

Preliminary Comments
on the
Draft Thurston County Master Program Update
Chapter 19.100
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Other Boston Harbor Residents
November 30, 2017

THURSTON COUNTY SHORELINE MASTER PROGRAM

P R E P A R E D F O R :

Thurston County Board of County Commissioners

P R E P A R E D B Y :

Thurston County Resource Stewardship



_____, 2017

Chapters:

19.100	Introduction
19.150	Definitions
19.200	Shoreline Jurisdiction and Environment Designation
19.300	General Goals and Policies
19.400	General Regulations
19.500	Permit Provisions, Review and Enforcement
19.600	Shoreline Use and Modification Development Standards
19.700	Special Reports
Appendix A	Shoreline Environment Designations Map
Appendix B	Mitigation Options to Achieve No Net Loss for New or Re-Development Activities
Appendix C	Shoreline Restoration Plan
Appendix D	Channel Migration Zone Maps
Appendix E	Critical Area Regulations Incorporated By Reference

Acknowledgements:

Chapter 19.100 Introduction

19.100.105 Title

The goals, policies and regulations herein shall be known as the Thurston County Shoreline Master Program, and may be referred to as the “Master Program”, “Program”, or the “SMP”.

19.100.110 Purpose and Intent

The Thurston County Comprehensive Plan explains that Thurston County’s shorelines provide valuable habitat for fish and wildlife, economic diversity, and recreational opportunities used by residents of all ages. Shorelines play an important role in enhancing the quality of life for our County’s citizens.

Therefore, the purpose of the Master Program is to guide the future development of the shorelines in Thurston County in a manner consistent with the Shoreline Management Act of 1971, hereinafter the “Act.” The Act and this Program comprise the basic state and county law regulating use of shorelines in the county and is the regulating document for critical areas within shoreline jurisdiction.

Thurston County utilizes a variety of other regulations, policies, plans, and programs to supplement the goals and regulations contained within the Shoreline Master Program, and to manage shoreline resources and regulate development near the shoreline. All development projects are reviewed for compliance with the Thurston County Code (TCC) including but not limited to: Thurston County Comprehensive Plan, Zoning Ordinance (TCC 20, 21, 22, and 23); Critical Areas Ordinance (TCC 24); Thurston County Stormwater Standards (TCC 15.05); Platting and Subdivisions (TCC 18); and the State Environmental Policy Act (SEPA) Ordinance (TCC 17.09.). The County works with other entities such as the Thurston Conservation District, Stream Team, South Sound Salmon Recovery Group and watershed lead entities to promote awareness of shoreline issues. In addition, the County has developed Shellfish Protection Districts, Basin Plans, and Capital Facilities Plans to further the goals and the policies of the Shoreline Master Program and promote wise shoreline usage.

Although critical areas in shoreline jurisdiction are identified and designated under the Growth Management Act (GMA), they must also be protected under the Shoreline Management Act (SMA). The Washington State Legislature has determined that local governments must adopt Programs that protect critical areas within shorelines at a level that assures no net loss of shoreline ecological functions (ESHB 1653 Sec. 2(4)). Although Washington’s shorelines may contain critical areas, the shorelines themselves are not critical areas by default as defined by GMA.

Please provide a link to ESHB 1653. Critical Areas Act. 1990

The provisions of this title for regulating critical areas shall apply to all land, all water areas and all structures, and all uses irrespective of lot lines in the unincorporated territory of Thurston County, Washington, except for existing and on-going agricultural activities. Agricultural activities meeting the requirements of TCC Section 17.15.110 shall be regulated by Chapter 17.15 TCC (as updated) or by the Voluntary Stewardship Program (VSP) once a VSP Workplan is adopted.

Add “upslope”. Should read: “...except for existing *upslope* ongoing agricultural activities.”

Existing aquaculture, but fin fish aquaculture and shellfish aquaculture should **not** be exempt.

19.100.115 Adoption Authority

This Master Program is adopted pursuant to the authority granted under the Shoreline Management Act of 1971, Chapter 90.58 Revised Code of Washington (RCW) and Chapter 173-26 of the Washington Administrative Code (WAC).

