



August 29, 2008

Michelle McConnell, Associate Planner
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SENT BY EMAIL TO: mmcconnell@co.jefferson.wa.us

Dear Michelle:

Re: 8-21-08 Chapter 8 Excerpt – Aquaculture Revision

Thank you for the opportunity for the Shoreline Policy and Technical Advisory Committees to review the latest draft of Chapter 8 prior to its submittal to the Planning Commission. We appreciate the hard work and dedication of Jefferson County staff and consultants over the last year towards developing this draft.

Changes We Support – Aquaculture Section

- Policy A.4, which states that aquaculture use and development should be designed, located, and operated in a manner that avoids significant adverse impacts on ecological functions and natural shoreline formation processes such as net-shore drift.
- Policy A.5, which recommends that aquaculture “developments” which provide locational criteria for siting of aquaculture to avoid significant adverse cumulative impacts. However, since there is much confusion and debate as to when aquaculture is considered development, we recommend you change the word “developments” to “uses”, since that is the term used in the WAC guidelines and because all types of aquaculture have potential for adverse impacts if not properly sited.
- Policy A.10, which states aquaculture uses and developments should not degrade critical habitat areas.
- Policy B. 1., which prohibits net pens and finfish aquaculture that uses herbicides, pesticides, antibiotics, fertilizers, genetically modified organisms, or feed. Research shows that these types of aquaculture are associated with adverse

impacts to water quality and to increase risks of wild fish to diseases and parasites.

- Regulation D.1.c and d, which define aquaculture that involves dredging using mechanical equipment such as clamshell, dipper, or scraper, or filling of tidelands or bedlands as development, therefore requiring a substantial development permit. We agree the potential impacts of these activities to Puget Sound nearshore environments warrant a substantial development permit.

Issues of Concern –Aquaculture Section

The September 21, 2008 text changes to the Shoreline Master Program draft regarding aquaculture are inconsistent with the Shoreline Management Act with respect to protection of shoreline critical areas. The changes have also created internal inconsistencies, especially with respect to the proposed purpose and goals of the priority aquatic environmental designation. Our primary concern is that the latest revisions, specifically Section D.1., appears to exempt certain types of new or expanded aquaculture from county review for compliance with the goals and policies of the SMP, including protection of shoreline critical areas. Section D. 1. provides that only certain new aquaculture operations will be subject to the SMP program, specifically those interfering with normal public use of waters, placement of structures, dredging using mechanical equipment, or filling. This implies that the policies for protecting critical areas, as well as policies in Section 2.A., don't apply to certain types of aquaculture activities, such as those that do not involve placement of structures (geoducks). The SMP needs to clearly state that all new or expanded aquaculture activities must comply with the policies to protect critical saltwater habitat and mitigate unavoidable impacts located in Chapter 6, as well as the specific policies in Chapter 8, particularly those listed in Sections 2.A. and 3.g, and D.3.a., b., c., h., i., and l. (Note: Section D.4. and 5. provide standards for issuing new permits for aquaculture uses and development, but it is unclear if these apply to the aquaculture uses and nonstructural aquaculture activities that aren't defined as development in D.1.)

At the August 5, 2008 joint meeting of the shoreline policy and technical advisory committees, county staff stated that the aquaculture section was being revised to conform to the AGO's January 4, 2007 opinion regarding geoduck aquaculture. That opinion states that the substantial development permit requirement is not necessarily required for intertidal geoduck farming. However, the opinion also clearly states: "our conclusion does not imply that the SMA lacks authority for local government to manage geoduck aquaculture use of the shoreline. The SMA authorizes conditional use permits to manage shoreline uses" (AGO2007 No. 1, page 11). And page 12 states:

"...It is likely that shoreline master programs have not considered using conditional use permits to regulate geoduck operations, and therefore, that option is not immediately applicable in all jurisdictions. However, all master programs are being reviewed and updated during the coming decade. Ecology's guidelines for updating master programs provide that aquaculture of this type is a favored use of the shoreline environment that should be accommodated by shoreline master program. Therefore, this option is prospectively available as a means for managing existing and future operations."

