;

- Their plan for minimizing visual impacts (extra points will be given for the use of colored PVC tubes, and for not using rebar or netting in which birds or animals can become caught), and
- The company's overall plans to minimize potential environmental impacts.

**Public Access to the DNR beach and recreation activities**

The tidelands adjacent to and north of your residence are owned by the State of Washington, amounting to slightly more than a mile of public tidelands. Members of the general public can access the DNR beach from the water, by boat at any time. Upland residents who are able to access the upper beach from the land will still be able to do so after the lease is in place. The planned geoduck aquaculture lease area is in the low intertidal—from a +2 foot tide height to extreme low tide height—so, members of the public will be free to recreate on the upper part of the beach that remains unleased. DNR's 2007 RFOs, under which the Fudge South lease area is listed, required the Offeror to submit a plan for public access through the planted geoduck lease area. The preliminary successful Offeror for the Fudge South lease site also committed to providing unplanted access corridors through the lease area, so people can access deep water from the unleased, upper part of the beach and *vice versa*. This Offeror now needs to submit information on their company in order for DNR to confirm them as the successful company. That process will be complete by December 28<sup>th</sup>.

Since the upper part of the beach will not be leased, the public will be able to traverse and make use of any resources naturally occurring on the beach. Clams and oysters are found mainly at these upper elevations. Also, if upland residents wanted to make use of a legally authorized mooring buoy that may be located near the site of the proposal, access could be provided in the form of a corridor for water access to the buoy.

**Are there not other sites available?**

There are a number of factors that, together, limit the sites suitable for leases. DNR has screening criteria for its planned geoduck aquaculture sites, and its Aquaculture Land Manager and other staff work each year to identify potential sites. DNR tries to spread the sites out as much as possible. The screening criteria, which DNR bears in mind when looking for sites, are:

- Low upland residential development, or high bank with low development;
- Absence of eelgrass;
- Low natural stock densities of shellfish
- Low recreational or tribal shellfish use;
- Suitable sediment substrate, and
- Approved or potential to be approved for shellfish Health Certification.

Each year, potential sites are identified using maps, shoreline data and professional knowledge and judgment. The sites are then visited by DNR staff to narrow down the list that will be published under the RFOs process mentioned above. The beach visits are vital to assess local conditions and groundtruth information on maps and other data sets. The beach is tested to ensure it has the right type of sediment—only certain conditions are good for geoduck growth, which considerably limits suitable areas. DNR staff assesses natural shellfish densities and other factors in the screening criteria list before finalizing the site's selection.

December 21, 2007

Page 5

### Best Management Practices (BMPs)

Your letter lays out concerns with some aspects of the programmatic management system. Your concerns center on what appears to be a contradiction between the Points of Clarification document, published as part of the 2007 RFOs, and DNR's geoduck aquaculture BMPs. The Points of Clarification document, along with the RFOs itself, is designed to assess the companies who bid for the lease sites. It is a competitive process, designed to 'raise the bar' for geoduck aquaculture practices. Only the highest scoring companies are awarded the right to apply for the leases. In addition, companies must sign and submit a compliance sheet with their Offer, in order to be considered for scoring. Part 7b of this form requires compliance with the BMPs.

Your letter quotes the following examples:

- a) *"'Evaluation Element 5.3.3—Netting' allows netting that might be hazardous to birds and animals."*

Evaluation Element 5.3.3 is not about just netting. The evaluation element assesses the company's plan to minimize potential visual and safety impacts. The Table of Elements at Element 5.3.3 actually states:

5.3.3	Plan for minimizing visual impacts to upland owners, and for minimizing safety issues. Extra points will be given for offers that show a dedicated plan to minimize visual impacts, such as gray/brown tubes; and that propose no use of rebar, or netting in which birds/animals can become caught.
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Please note that the extra points are given during scoring for submission of the *dedicated plan* in the Offer. If such a plan is not provided, but that company still happens to be the highest scoring Offeror overall, it does not mean that the company will not be held to the BMPs. The BMPs will be incorporated by reference into the lease, and the lessee has to comply with all lease conditions if they do not want to be found in default.

If you are interested in netting and bird/animal interactions, Washington Department of Fish and Wildlife raptor biologist Mr. Jim Watson would be a good resource. Mr. Watson's telephone number is (360) 853 8031.

- b) *"'Element 5.3.2—Debris' encourages, but does NOT require, that a bidder provide a detailed plan for beach sweep clean-ups and visiting site after storms to check for debris'".*

Again, per the answer to (a) above, even if a dedicated plan is not submitted, the company will still be held to all BMPs. The RFOs is a scoring process aimed at identifying the most responsible companies and 'raising the bar'. If a company doesn't submit these types of detail in its Offer, it will score poorly against companies who do.