19.100.120 Applicability

- A. Unless specifically exempted by statute, all proposed uses and development occurring within shoreline jurisdiction must conform to Chapter 90.58 RCW, the Act, this Master Program and Thurston County Code (TCC), whether or not a permit is required. This Master Program applies to every person, firm, corporation, government agency, or department who or which:
 - 1. Proposes any new use, activity, development or structure within the unincorporated area of Thurston County subject to the Act, as now or hereafter amended; or
 - 2. Proposes a change, modification, addition or alteration to a legally existing use, activity, development or structure within the unincorporated area of Thurston County subject to the Act, as now or hereafter amended.
- B. Direct federal agency activities affecting the uses or resources subject to the Act must be consistent to the maximum extent practicable with the enforceable provisions of the Act and with this Master Program as required by WAC 173-27-060.
- C. The Act and this Program, including the permit system, shall apply to all non-federal developments and uses undertaken on federal lands and on lands subject to non-federal ownership, lease or agreement, even though such lands may fall within the external boundaries of a federal ownership.
- D. This Master Program shall apply to all unincorporated rural and urban lands until such time as a city incorporates land into their city boundaries through annexation.

19.100.125 Relationship to Other Plans and Regulations

- A. Uses, developments, and activities regulated by the Master Program may be independently subject to the Thurston County Comprehensive Plan, the Washington State Environmental Policy Act, the Thurston County Code (TCC) Zoning (Title 20, 21, 22, and 23), Platting and Subdivisions (Title 18), Environment (Title 17), the Critical Areas Ordinance (Title 24), and various other provisions of federal, state, and county laws. The applicant must comply with all applicable laws prior to commencing any use, development, or activity.
- B. Should a conflict occur between the provisions of this Program or between this Program and the laws, regulations, codes or rules promulgated by any other authority having jurisdiction within Thurston County, the more restrictive requirements shall apply, except when constrained by federal or state law, or where specifically provided otherwise in this Program.
- C. When achieved in accordance with Title 20, 21, 22, or 23 TCC (Zoning), building and lot dimension flexibility may be allowed on shorelines within Urban areas or Limited Areas of More Intensive Rural Development (LAMIRDs) when consistent with the Act and all other applicable requirements of this Program, including the requirement to achieve no net loss of shoreline ecological functions.

Further, in order to preclude fragmentation of review and the necessity for individual shoreline permits, a combined shoreline permit is encouraged for proposed activities within the shoreline jurisdiction where feasible.

Please give citations for the source of this paragraph.

Please give examples of a “combined shoreline permit.”

Please define the term “where feasible.”

Please define when a combined permit would not be allowed. For example, are there proximity restrictions to the combined permit?

The language of this paragraph appears to be vague. Examples of potential problems: One lot has a salmon bearing stream, another combined lot does not. One shoreline lot has migrating salmon, another does not. One shoreline plot has strong tidal flows, the other does not. All shoreline lots vary to a smaller or greater degree. A shoreline permit should be based on the unique individual characteristics of the site.

We strongly disagree with the issuance of aquaculture permits by type of use for multiple properties/land owners. Because of varying conditions, individual permit applications must be required.

- D. Consistent with RCW 36.70A.480, the goals and policies of this Master Program approved under Chapter 90.58 RCW shall be considered an element of the County’s comprehensive plan, including Chapter 19.300 (General Goals and Policies). All regulatory elements of this Program, including, but not limited to Chapter 19.100 (Introduction), Chapter 19.150 (Definitions), Chapter 19.200 (Shoreline Jurisdiction and Environment Designations), Chapter 19.400 (General Regulations), Chapter 19.500 (Permit Provisions, Review and Enforcement), Chapter 19.600 (Shoreline Use and Modification Development Standards), Chapter 19.700 (Special Reports), Appendix A (Shoreline Environment Designations Map), Appendix B (Mitigation Options to Achieve No Net Loss for New or Re-Development Activities), and Appendix D (Channel Migration Zone Maps) shall be considered a part of the County’s development regulations. Certain non-regulatory elements of this Master Program, including, but not limited to Appendix C (Shoreline Restoration Plan), may be updated and amended at any time without requiring a formal Master Program amendment.

