



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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February 25, 2009

CERTIFIED MAIL

Sean Gaffney, Interim Division Manager
Pierce County Planning and Land Services - Advance Planning Division
2401 South 35th Street, Room 228
Tacoma, WA 98409-7490

**Re: Pierce County Shoreline Master Program Limited Amendment
Interim Regulations for Aquaculture and Piers and Docks
(Ordinance Nos. 2007-34s2 and 2008-25)**

Dear Mr. Gaffney:

I would like to take this opportunity to thank Pierce County (County) for its efforts in developing this proposed Shoreline Master Program (SMP) amendment. It is consistent not only with the needs of Pierce County, but also with the policy and procedural requirements of the Shoreline Management Act and the Shoreline Master Program Guidelines.

As we have already discussed with your staff, the Department of Ecology (Ecology) approves the proposed amendment, **subject to the County's agreement to the required changes detailed in Attachment B**. The findings and conclusions that support Ecology's decision are enclosed as Attachment A.

Because a change is required, the amendment will not become effective until Ecology receives written notice that the County agrees to the changes¹. The effective date of the amendment will be the date on which Ecology receives written notice of your agreement.

As a reminder, shoreline procedural rules² require the County to publish a notice that Ecology has taken final action on this amendment. Therefore, once Ecology acknowledges receipt of your written agreement, you must publish a public notice. This will initiate an appeal period that lasts 60 days.

¹ WAC 173-26-120(7)(b)(i)

² WAC 173-26-120(9)



Mr. Sean Gaffney
February 25, 2009
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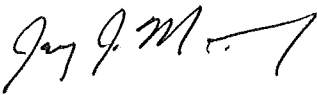
Finally, the County must forward two hard copies and one digital copy of the final amendment to Ecology.

To summarize, if the County agrees with the required changes, it must:

1. Notify Ecology in writing.
2. Wait to hear from Ecology that we received your notice of agreement.
3. Publish a notice that Ecology has taken final action. This notice will begin a 60-day appeal period.
4. Forward two hard copies and one digital copy of the final SMP amendment to Ecology.

Thank you again for your efforts. If you have any questions, please contact our regional planner Kim Van Zwalenburg at kvan461@ecy.wa.gov/(360) 407-6520.

Sincerely,



Jay J. Manning,
Director

Enclosures

cc: Paula Ehlers, SEA Section Manager, Ecology SWRO
Mike Erkinen, Senior Planner, Pierce County Planning and Land Services
Chuck Kleeburg, Director, Pierce County Planning and Land Services
Peter Skowlund, Ecology HQ
Hugh Taylor, Pierce County Council Office
Kim Van Zwalenburg, Ecology SWRO
Interested Parties

**ATTACHMENT A: FINDINGS AND CONCLUSIONS
FOR PROPOSED AMENDMENTS TO THE PIERCE COUNTY
SHORELINE MASTER PROGRAM**

SMP Submittal June 25, 2008, Ordinance No. 2007-34s2 and 2008-25
Prepared by Kim Van Zwalenburg, on January 13, 2009, Revised February 3, 2009

Brief Description of Proposed Amendments:

Pierce County is proposing a limited amendment to their existing Shoreline Master Program (SMP). The changes in this amendment will sunset upon adoption of a comprehensive update to the SMP which the County is currently working on under a grant with Ecology (SMA Grant Agreement No. G0700001).

This limited scope amendment revises sections of the Aquaculture Chapter to include regulations for intertidal geoduck planting and harvest; revises Environment regulations related to allowed aquaculture operations; and revises definitions and environment regulations in the Piers and Docks Chapter to address float lifts, joint use docks and fetch; prohibits covered moorage in all environments; and prohibits new piers and docks in the marine Conservancy environment.

FINDINGS OF FACT

Need for Amendment:

The record submitted by Pierce County, including Resolutions R2006-96 and R2006-97, Ordinances 2007-34s2 and 2008-25 and their supporting documents, and the County's submittal letter provide information related to the need for the proposed amendments. The County indicates that emerging issues relating to intertidal geoduck aquaculture and piers, docks and related structures are not adequately addressed in the current Shoreline Use Regulations. In order to address these emerging issues, the County finds a need to adopt interim regulations "to provide for consistent and predictable County review of these developments and activities" while undergoing the comprehensive update to their SMP. The County also indicates that a delay in addressing these issues "could result in adverse impacts to the shoreline environment and the use and enjoyment of the shoreline by the citizens of Pierce County." The County has stated that these interim regulations will reduce the potential for a rush of applications that might undermine the comprehensive process and will minimize the potential for net loss of ecological function.

