Snohomish County has submitted to Ecology a comprehensive amendment to their Shoreline Master Program (SMP). On February 28, 2012, Department of Ecology Director Ted Sturdevant sent an approved with conditions letter to the Snohomish County Council Chairman Dave Gossett. The County responded in a letter dated June 28, 2012 accepting all the required and recommended changes with alternative language for seven required changes concerning Aquaculture, Agriculture and boathouse regulations. The County Council also approved four minor amendments with the SMP ordinance. Two of these amendments focused on clarification of recommended change #1; while the other two address SMP typographical errors and fee revisions for shoreline exemption letters, permit renewals and revisions. Ecology has reviewed these alternatives and amendments and finds them consistent with Shoreline Management Act policy, the State SMP guidelines and with the purpose and intent of Ecology’s February 28, 2012 conditions of SMP approval.

FINDINGS OF FACT

- **#4 – Boathouse Regulations.** The required change alters the construction standards for boathouses and changes the use restrictions in the Urban Conservancy and Resource environments in the use and modification matrix. Additional language is proposed in SMP section Snohomish County Code (SCC) 30.67.515(2) (environment specific regulations) to correspond to the required changes in the SMP Shoreline Use and Modifications Matrix (SCC 30.67.430) to fully implement Ecology’s intent.

- **#5 – Agricultural exemption definition from shoreline substantial development permit requirement.** Ecology’s intent with this required change was to precisely reflect language from RCW 90.58.030(3)(e)(iv). Three key words were inadvertently omitted from the original required change. This omission incorrectly reverses the meaning of the code. The alternative proposal would re-insert the missing words, “other than that” between the words “filling” and “which” in subsection (ii) of Ecology’s required change.

(iv) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels. A feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

- **#10 – Manure lagoon setback.** As written in Attachment B, Ecology’s required change would require that manure lagoons be setback 150’ from any Shorelines of the State. “Shorelines of the State” is defined as the entirety of the lands, floodplains, wetlands and waters under jurisdiction of the SMA. However,
Ecology’s intent was to increase the required setback to 150’ from the water body, not from the entirety of the shoreline jurisdiction. After discussion with Snohomish County it was determined that the following language accurately reflects the original intent:

“(iii) Unless the conditions in SCC 30.67.505 (1) (b) (i) and (ii) apply, the toe of the dike of a manure lagoon shall be set back from the water bodies used for recreation as much as possible, and at a minimum shall maintain a 150-foot setback from the OHWM of any river, stream, lake, marine waters or estuary regulated under the Shoreline Management Act.”

- **#13 – Aquaculture in critical saltwater habitats.** Ecology staff recommended inserting the word, “in” into the provision in SCC 30.67.510(1)(a) to read, “New shellfish aquaculture activities shall not be located in nearshore critical saltwater habitats except for existing commercial shellfish beds, . . .” This provides better regulation clarity.

- **#16 – Aquaculture in critical saltwater habitats.** Ecology staff recommended inserting the word, “existing” into the footnote for the use and modification table 1 in SMP section 30.67.440(4) to read, “Uses or modifications are not allowed in critical saltwater habitats other than existing commercial shellfish beds, . . .” This provides better regulation clarity.

- **#17 – Aquaculture provisions in shoreline use matrix SCC 30.67.430.** Ecology’s original required changes to the SMP use & modification matrix (30.67.430) did not match the language used in the required changes to the specific use regulations for aquaculture in required change #18. Alternative language clarifying commercial and non-commercial activities, avoids this internal inconsistency within the code by using the same terms in the matrix as used in required change #18. The alternative language also includes adjustment to the definition of aquaculture (30.91A.255) (recommended change #5) to differentiate between cultivation, commercial and non-commercial/recreational aquacultural activities consistent with the Ecology’s discussion of the rationale supporting the required change.