As of 11/29/17, the Appendices C and B are still not available on the County SMP website. Full comment cannot be made until these are available to the public.

- E. Where this Program makes reference to RCW, WAC, or other state or federal law or regulation, the most recent amendment or version shall apply.
- F. This Program will be applied consistent with all applicable federal, state and local laws affecting tribal rights.
- G. Coastal Zone Management Act Consistency reviews for sites within federal jurisdiction shall apply the Environment Designation criteria in Chapter 19.200 that most closely correspond to the project site in order to determine applicable Program policies.

19.100.130 Governing Principles

The following governing principals, along with the policy statement of RCW 90.58.020, the principles of WAC 173-26, and purpose statements in Title 24.01.010 & 24.01.015 TCC, establish the basic concepts of this Program.

- A. Any inconsistencies between this Program and the Act must be resolved in accordance with the Act.
- B. The policies of this Program may be achieved by diverse means, one of which is regulation. Other means authorized by the Act include, but are not limited to: acquisition of lands and/or easements by purchase or gift, incentive programs, and implementation of capital facility and/or non-structural programs.
- C. Protecting the shoreline environment is an essential statewide policy goal. Permitted and/or exempt development, actions taken prior to the Act's adoption, and/or unregulated activities can impair shoreline ecological processes and functions. This Program protects shoreline ecology from such impairments in the following ways:
 1. By using a process that identifies, inventories, and ensures meaningful understanding of current and potential ecological functions provided by shorelines.
 2. By including policies and regulations that require mitigation of all adverse impacts in a manner that ensures no net loss of shoreline ecological functions. The required mitigation shall include avoidance, minimization, and compensation of impacts in accordance with the policies and regulations for mitigation sequencing. This Program and any future amendment hereto shall ensure no net loss of shoreline ecological functions and processes on a programmatic basis in accordance with the baseline functions present as of the date of adoption of this Program.

A clear definition of "no net loss on a programmatic basis" is required to make full comment. This definition would be in Appendix B, which is still not available.

3. By including policies and regulations that ensure that the cumulative effect of exempt development will not cause a net loss of shoreline ecological functions, and by fairly allocating the burden of addressing such impacts among development opportunities.

(1) Thurston County cannot implement this policy when the county does not have knowledge of the current aquaculture projects. The fact that Thurston County does not have knowledge of all aquaculture operations in the County was provided in recent testimony by Thurston County planner, Tony Kantas, during the Jensen/Townsend vs. Sohn hearing before the Hearing Examiner.

(2) If Thurston County does not have knowledge of all aquaculture operation, we question the County's grasp and/or knowledge of other types of operations within the County that would impact ecological function.

(3) To implement this policy, a complete written accounting, including but not limited to start date of operation, whether the operation is ongoing, whether the operation has a permit, who runs the operation, what types of structures are used, etc. would be required.

(4) Description/definition of "exempt development" along with specific examples of "exempt development" is needed.

- (5) A detailed description of the existing baselines on which the County measures cumulative impact for each type of project is needed.
- (6) The term “development opportunities” needs definition. If there is a definition related to this term it should be cited or, preferably, re-stated within the context of this paragraph including examples.
- (7) This paragraph is basically “gobbledygook, i.e., “inflated, jargon-cluttered prose that fails to communicate clearly.”

4. By including regulations and regulatory incentives designed to protect shoreline ecological functions, and restore impaired ecological functions where such opportunities have been identified, consistent with the Shoreline Restoration Plan (Appendix C) developed by Thurston County.

Please provide Appendix C so that we can provide comment.

- D. Regulation of private property to implement Program goals, such as public access and protection of ecological functions and processes, must be consistent with all relevant constitutional and other legal limitations. These include, but are not limited to the protections afforded by the federal and state constitutions, and federal, state and local laws.

Please provide detailed information/references to the relevant federal, state, local laws and other “protections.”

- E. Regulatory or administrative actions contained herein must be implemented with consideration to the Public Trust Doctrine, regulatory takings, and other applicable legal principles as appropriate.