The County record indicates that changes are needed to the Aquaculture section because intertidal geoduck operations are not specifically addressed in the current Shoreline Use Regulations. Growth in these new aquacultural operations has resulted in increased concerns regarding the regulation of these activities and their potential impacts to the environment, particularly water quality, the nearshore environment, shoreline access and navigation. The County record also indicates a need for more specific standards in the Use Regulations to minimize adverse impacts.

Changes to the Piers and Docks section of the SMP address new technologies and clarify and add definitions to improve consistency in regulating the placement of piers and docks.

SMP Provisions To Be Changed By The Amendment As Proposed: The following sections of the existing County Shoreline Management Use Regulations (Pierce County Code Title 20) are proposed for change (see attached Exhibit C for the complete language):

Chapter 20.24, Aquacultural Practices:

- *Section 20.24.020 Guidelines for Reviewing Substantial Development Permits* is amended to include the addition of regulations to address intertidal geoduck aquaculture.
- *Section 20.24.030 Environment Regulations – Uses Permitted* is amended to restrict aquaculture operations involving tubes, netting or other materials placed in intertidal areas to Rural and Conservancy Environments. These activities would be prohibited in Urban, Rural-Residential and Natural environments.

Chapter 20.56 Piers and Docks:

- *Section 20.56.010 Definitions* has been amended as follows:

Definition C. “Float” is changed to include “Float Lift”

Definition G. “Fetch” has been amended and Definition H. “Opposite Shore” has been deleted.

A new Figure 2 showing how to determine the fetch has been included.

Definition J. “Joint Use Pier or Dock” is now Definition I and has been amended to specify that these are for two to four waterfront building lots under separate ownership.

Definitions I through O have been renumbered as H through N.

- *Section 20.56.030 Environment Regulations – Uses Permitted* has been amended to:

Allow float lifts as a defined use (rather than as an unclassified conditional use);

Restrict the number of moorage facilities (e.g. dock, float, pier) to no more than two for any given parcel;

Prohibit new piers and docks in the marine Conservancy Environment;

Prohibit covered moorage in all shoreline environments.

These proposed changes are intended to be a temporary measure and will sunset upon adoption of Pierce County's Comprehensive update to their Shoreline Master Program. The County is currently working on their comprehensive SMP update under a grant from Ecology (SMA Grant Agreement No. G0700001).

Amendment History, Local Review Process (2006-2008): The County indicates the proposed Interim SMP amendments originated from a local planning process that began on September 12, 2006 (Pierce County Council Resolution No. R2006-96 (Aquacultural Practices) and Resolution No. R2006-97 (Docks and Piers)).

The County's record submitted to Ecology details the public and administrative process for this Interim proposal:

- Peninsula Advisory Commission held public meetings on November 8, 2006 and continued to December 5, 2006. Attached e-mails indicate ads were to run in *The News Tribune* and *The Dispatch* on November 22, 2006.
- Pierce County Planning Commission public hearing was held on December 12, 2006 and continued to January 23, 2007. Affidavits of publication indicate notice of the hearing was published on December 6, 2006 and January 10, 2007 in *The News Tribune*, *The Dispatch* and *The Peninsula Gateway*.
- Sepa Determination of Nonsignificance was issued March 8, 2007. An affidavit of publication shows notice of this determination was published March 14, 2007 in *The Dispatch*.
- Pierce County Council Community Development Committee hearing was held May 7, 2007 and continued to May 21, 2007 and June 4, 2007. County documents show that interested parties were notified by e-mail.
- Pierce County Council public hearing was held August 7, 2007. Affidavits of publication indicate notice of the hearing was published on June 27, 2007 in *The News Tribune* and *The Dispatch*.
- Pierce County Council Community Development Committee hearing was held September 10, 2007.
- A second Pierce County Council public hearing was held October 16, 2007. Affidavits of publication indicate notice of the hearing was published on October 3, 2007 in *The News Tribune* and *The Peninsula Gateway*.
- Pierce County Council approval of Ordinance #2007-34s2 occurred on October 16, 2007 amending the Shoreline Master Program.