We do not believe the AGO opinion authorizes the county to forego management of aquaculture uses in the shoreline. Indeed, the AGO opinion offers the condition use permit as an option. To be consistent with the SMA, the county needs to establish an appropriate review process that provides clear documentation that the county has reviewed and approved the proposed use or expansion for consistency with the SMP and critical areas ordinance. WAC administrative rules 173-27-040 states: “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. To be authorized, all uses and developments must be consistent with the policies and provisions of the applicable master program and the Shoreline Management Act.” Further, WAC 173-26-191 states that the SMP policies and regulations “apply to all uses and development within shoreline jurisdiction, whether or not a shoreline permit is required.” Lastly, WAC 173-26-241(3)(b) states: “aquaculture should not be permitted in areas where it would result in a net loss of ecological functions, adversely impact eelgrass and macroalgae”. How is the county to ensure aquaculture uses meet the goals of the SMA if there is no review of aquaculture activities? We believe it is the county’s obligation under the SMA to ensure that all uses within shorelines, including aquaculture, are managed to assure no net loss of ecological functions and to avoid adverse effects on shoreline resources and values.

The lack of clear provisions for critical areas and SMP regulatory review for new aquaculture also conflicts with the priority aquatic designation. The purpose of the priority aquatic designation is supposed to be to “protect to the highest degree possible, and where feasible, restore waters and their underlying bedlands deemed vital for salmon and shellfish.” It is assigned to the most vital salmon streams and nearshore areas as well as marine shellfish habitats whose qualities include: documented endangered species and their estuarine and freshwater habitat, intact drift cell processes, documented forage fish spawning habitat, and important intertidal and subtidal shellfish areas. Why then would the county not require critical area review for a use that will be located primarily in an environmental designation whose purpose is to protect endangered species habitat and other shoreline critical areas? If the county is going to exempt new aquaculture from critical areas review then the areas that are priority for aquaculture should be those shorelines which do not contain shoreline critical areas.

Section D.1 also conflicts with Section C.1. priority aquatic, which states that bottom and floating/hanging aquaculture may be allowed subject to policies and regulations of this program and the abutting shoreline area designation.

Section D.4. This section makes it clear when a new shoreline permit is not required, but Section D. 4 and 5 are confusing as to whether this applies to the activities that D.1. say are not subject to this program. Section 5 says permits may be issued for bottom culture, which would appear to conflict with D.1. We support requirements for new or expansion of all types of aquaculture, regardless of whether they meet the definition of development or involve placement of structures. We support the requirements for Section D.5 and recommend they be applicable to all aquaculture. We recommend adding an additional standard: “aquaculture use and development shall be sited to avoid impacts to forage fish

and salmon rearing and migratory habitats”.

Concluding Comments

People For Puget Sound understands that filter feeders like clams, mussels and oysters can contribute to ecosystem health. Restoration of shellfish populations is part of the overall strategy of returning Puget Sound to health. In poorly flushed areas such as Hood Canal, shellfish may in fact be crucial consumers of nutrients. We also recognize there are issues, like those raised about geoduck aquaculture, that need to be addressed to ensure a cautious approach is taken regarding practices where the potential impacts to Puget Sound ecosystem health are unknown. Scientific studies and monitoring need to be funded in order to provide the best information possible about potential impacts, and to provide a basis for determining on a factual basis the appropriate scale and best practices for sustainable geoduck aquaculture in the intertidal zone.

We believe that the Jefferson County SMP needs to ensure that all new or expanded uses, activities or developments within shoreline jurisdiction with the potential to adversely impact critical areas receive appropriate county review to ensure they meet the goals and policies of the SMP. This is consistent with the SMA and the AGO opinion. We also believe this will be helpful to the shoreline community as a whole. At this time, there is much controversy over geoduck farming in Puget Sound. A fair and transparent review process for aquaculture will ensure the county is managing all shoreline uses for consistency with the shoreline master program, as well as increase certainty for both shellfish farmers and adjacent property owners, which can go along way towards reducing future appeals and complaints overall.

We are participating with a diverse group of stakeholders in the Shellfish Aquaculture Regulatory Committee being facilitated by the Department of Ecology (DOE). The committee is assisting DOE in developing guidelines that would assist local government updates of their SMPs with respect to geoduck aquaculture. These guidelines are to be adopted by rule into Ecology's Shoreline Master Program Guidelines, occurring roughly mid-2008 to mid-2009. DOE is working on an environmental impact statement for these guidelines due in December 2008. The EIS, as well as the guidelines, may be informative to Jefferson County as it refines its draft SMP. The committee also identified scientific research towards reducing uncertainty regarding potential adverse impacts of geoduck aquaculture practices on Puget Sound nearshore environments. Results of that research will likely not be available until 2013. However, in the meantime, it is important that local governments and agencies take a precautionary approach to avoid adverse impacts to nearshore species and habitats. Please do not hesitate to call me should you have questions at (206) 382-7007 or ccook@pugetsound.org.

Sincerely,

Cyrilla Cook, AICP
People For Puget Sound

Al Bergstein
People For Puget Sound