Please provide examples of how the Public Trust Doctrine applies to regulatory or administrative actions. Public Trust Doctrine: <https://fortress.wa.gov/ecy/publications/documents/93054.pdf>

- F. Regulatory provisions of this Program are limited to Shorelines of the State, whereas the planning functions of this Program may extend beyond the designated shoreline boundaries.

- G. Consistent with the policy and use preferences of RCW 90.58.020, Thurston County should balance the various policy goals of this Program along with giving consideration to other relevant local, state, and federal regulatory and non-regulatory programs.

19.100.135 Liberal Construction

As provided for in RCW 90.58.900, the Act is exempted from the rule of strict construction. Therefore, the Act and this Program shall be liberally construed to give full effect to the purposes, goals, objectives, and policies for which the Act and this Program were enacted and adopted, respectively.

Please provide the County’s definitions of “strict construction: and “liberal construction.”

19.100.140 Severability

Should any section or provision of this Program be declared invalid, such decision shall not affect the validity of this Program as a whole.

Chapter 19.150 Definitions

Where terms, phrases and words are not defined, they shall have their ordinary accepted meanings within the context with which they are used. The most current version of the English Webster's Dictionary shall be considered as providing ordinary accepted meanings. In addition, where available, the definitions provided in WAC 173-26-020, WAC 173-27-030, Chapter 90.58 RCW, TCC 20.03, or TCC Title 24.03 shall be applied in the interpretation and administration of this Program. The definition of various terms as presented in this section does not necessarily represent the same definitions as may be found for the same terms in other chapters of the Thurston County Code.

19.150.100 Abandonment: cessation or vacation of a permitted use or structure through non-action for a period of one year or longer.

Please provide reference to the "one-year" baseline requirement. Please provide the definition of "cessation" as it relates to upland and shoreline permits.

19.150.105 Accessory use or accessory structure - any use or structure customarily incidental and accessory to the principal use of a site or a building or other structure located upon the same lot.

19.150.110 Accessory Structure -View Blockage: as it relates to view blockage, buildings and other structures encompassing less than 200 square feet and less than twelve feet in height from grade level, and fences which are six feet, or less in height from grade level do not constitute view blockage.

There should be a "view degradation" definition for activities that are not defined under 19.150.110 but nevertheless cause view degradation to properties, such as waterfront properties, that pay taxes based in part on the "view." Commercial operations on the tidelands would fall under this definition.

19.150.115 Accretion: the growth of a beach by the addition of material transported by wind and/or water. Included are such shore forms as barrier beaches, points, spits, and hooks.

PT: Accretion can occur due to activities other than wind and/or water. This should include accretion due to development activities, including commercial activities on the tidelands as well as the uplands, etc.

19.150.120 Adaptive Management: a process of evaluating data acquired through project monitoring relative to a developed plan with goals or benchmarks, and taking action based on the results in order to reduce uncertainty with regard to adverse ecological impacts and improve outcomes over time.

How would "adaptive management" be implemented once permits are given for aquaculture activities or other activities on the shoreline? How would "adaptive management" be implemented if tideland/shoreline activities are allowed without a permit? Please give examples (including but not limited to) of activities/operations that are subject to "adaptive management."

19.150.125 Adjacent Principle Building: a principle building on a lot abutting the applicant's lot.

19.150.130 Agriculture: uses and practices, primarily commercial in nature, which are in support of agricultural activities, agricultural products, agricultural equipment and facilities, and agricultural land, as defined in WAC 173-26-020(3). This excludes activities typically associated with single-family residences, such as gardening activities primarily for on-site consumption. Such uses may still be subject to other provisions of this Program, Title 24 TCC, or Title 17.15 TCC.

19.150.135 Amendment: a revision, update, addition, deletion, and/or reenactment to an existing shoreline master program.

19.150.140 Anchor: a device used to secure a vessel

19.150.145 Appurtenance: structures and development necessarily connected to the use of a single family residence, and located within contiguous ownership of the primary residential use: Common appurtenances include a garage, deck, driveway, fences, utilities, septic tanks and drain-fields, officially registered historic structures, and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill in any wetland or waterward of the OHWM. Appurtenances do not include bulkheads and other shoreline modifications or over-water structures, including tower stairs with landings at or below the ordinary high water line.