Ecology received the initial submittal on November 21, 2007. In a certified letter dated December 13, 2007 Ecology notified the County that the submittal was incomplete per WAC 173-26-110 and WAC 173-26-201. Ecology's letter also indicated the submittal could not be processed as a limited amendment because of the adoption of the Critical Area Ordinance (Pierce County Code (PCC) Section 20.20.020) into the shoreline master program by reference. The letter identified the missing documents and also asked that the County withdraw the submittal.

The record indicates the County drafted a new ordinance No. 2008-25 repealing PCC Section 20.20.020, the section which incorporated the County's Critical Area ordinance into the SMP by reference. Pierce County Council Rules Committee held a public hearing April 21, 2008 (Public notice was done by e-mail). A hearing before the County Council was held June 3, 2008. Notice of the hearing was published May 21, 2008 in The Peninsula Gateway and The News Tribune. Ordinance No. 2008-25 was adopted June 3, 2008.

Summary of Issues Raised During The 2006-2008 County Public Review Process: The County's SMP amendment drafting/public review process generated considerable public comment and testimony. Debate centered on the following topics listed below:

Chapter 20.24 Aquacultural Practices proposed amendments:

Concerns were raised about how best to regulate and/or mitigate for the following impacts from activities related to intertidal geoduck planting and harvest:

- debris escapement (planting tubes, rubber bands, netting) from intertidal geoduck aquaculture sites; scattered up and down the beach;
- impacts to water quality and beach sediments from harvest activities
- Aesthetic impacts from planting tubes, netting and the scattered debris that gets loose.
- Lack of science on environmental impacts from planting a monoculture of thousands of geoduck in a concentrated area in the intertidal zone.
- potential noise and light impacts from planting and harvest activities occurring on sites adjacent to residential areas.
- navigational/recreational impacts from netting, tubes and other equipment related to the aquaculture sites
- Loss of property value resulting from proximity to an intertidal geoduck aquaculture site

Concerns were also expressed about the County setting restrictive standards with potentially significant economic impact to the shellfish industry including:

- Restricting hours of operation to daylight hours and weekdays only
- Requiring a 10-foot setback from property lines
- Increased costs to growers re: equipment marking and a \$1/tube bond or financial guarantee

Finally, concerns were expressed that this issue is really a land use conflict between aquaculture and adjacent residential land uses and recreational use of the shoreline and that the issue should be addressed during the County's comprehensive SMP update. Suggestions were also made that the County should wait for new guidelines from the state which will come through the process set up by Second Substitute House Bill 2220 which established the Shellfish Aquaculture Regulatory Committee or SARC¹.

¹ SARC has three tasks under this legislation:

1. Developing recommendations for an integrated regulatory process for all current and new shellfish aquaculture projects.

Chapter 20.56 Piers and Docks proposed amendments:

Concerns raised about these amendments include:

- Inadequate public notice
- Confusion over what changes would be addressed later during the comprehensive update and what changes remained
- Need for specific standards because the current loose guidelines in the SMP are inconsistently applied
- Loss of flexibility if standards are adopted
- Denial of a fundamental property right (takings)
- The number of uses allowed (pier, float lift, boat ramp) on any single property

Department of Ecology Review Process (2008): Ecology received the initial submittal on November 21, 2007. In a certified letter dated December 13, 2007 Ecology notified the County that the submittal was incomplete per WAC 173-26-110 and WAC 173-26-201. Ecology's letter also indicated the submittal could not be processed as a limited amendment because of the adoption of the Critical Area Ordinance (Pierce County Code (PCC) Section 20.20.020) into the shoreline master program by reference. The letter identified the missing documents and also asked that the County withdraw the submittal.

The proposed revised SMP amendments (including Ordinance #2008-25) were received by Ecology for state review and verified as complete on July 17, 2008. (This revised submittal also withdrew the previous submittal). Notice of the state comment period was distributed by mail, to state task force members and interested parties identified by the County, on August 27, 2008 and by e-mail on August 28, 2008, in compliance with the requirements of WAC 173-26-120. The state comment period began on September 3, 2008 and continued through October 2, 2008. Notice of the comment period, including a description of the proposed amendment, the authority under which the action is proposed, and the manner in which interested persons could obtain copies and present their views was provided in the September 2, 2008 edition of *The News Tribune*, and on September 3, 2008 in *The Peninsula Gateway*. A public hearing was not held. Eleven individuals or organizations submitted comments on the proposed amendments. Ecology sent all comments it received to the County on October 14, 2008. In a letter dated December 19, 2008, and received by Ecology on December 23, 2008, the County submitted its responses to issues raised during the state comment period. Ecology's own responses to issues raised during the comment period are summarized below.

