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November 2, 2010

Ms. Cedar Bouta
Washington State Department of Ecology
Shorelands and Environmental Assistance Program
PO Box 47600
Olympia, WA 98504-7600

RE: Comments on Proposed Rule Changes to Chapter 173-26

Dear Ms. Bouta:

Thank you for giving Pierce County the opportunity to comment on the August 14, 2010, Draft Summary of Proposed Changes to Chapter 173-26, Shoreline Management Act, Geoduck Aquaculture. We appreciate some of the changes you have made (such as clarifying that commercial aquaculture is a “use” and not a “habitat”) while recognizing that some of the language we expressed concerns over remains the same. We have no new comments on this latest version but, we wish to reiterate some of our earlier comments.

1. The current document still focuses its discussion on commercial geoduck aquaculture with a separate section titled: “Additional provisions for commercial geoduck aquaculture” devoted to the subject. We realize that geoduck aquaculture is the source of much interest but, we feel the provisions provided should not be specific to geoduck but, should also apply to other forms of aquaculture. As two examples, the following are included within the “Additional Provisions” section:

Commercial geoduck aquaculture should be located where water quality meets department of health certification requirements, and sediments, topography, land and water access support geoduck aquaculture operations without modification of the site such as grading or rock removal.

A narrative description and timeline for all geoduck planting and harvesting activities anticipated within the permit period if not already contained in the federal or state permit application or comparable information mentioned above.

These two provisions are as important to non-geoduck aquaculture as they are to geoduck. Making them specific to just one type of aquaculture gives the impression that they are unimportant to other types of aquaculture. Since the rule is being revised, we feel it would be prudent to make the provisions applicable to all aquaculture.

2. The draft rule continues to include the following (emphasis added):



Conditional use permits apply to any subsequent harvesting of permitted plantings. Conditional use permits must take into account that commercial geoduck operators have a right to harvest geoduck once planted.

As expressed in our previous set of comments, we are concerned this language will be misinterpreted by the grower to mean they have some sort of absolute right to harvest irrespective of their permit conditions. As we noted, once all approvals are granted, a geoduck operator has the right to harvest just as a developer has the right to construct a land-based project. However, failure to comply with the conditions of approval is reasonable grounds to suspend a geoduck operator's right to harvest just as it would be reasonable grounds to suspend the developer's right to construct their project.

We request again that the language be revised to:

... commercial geoduck operators have a right to harvest planted geoduck under the terms and conditions of their approval".

3. The document continues to propose the following language:

Aquaculture should not be permitted in areas where it would ~~((result in a net loss of ecological functions,))~~ adversely impact ~~((eelgrass and macroalgae))~~ critical areas or critical resource areas, suspend contaminated sediments that exceed state sediment standards, or ~~((significantly))~~ conflict with navigation and other water-dependent uses...or significantly impact the aesthetic qualities of the shoreline.

We remain concerned that "Adversely Impact" will lend itself to argument because opponents of aquaculture will note that most forms of aquaculture do result in some level of adverse impact. Even when there is agreement amongst all parties that the impact isn't significant or that it is short-lived, the proposed language doesn't recognize those qualifiers. In contrast, the existing, struck-out language does acknowledge those qualifiers when it references "net loss of ecological function". If the proposed language remains, the applicant is put in the position of having to argue (and the local jurisdiction to agree) that their proposed project results in no adverse impacts of any kind (which may not be possible) or of providing a "demonstrated, compelling reason, based on policy of the Shoreline Management Act" as to why their project should be allowed even though it results in adverse impacts.

We urge you to retain the original language:

"(shouldn't be permitted)...in areas where it would result in a net loss of ecological functions, eelgrass and macroalgae."

4. The document continues to reference *shoreland resource areas*:

In addition to critical areas defined under Chapter 36.70A RCW and critical saltwater and freshwater habitats as described in these guidelines, local governments should identify additional shoreline and shoreland resource areas that warrant special protection necessary to achieve no net loss of ecological.

To aid local governments in identifying such areas, it would be most helpful if you would include a few examples of what a shoreline resource area may be. We don't find the term defined anywhere.

In closing, please consider the concern expressed in our earlier review letter; that local jurisdictions are having a difficult time trying to reconcile two prominent themes in the Shoreline Management Act: the need to provide a high level of habitat protection and the need to provide for preferred uses such as commercial aquaculture. Under what circumstances does one trump the other? Without clear direction, this question is likely to be resolved in the court system at much cost to the citizens of Pierce County and both proponents and opponents of commercial geoduck aquaculture.

Page 16 of the rule identifies the first order of priority to be "...*protecting and restoring ecological functions...*". However, it is easy to lose sight of that when, for example, the document then goes on to acknowledge that some level of clearing and grading within the intertidal is acceptable. New section 173-26-211 (5) (c) (ii) (E) does help address this apparent inconsistency when it notes that "*This policy (classifying areas appropriate for geoduck aquaculture) does not preclude reserving...areas for protecting...ecological functions.*" We feel it would be additionally helpful to repeat this qualifier a few times throughout the document to make the first order of priority absolutely clear.

We urge you to consider these clarifications when drafting the proposed changes to Chapter 173-26, Shoreline Management Act. Such clarification will avoid unnecessary and unproductive conflicts and be of clear benefit to citizens, local jurisdictions, and businesses. Pierce County staff is available to discuss the concerns raised in this letter. If you feel a meeting is necessary or you would like to discuss our concerns, please contact David Risvold at 253.798.7036.

Sincerely,



Sean Gaffney
Supervisor, Long Range Planning

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- c. Pat McCarthy, Pierce County Executive
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