RCW 90.58.030 states development is “substantial development” and thus subject to “substantial development” scrutiny except for normal repair and maintenance of residences and their appurtenance, and repair and maintenance of bulkheads.

The question is, what is regarded as “normal repair and maintenance” and who decides what is “normal repair and maintenance?” If what a homeowner needs to do is not considered “normal,” then a full-blown Substantial Development Permit process with a hearings examiner, appeal so the SHB, may be triggered.

RCW 90.58.030 (e) "Substantial development" means any development of which the total cost or fair market value exceeds five thousand dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection (3)(e) must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect. The following shall not be considered substantial developments for the purpose of this chapter:

- (i) Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements;
- (ii) Construction of the normal protective bulkhead common to single-family residences;

19.150.150 Aquaculture: the culture or farming of fish, shellfish, or other aquatic plants and animals. Aquaculture does not include the harvest of wild geoduck associated with the state and tribal co-managed wild-stock geoduck fishery.

Does aquaculture include net pens? Does aquaculture include floating rafts or similar methods?

The phrase, “and tribal co-managed,” was inserted by Thurston County into the Ecology WAC definition. This needs an explanation.

19.150.155 Aquatic Lands: the bed-lands (submerged at all times) and tidelands (submerged lands and beaches that are exposed and submerged with the ebb and flow of the tides) beneath the waters of lakes, rivers and marine waters and along their shores.

19.150.160 Associated Wetlands: those wetlands which are in proximity to and either influence or are influenced by tidal waters or a lake or stream subject to the Act.

19.150.165 Barrier Structure: any shoreline or in-water structure that has the primary purpose of diverting, capturing or altering the natural flow or transport of water or sediment. These include breakwaters, jetties, groins and weirs.

19.150.170 Best Management Practices: those practices determined to be the most efficient, practical and cost-effective measures identified to reduce or control impacts to water bodies from a particular activity, most commonly by reducing the loading of pollutants from such sources into stormwater and water bodies.

Reference should be made to the source(s) of the definition of “best management practices.” Where specifically are “best management practices defined?”

19.150.175 Boat House: a structure built for and with a continued primary purpose to store aquatic vessels and usually associated with a single-family residence.

19.150.180 Boat Launch or Ramp: a solid ramp, usually made of concrete, used for the purpose of placing watercraft in and out of the water.

19.150.185 Boating Facilities: public and private mooring structures and related services serving five or more boats, including piers, docks, buoys, floats, marinas, and facilities for the use of boat launching, boat storage, or for the service and maintenance of pleasure or commercial craft.

19.150.190 Breakwater: a protective structure usually built off-shore to protect beaches, bluffs, or harbor areas from wave action.

19.150.195 Buffer: a non-clearing area established to protect the integrity, functions and values of the affected critical area or shoreline, so that no net loss of critical area or shoreline ecological functions occurs. Under optimal conditions, buffers are composed of intact native vegetation. Buffer widths are measured horizontally.

What “buffers” will be required around aquaculture installations? The issue of “buffers” around aquaculture installations need to be specifically detailed in this SMP document because aquaculture installations are subject to tides, currents and lack of obvious boundaries such as fences.

How will aquaculture operators guarantee that vegetation/sea life in buffers around aquaculture installations remain intact? Unlike upland areas that can be fenced, the tides and the current inevitably cause sediments from, for example, geoduck harvesting, to fall on neighboring tidelands. Since there are no fences, workers, barges, PVC pipes, netting will inevitably encroach on neighboring tidelands. This has happened in the past in Totten Inlet (Taylor Shellfish encroaching on state-owned tidelands) and lawsuits ensued.

19.150.200 Building: any structure used or intended for supporting or sheltering any use or occupancy.

19.150.205 Building Line: the perimeter or that portion of a building closest to the ordinary high water mark (OHWM), including (but not limited to) decks, balconies, open steps, architectural features (such as cornices), utilities, and roof overhangs.

19.150.210 Bulkhead: a “normal protective” bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the OHWM for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion.

19.150.215 Buoy: an anchoring device with a float used to secure a vessel. For the purposes of this program, the term “buoy field” refers to more than one buoy per parcel.