-
2. Advising Ecology on new geoduck aquaculture guidelines to assist local Shoreline Master Program updates.
 3. Oversight of the intertidal geoduck scientific research program authorized by the bill.

Summary of Issues Identified by Ecology as Relevant To Its Decision:

- **Interim regulations and consistency with WAC 173-26-201**

Issues have been raised regarding the consistency of this proposal with the criteria for a comprehensive update. The County is currently undergoing a comprehensive update of their SMP. These interim regulations are intended to address issues the County found problematic as they began the comprehensive update and they will sunset upon adoption of the comprehensively updated SMP. Originally, the County proposed more substantive changes, but significant issues were raised during the local process that resulted in a very limited number of proposed changes, particularly related to Piers and Docks. The Piers and Docks and Aquaculture policies and regulations will be revisited and fully addressed during the comprehensive update. In light of the limited nature of this proposal, with the required changes in Attachment B, Ecology believes this proposal is consistent with WAC 173-26-201.

- **Lack of a shoreline inventory & characterization and use analysis to support proposed prohibition of intertidal aquaculture and piers and docks in certain shoreline environments**
An inventory and characterization was not completed for these interim regulations because of the County's intent to follow up this interim effort with their Comprehensive SMP update. Ecology is concerned however regarding the lack of information about the amount and location of potential sites suitable for aquaculture in general and intertidal aquaculture specifically. This lack of information makes it unclear whether prohibiting the activity within Urban and Rural-Residential environments will remove some or all of the potential area feasible for intertidal geoduck aquaculture.

There is also a lack of information regarding how much shoreline would be affected by the prohibition on Piers and Docks in the marine Conservancy environment. A February 6, 2007 letter from Chip Vincent, Pierce County to Kim Van Zwalenburg, Ecology indicates the prohibition would affect approximately 11% of Pierce County marine shorelines. However, there has been no assessment of how many docks currently exist or could potentially be proposed. There also is no assessment addressing potential use conflicts and impacts to navigation resulting from the proposed dock and pier regulations. Ecology believes that without the inventory and analysis, prohibitions on these activities cannot be supported.

- **Use conflicts between residential and aquacultural activities**

This conflict should be clearly assessed during a use analysis (see bullet point above). Aquaculture, as a water-dependent activity, is recognized as a preferred use of the state's shorelines. The Shoreline Management Act also gives preferential accommodation to single-family uses (RCW 90.58.020 and WAC 173-26-176). The Guidelines recognize that there are competing uses for shoreline areas. WAC 173-26-201(2)(d) sets out preferences and priorities. WAC 173-26-201(3)(c), in the development of an SMP, requires an inventory, including shoreline and adjacent land use patterns, with special attention "paid to identification of water-oriented uses and related navigation, transportation and utility facilities." WAC 173-26-201(3)(d)(ii) requires local government to conduct a shoreline use analysis to estimate future demand for shoreline space and potential use conflicts. Despite the lack of a use analysis,

Ecology believes it is appropriate to impose some restrictions to minimize the potential conflict between these uses including noise and lighting standards and setbacks from property lines to minimize the potential for encroachment.

- **Consistency with WAC 173-26-231 Shoreline modifications**

The Guidelines require SMPs to “reduce the adverse effects of shoreline modifications” and “limit shoreline modifications in number and extent”. The proposed allowance for up to two “uses” per shoreline property (SUR 20.56.030.2.a and 2.b.) does not appear to be consistent with this requirement and may contribute to increased impacts on shoreline ecological functions. Ecology finds this allowance inconsistent with these requirements.

- **Timing restrictions on planting and harvest activities**

Unlike subtidal geoduck harvest, access to intertidal aquaculture sites is limited by tidal fluctuations. Low tides occur during nighttime hours in the fall and winter. Regulations need to recognize this constraint on operations and should not preclude the activity during significant periods of low tidal ranges.

- **Is intertidal geoduck aquaculture considered “substantial development”**

Ecology recognizes that the January 2007 Attorney General Opinion (AGO 2007 No. 1) discusses what is and isn’t considered “substantial development” with regard to intertidal geoduck aquaculture. As the primary administrator of the SMP regulatory program, it is Pierce County’s responsibility to review all shoreline uses and activities to determine whether the proposed activity constitutes “substantial development” as defined by the Shoreline Management Act and what, if any, shoreline permits are required.