30.91A.255 "Aquaculture" means the culture, harvesting or farming of food fish, shellfish, or other aquatic plants and animals. Commercial activities include the hatching, cultivating, planting, feeding, raising, harvesting, and processing of aquatic plants and animals and the maintenance and construction of necessary equipment, buildings and growing areas. Cultivation methods include but are not limited to fish pens, fish hatcheries, shellfish rafts, racks and long lines, seaweed floats and nets and the culture of clams and oysters on tidelands and subtidal areas. Non-commercial activities include harvesting for subsistence, recreational and personal consumption, and research and restoration activities. Aquaculture does not include the harvest of wild geoduck associated with the state managed wild stock geoduck fishery.

- **#18 – Aquaculture provisions in the specific use regulations.** Alternative language reflects the environment-specific use regulations as required by Ecology but uses the term “permitted” instead of the term “allowed” to maintain internal consistency between SCC 30.76.510 with the use and modification matrix SCC 30.67.430). Because non-commercial/ recreational aquaculture is specifically addressed in the required code changes, the alternative language also clarifies provisions for the recreational fishery on Spada Lake in the Municipal Watershed Utility environment in SCC 30.67.510 (2) (e). Recreational opportunities and access to the lake are required as part of the utility purveyor’s Federal Energy Regulatory Commission (FERC) license.

The Snohomish County Council also adopted all of Ecology’s recommended changes. For recommended change #1, Ecology did not include specific language instead provided direction for Snohomish County to draft a map disclaimer highlighting jurisdictional issues related to tidelands on the Tulalip Indian Reservation. To implement this recommendation, the county met with representative from the Tulalip Tribes and relied on language in the current Shoreline Management Master Program as a starting point to explain these jurisdictional issues. The new disclaimer language and an expanded discussion in the SMP (section 2.5, pg. 32-33) provides
an acknowledgment of the issues but does not provide resolution of this jurisdictional dispute. In addition, shoreline environment designation maps 25, 26, 27, 37 and 38 have been revised to remove the Aquatic designation from Reservation tidelands adjacent to tribal lands. The Aquatic designation remains on Reservation tidelands adjacent to non-tribal lands. These adjustments were addressed by the County Council in SMP minor amendments #3 and #4.

The Council also approves SMP minor amendments #1 and #2. #1 addresses revisions for shoreline permit exemption letters, permit revision and extensions.

**CONCLUSIONS OF LAW**

**Boathouse Regulations:** The alternative creates better consistency between the SMP boathouse regulations and the shoreline use and modification matrix.

**Agricultural Exemption Definition:** Alternative corrects ecology staff’s inadvertent exclusion of key language from RCW 90.58.030(3)(e)(iv).

**Manure Lagoon Setback:** Given the County inclusion of entire floodplains within SMP; this alternative provides improved clarity of setbacks from SMA jurisdiction water bodies.

**Aquaculture:** A number of minor alternatives to required aquaculture related changes are proposed by Snohomish County. These alternatives provide improved clarity and consistency between the SMP aquaculture regulations (SCC 30.67.510) and the shoreline use and modification matrix (SCC 30.67.430).

**SMP map disclaimer recognizing tribal trust land and tidelands adjacent to Tulalip Reservation:** Snohomish County is correct that Ecology did not provide specific language for improving recognition of Tulalip tribal trust land and tidelands within the SMP in recommended change #1. The County consulted the Tulalip Tribe to develop language to address this change. Ecology has reviewed the language and updates to the shoreline environment maps. The alternative approach addresses the intent of recommended change #1.

Consistent with RCW 90.58.090(2)(e)(ii), Snohomish County’s proposed alternative language provided in revised attachments B and C is consistent with the Shoreline Management Act and the purpose and intent of Ecology’s original changes identified within Ecology’s February 28, 2012. Therefore, Ecology accepts the county’s alternatives.

**DECISION AND EFFECTIVE DATE**

Ecology approval of the County’s proposed comprehensive SMP amendment is effective 14 days from the date of the Ecology Director’s letter accepting the County’s alternative changes.

**Attachments:**
- SMP Review Router
- Revised Required Changes Table Attachment B.
- Director’s Memo
- Snohomish County June 28, 2012 response letter