19.150.220 Census-defined Urban Areas: Territories that consist of areas of high population density and urban land use resulting in a representation of “urban footprint”. The territories include residential, commercial and other non-residential urban land uses. Defined by U.S. Department of Commerce and the U.S. Census Bureau Tigerline Shapefile 2012:
<http://www.census.gov/geo/www/ua/2010urbanruralclass.html>.

19.150.225 Certified Local Government: a local government that establishes a historic preservation program meeting federal and state standards, and is eligible to apply to the State Historic Preservation Officer (SHPO) and the National Park Service for certification.

19.150.230 Clearing: the destruction, removal, or disposal of vegetation by manual, mechanical, or chemical methods. Clearing includes logging, even when the understory of vegetation is not being removed.

This definition must include “clearing” the tideland of unwanted native sea life and creatures for commercial geoduck, clam and oyster operations.

19.150.235 Commercial, Commercial Development: a use that involves wholesale or retail trade, or the provision of services.

19.150.240 Compensatory Mitigation: compensatory mitigation is the stage of mitigation sequencing where unavoidable impacts to shoreline ecological functions are offset by restoring, creating, enhancing, or preserving critical habitat within a specific watershed or geographic area.

How does this encourage overall recovery of Puget Sound? Compensatory mitigation appears to undermine recovery of ecological conditions.

Please provide citations within the WAC’s that define all elements of compensatory mitigation and “no net loss.”

Commercial aquaculture operations on the tidelands, which cannot be mitigated on their own, are not “unavoidable” activities. Please provide citations within the WAC’s that define “commercial aquaculture” as an “unavoidable” activity.

19.150.245 Conditional Use Permit (CUP): a permit for a use, development, or substantial development that is classified as a conditional use or is not a listed use in the Use and Modifications Matrix in Chapter 19.600.

CUP’s will be applied at the County to aquaculture installations and approved by ECY per this draft. The ruling by Judge Bjorgen in 2011 defines a geoduck operation, because of the tubes/nets, as a "structure" and the operations are deemed "developments" under the SMA. Does this not require a substantial development permit?

19.150.250 Critical Areas: As defined in Title 24 (Critical Areas) of the Thurston County Code which is adopted by reference as though set forth herein in full, (as amended) provided that the reasonable use provisions set forth in TCC 24.45, and 24.17, shall not be available within the shoreline jurisdiction. Instead, applicants may apply for a shoreline variance when seeking relief from critical areas regulations within shorelines.

Please provide citations from TCC 24.45, and 24.17 and from the Critical Areas Ordinance (CAO) that refer to and/or describe any rules, exclusions and/or the relationship of commercial/industrial shellfish aquaculture and/or net pen aquaculture to Critical Areas.

19.150.255 Critical Habitat: Habitat areas within which endangered, threatened, sensitive or monitored plant, fish, or wildlife species have a primary association (e.g., feeding, breeding, rearing of young, migrating). Such areas are identified herein with reference to lists, categories, and definitions promulgated by the Washington Department of Fish and Wildlife as identified in WAC 232 12 011 or WAC 232 12 014; in the Priority Habitat and Species (PHS) program by the Department of Fish and Wildlife; or by rules and regulations adopted by the U.S. Fish and Wildlife Service, National Marine Fisheries Service, or other agency with jurisdiction for such designations.

Please provide reference to any discussion in the SMP Update regarding Critical Habitat areas, as identified in WAC 232-12-011 and WAC 232-12-014, regarding rules, regulations and in general the relationship of “Critical Habitat” to commercial/industrial shellfish aquaculture and net pen aquaculture.

19.150.260 Critical Freshwater Habitats: includes those portions of streams, rivers, wetlands, lakes and their associated channel migration zones and flood plains that provide habitat for priority species at any stage in their life cycles, and provide critical ecosystem-wide processes, as established in WAC 173-26-221(2)(c)(iv). This is distinguished from the term “Critical Habitat” as utilized in relation to the Endangered Species Act.