- **Other regulations proposed specific to intertidal geoduck aquaculture and Piers and Docks**
Ecology generally concurs with Pierce County’s response to comments.

Consistency with Chapter 90.58 RCW: The proposed amendments have been reviewed for consistency with the policy and procedural requirements of RCW 90.58.020 and the approval criteria of RCW 90.58.090.

Consistency with “applicable guidelines” (Chapter 173-26 WAC, Part III): The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program guidelines (WAC 173-26-171 through 251 and -020 definitions; see especially WAC 173-26-201, WAC 173-26-231 Shoreline modifications (including Piers and docks). WAC 173-26-241(3)(b) Shoreline Uses - Aquaculture). This included review of a SMP Submittal Checklist, which was completed by the County on February 12, 2008 and a review of the June 2008 document titled “Proposed Interim Changes to Pierce County Shoreline Use Regulations Consistency with Guidelines in Washington Administrative Code (WAC 173-26-201(1)).

Consistency with SEPA Requirements: The County submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance for the

proposed SMP amendments on March 8, 2007. Notice of the SEPA determination was published in The Dispatch on March 14, 2007. Ecology did not comment on the DNS.

Other Studies or Analyses supporting the SMP update:

Ecology reviewed the following:

- June 2008 document submitted by Pierce County describing the consistency between the proposed regulations and WAC 173-26-201(1)
- Policies relating to aquaculture and piers (and docks) found in the existing Pierce County SMP.

Ecology also considered recent decisions of the Shoreline Hearings Board (SHB) including the *Marnin* case, *Marnin, et. al. v. Mason County & Ecology et. al.*, SHB 07-021 Modified Findings of Fact, Conclusions of Law & Order (February 6, 2008). In *Marnin*, the SHB found that time-of-day restrictions on intertidal shellfish operations were “unreasonable and inconsistent with statewide interest in properly managed aquaculture”(Conclusion of Law #14), but that other restrictions such as those restricting nighttime lighting were appropriate. More recently, the SHB issued a decision in the *Taylor Shellfish Farms* case, *Taylor Shellfish Farms v. Pierce County*, SHB 06-039, 07-003, 07-005 (Consolidated Case) Findings of Fact, Conclusions of Law & Order (January 23, 2009). The Board again found that timing restrictions would make successful intertidal aquaculture operations impossible at the two proposed sites (see Conclusions of Law 5 through 9) and were not consistent with the Shoreline Management Act. The Board also found that restrictions on noise and light would help mitigate the impacts of intertidal aquaculture on adjacent residential uses.

CONCLUSIONS OF LAW

After review of the complete record submitted, all comments received and relevant case law (see discussion above), Ecology concludes that as an interim measure, the County’s proposed limited SMP amendment, is consistent with the policy (RCW 90.58.020) and standards of the Shoreline Management Act and the applicable SMP guidelines WAC 173-26-171 through 251 and .020 definitions (see specifically WAC 173-26-201, WAC 173-26-231 Shoreline modifications, WAC 173-26-241 Shoreline uses) subject to and including Ecology’s required changes (itemized in Attachment B). Attachment B includes further specific rationale for the required changes.

Ecology concludes that the proposed limited SMP amendment, as an interim preventative measure subject to the required changes in Attachment B, meets the intent of the provision for no net loss of shoreline ecological functions (WAC 173-26-201(2)(c)).

Ecology concludes that those SMP segments relating to shorelines of statewide significance provide for the optimum implementation of Shoreline Management Act policy (RCW 90.58.090(5)).

Ecology concludes that Pierce County has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that Pierce County has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 regarding public and agency involvement in the SMP amendment process.

Ecology concludes that Pierce County has complied with the purpose and intent of the local amendment process requirements contained in WAC 173-26-100, including conducting open houses and public hearings, notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.

Ecology concludes that Pierce County has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that Pierce County's SMP amendment submittal to Ecology was complete pursuant to the requirements of WAC 173-26-110 and WAC 173-26-201(3)(a) and (h) requiring a SMP Submittal Checklist.

Ecology concludes that it has complied with the procedural requirements for state review and approval of shoreline master program amendments as set forth in WAC 173-26-120.