- c) *"'Element 5.5.2—Wet vs. Dry Harvest and Daytime vs. Nighttime Harvest' allows nighttime, wet harvests which could create significant noise pollution for the adjoining residences."*

Low tides in winter only occur during the night and some companies will need to harvest then to meet market conditions for their business. A company who presents a plan outlining dry harvest during daylight hours may have product availability at other locations in these winter months and, thus, may realistically make this offer. As mentioned in the RFOs, DNR's preference is for dry harvest at a low tide and Offers are scored to reflect this. If a company who plans to harvest at night is awarded the right to apply for a lease, there are a number of noise and light related BMPs to which they must comply. The 2007 Offers showed a marked transition towards the use of quieter diesel motors with housings to muffle sound. This is an indication that the RFOs process is indeed 'raising the bar' in increments. The Offers also showed a transition to low impact LED headlamps for nighttime work.

c) "'Evaluation Element 3.5—Public Access' .... states 'lessees are not required to allow public access.'"

The Table of Elements in the RFOs actually states:

3.5	Provision for public access, if appropriate. Extra points will be given for a public access component. <i>Plan should describe the type and location of public access. Examples of public access activities include, but are not limited to: access by public to walk across upper (unplanted) beach; access corridors through the planted farm area to deep water; dedicated portion of a planted area for public recreational harvest.</i>
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The Points of Clarification document states:

**Evaluation Element 3.5—Public Access**

*Clarification on scoring of Offers for a public access component, even if there is little opportunity for public access from the uplands.*

Public access is very important to DNR. It is possible for the public to access state-owned aquatic lands from the water as well as from the uplands. Although lessees are not required to allow public access, DNR will give up to five extra points to Offers that provide for a site-dedicated public access plan. The plan should describe the type and location of public access within the proposed lease area. Examples of public access activities include, but are not limited to:

- Access by the public to walk across upper (non-planted) beach
- Access corridor(s) through the aquaculture farm between deep water and the upper beach *(be aware of any commonly used corridors between uplands and deep water).*
- A dedicated portion of a planted area for public recreational digging

As mentioned earlier in this letter, the lease area will not encumber the entire beach, just the lower intertidal area. The RFOs process asked for dedicated plan and stressed the importance DNR places on public access. All Apparent Successful Offerors under the 2007 RFOs listed

[REDACTED]  
December 21, 2007

Page 7

access corridors through the cultivated lease area, along with access to the lease area itself. Some companies also offered to set aside a portion of the cultivated area for recreational harvest to members of the public. The 2007 Offers showed a marked transition to this type of public access provision, illustrating that the RFOs is indeed raising the bar.

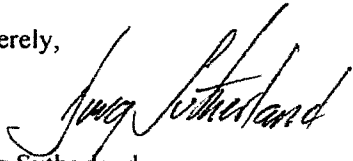
#### **Public Involvement**

Letters were sent to ten property owners near the site. Follow up letters such as this one have also been written about the Fudge Point site (three to date including yours), along with a number of letters about other 2007 sites. In addition to DNR's contact with neighboring land owners, the geoduck aquaculture RFOs process puts a great deal of emphasis on public outreach, favorably scoring offers that have comprehensive outreach plans. DNR's lessees will be required to keep upland neighbors informed of the planned phases for geoduck aquaculture operations.

DNR's leasing is a proprietary (land manager) action, not a regulatory action. However, DNR always takes seriously citizens' concerns about proposed projects. Letters such as yours highlight site specific issues that the agency takes into account. There are also a number of regulatory actions that have built in public appeal processes—local government permits, federal permits, and State Environmental Policy Act (SEPA) determinations. A project specific SEPA review will be conducted for each of the geoduck aquaculture leases. If a local government requires a permit, a local government may be the lead agency; if not, DNR will take lead agency status.

I would like to thank you for your letter and I hope this information is helpful. If you have any questions or need further detail, please contact either Jeff Schreck or Sarah Dzinbal. Jeff can be reached at (360) 732-7411, or [jeff.schreck@dnr.wa.gov](mailto:jeff.schreck@dnr.wa.gov). Sarah can be reached at (360) 902-1584, or by e-mail at [sarah.dzinbal@dnr.wa.gov](mailto:sarah.dzinbal@dnr.wa.gov).

Sincerely,



Doug Sutherland  
Commissioner of Public Lands

Attachments: (6)

c: Fran McNair, Aquatic Lands Steward  
Rich Doenges, Aquatic Resources Division Manager  
File: 07-0253