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendments are consistent with the policy of the Shoreline Management Act, the applicable guidelines and implementing rules, once required changes set forth in Attachment B are approved by the County. Ecology approval of the proposed amendments with required changes is effective on the date at which Ecology receives written notice that the County has agreed to the required changes.

As provided in RCW 90.58.090(2)(e)(ii) the County may choose to submit an alternative to all or part of the changes required by Ecology. If Ecology determines that the alternative proposal is consistent with the purpose and intent of Ecology's original changes and with RCW 90.58, then the department shall approve the alternative proposal and that action shall be the final action on the amendment.

ATTACHMENT B REQUIRED CHANGES

PIERCE COUNTY SHORELINE MASTER PROGRAM Proposed Limited Amendment to Shoreline Management Use Regulations (SMUR) Chapter 20.24 Aquacultural Practices and Chapter 20.56 Piers and Docks

January 13, 2009; Revised February 3, 2009

The Pierce County Shoreline Master Program (SMP) proposed amendments are approved, SUBJECT to the following conditions:

Added text is underlined, removed text is ~~struck~~. Ecology's explanatory statements are in *italics*.

Chapter 20.24 – Aquacultural Practices

The County's Interim regulations require timing restrictions (Hours and Days of Operation) for a proposal be consistent with the May 23, 2001 State of Washington Commercial Geoduck Fishery Management Plan. In this Plan, hours of operation are restricted to weekdays between the hours of 8:30 am to 4:30 pm and are prohibited on state holidays. While a reasonable restriction for subtidal harvest on State Owned Aquatic Land, when applied to intertidal operations, this restriction has the potential to preclude operations all together, due to their dependency on tidal fluctuation.

*Required changes for consistency with RCW 90.58.020 and WAC 173-26-241(3)(b):
Delete the restriction on hours and days of operation in 20.24.020.B.3. Renumber Standards 4 through 7 as 3 through 6.*

20.24.020 Standards and Guidelines for Reviewing Substantial Development Permits

B. Specific Standards Applicable to Geoduck Aquaculture.

~~3. Hours and Days of Operation.~~

~~— a. Hours and days of operation shall be identified as a condition of approval for a geoduck aquaculture operation and should be consistent with the management practices for geoduck fisheries set forth [in] the State of Washington Commercial Geoduck Fishery Management Plan, dated May 23, 2001.~~

~~— b. Night and weekend seeding and harvest operations should only be permitted where the operation is located 1000 feet or more from residential dwellings and public park sites.~~

4.3.

5.4.

6.5.

7.6.

20.24.030 Environment Regulations – Uses Permitted.

Aquaculture, as a water-dependent activity, is recognized as a preferred use of the state's shorelines. The Shoreline Management Act also gives preferential accommodation to single-family uses (RCW 90.58.020 and WAC 173-26-176). The Guidelines recognize that there are competing uses for shoreline areas. WAC 173-26-201(2)(d) sets out preferences and priorities. WAC 173-26-201(3)(c), in the development of an SMP, requires an inventory, including shoreline and adjacent land use patterns, with special attention "paid to identification of water-oriented uses and related navigation, transportation and utility facilities." WAC 173-26-201(3)(d)(ii) requires local government to conduct a shoreline use analysis to estimate future demand for shoreline space and potential use conflicts.

Lacking the inventory and analysis necessary to determine where intertidal geoduck aquaculture can occur, it is inconsistent with the SMA and the implementing Guidelines to prohibit this activity across an estimated 50% of the Pierce County marine shoreline.

Required changes for consistency with RCW 90.58.020, WAC 173-26-201(2)(d) preferred uses, WAC 173-26-201(3)(c) inventory, WAC 173-26-201(3)(d)(ii) shoreline use analysis and priorities, and WAC 173-26-241(3)(b) aquaculture: Delete the prohibition of aquaculture operations using tubes, netting or other materials in the Urban and Rural-Residential Environments.

- A. Urban and Rural-Residential Environments. ~~Aquaculture operations are permitted are limited to fishing, raising, holding, and harvesting of wild and planted stocks for recreation and commercial purposes that do not involve the use of tubes, netting, or other materials placed in intertidal areas. Aquaculture operations that do not involve the use of tubes, netting, or other materials placed in intertidal areas will be allowed upon showing the activity will not substantially change the character of the site or adversely affect natural populations and shall be subject to the Standards and Guidelines for Reviewing Substantial Development Permits.~~

Chapter 20.56 – Piers and Docks

*Correct the following typographical errors identified by the County in their response to comments, dated December 19, 2008 and follow-up e-mail dated January 6, 2009:
Delete the word "Standards" in the title of Section 20.56.040 listed in the table of contents;
delete the word "standards" in Sections 20.56.030.A.1 and 20.56.030.A.2 as shown below.*

Sections:

20.56.040 General Criteria and ~~Standards~~ Guidelines for Reviewing Substantial Development Permits

20.56.030 Environment Regulations - Uses Permitted.

A. Urban Environment.

1. Subject to the ~~standards~~ guidelines in Section 20.56.040, the following...

2. Uses permitted subject to the granting of a Substantial Development Permit upon a finding by the appropriate County reviewing authority, of consistency with the criteria and standards guidelines of Section 20.56.040; and subject....

20.56.030 Environment Regulations – Uses Permitted

No uses shall be permitted outright. Some uses or activities are specifically identified as exempt but these can only be exempt from the substantial development permit process. All uses and activities, whether or not exempt from the requirement for a substantial development permit, must be consistent with the SMA and the applicable regulations in the Pierce County SMP.

Required changes to ensure consistency with RCW 90.58.020, WAC 173-27-040(1)(b) and WAC 173-26-191(2)(a)(iii): Delete the word “outright” found in A.1 and A.2.a.

The County may not add to the exemptions for substantial development permits that are listed in the statute (see RCW 90.58.030(3)(e) and also WAC 173-27-040(2)(a) and (h)).

Required change for consistency with the definition of “substantial development” and the exceptions to that definition: Delete all the language in A.1.c and replace it with the language from RCW 90.58.030(3)(e)(vii).

The allowance for more than one overwater use per property is not demonstrated as consistent with the SMP Guidelines goal of no net loss of shoreline ecological functions or protection of the rights of navigation. This is because of the lack of a shoreline inventory and characterization and use analysis. Impacts from new shoreline uses are first to be avoided, then minimized.

Required changes for consistency with WAC 173-26-201(2)(c), WAC 173-26-221(2)(c)(iii) and (iv), WAC 173-26-231(2)(a)-(g), and WAC 173-26-231(3)(b): Delete the phrase “provided there are no more than two uses allowed per property” found in A.2.a and A.2.b.

A. Urban Environment.

1. Subject to the standards guidelines in Section 20.56.040, the following uses are permitted outright: (The issuance of a building permit and review by other agencies may be required.)

a. Floating type navigation aids such as channel markers.
b. Anchor buoys limited to one per waterfront lot owner, located between the side property lines extended at a right angle to the shoreline.

c. ~~One uncovered float/float lift, pier and float/float lift, or dock as an accessory use and located on, or in front of the same lot, tract or parcel of land as a single family dwelling.~~

~~(1) The dock, pier or float/float lift shall be designed for swimming and/or mooring/storing pleasure craft only, for the private noncommercial use of the owners, lessee or contract purchaser or the single family residence to which the float or dock is accessory provided the cost or fair market value, whichever is higher, does not exceed \$5000.~~

Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single and multiple family residences. The exception applies if either: (A) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or (B) in fresh waters, the fair market value of the dock does not exceed ten thousand dollars, but if subsequent construction having a fair market value exceeding two thousand five hundred dollars occurs within five years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this chapter.

2. Uses permitted subject to the granting of a Substantial Development Permit...

a. Uses permitted ~~outright~~ in subsection A.1., but which exceed the limitations set forth in subsection A.1. ~~provided there are no more than two uses allowed per property.~~ There shall be no more than one pier, dock or float in combination allowed per contiguous ownership.

b. Joint use pier or dock, uncovered ~~provided there are no more than two uses allowed per property;~~

20.56.030 Environment Regulations – Uses Permitted.

Based on concerns raised during Ecology's public comment period, the County and Ecology agree that the prohibition on docks in the Conservancy shoreline environment is more properly addressed in the comprehensive update process. (This is documented in an e-mail dated 1/6/2009 from Pierce County to Ecology). The prohibition is deleted from this limited amendment.

D. Conservancy Environment. Same as Urban Environment, except only water dependent and water related commercial and light industrial piers are allowed as a conditional use. ~~Piers, docks and floats/float lifts are prohibited in marine waters.~~