19.150.265 Critical Saltwater Habitats: as defined in WAC 173-26-221(2)(c)(iii), include all kelp beds; eelgrass beds; spawning and holding areas for forage fish, such as herring, smelt and sand lance; subsistence, commercial and recreational shellfish beds; mudflats; intertidal habitats with vascular plants; and areas with which priority species have a primary association. See this chapter for definitions of each type of critical saltwater habitat. This is distinguished from the term “Critical Habitat” as utilized in relation to the Endangered Species Act.

Commercial shellfish beds are an industrial use of aquatic habitat and are not a “Critical Saltwater Habitat,” however they have previously been defined. We believe any definition including commercial shellfish beds” as critical saltwater habitat were developed before the advent of commercial/industrial geoduck aquaculture and aquaculture that utilizes plastic tubs, bags or any other man-made structures.

We believe this document must distinguish the harvesting from “natural shellfish beds,” from “commercial shellfish beds” that are planted. Commercially planted shellfish beds devastate critical saltwater habitats (and certainly over-harvesting does as well).

19.150.270 Cumulative impacts or cumulative effects: the impact on the environment or other shoreline functions or uses which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a long period of time. See WAC 173 26 186(8)(d).

Please provide a citation to the definition of “cumulative impacts” in ECY materials and to baseline information regarding cumulative impacts.

Cumulative impacts can only be determined when there is a clear baseline. The Thurston County baseline should be included in this description, but as Thurston County does not have knowledge of all aquaculture activities (testimony by Thurston County in the Sohn hearing), it obviously has no means of determining cumulative impacts.

19.150.275 Department: for the purposes of this program, means the Thurston County Resource Stewardship Department (or as amended).

19.150.280 Development: means any human-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, clearing, paving, excavation or drilling operations, storage of equipment or materials, bulkheading, driving of piling, placing of obstructions, or any project of a permanent or temporary nature which interferes with the normal public use of the surface waters overlying lands subject to the Act at any stage of water level.

19.150.285 Development Regulation Standards: controls placed on development or land uses, including, but not limited to, zoning ordinances, critical areas ordinances, all portions of a shoreline master program other than goals and policies approved or adopted under Chapter 90.58 RCW, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto.

19.150.290 Dock: the collective term for a moorage structure that typically consists of a nearshore fixed-pile pier, a ramp (or gangway), and a float that is used as a landing place for marine transport or for recreational purposes. It does not include recreational decks, storage facilities or other accessory structures.

19.150.295 Dredge: the removal of earth, gravel, sand or other mineral substances from the bottom of a stream, river, lake, bay, or other waterbody, including wetlands.

The commercial/industrial shellfish industry not only frequently scrapes the beach before planting, but at harvest dredges the entire areas to 3 feet in depth. However “nicely” this has been worded, the impact exists.

19.150.300 Ecological Functions: the work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem.

19.150.305 Ecologically Intact: those shoreline areas that retain the majority of their natural shoreline functions, as evidenced by the shoreline configuration and the presence of native vegetation. Generally, but not necessarily, ecologically intact shorelines are free of structural shoreline modifications, structures, and intensive human uses. In forested areas, they generally include native vegetation with diverse plant communities, multiple canopy layers, and the presence of large woody debris available for recruitment to adjacent water bodies. Recognizing that there is a continuum of ecological conditions ranging from near natural conditions to totally degraded and contaminated sites, this term is intended to delineate those shoreline areas that provide valuable functions for the larger aquatic and terrestrial environments which could be lost or significantly reduced by human development. Whether or not a shoreline is ecologically intact is determined on a case-by-case basis.

In the first sentence, in addition to vegetation this sentence should include the presence of native vertebrate and invertebrate wildlife. Vegetation is only one aspect of the ecology of the shoreline.

19.150.310 Eelgrass: a flowering plant adapted to the marine environment that roots in sand or mud in shallow waters where waves and currents are not too severe. Eelgrass beds require high ambient light levels. Where eelgrass beds are disputed as a critical saltwater habitat, appropriate state agencies and co-managing tribes shall be consulted in order to assist with the determination.

19.150.315 Emergency: an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with this program. All emergency construction is construed narrowly and shall be consistent with the SMA and this Program (RCW 90.58.030 (3eiii)). See also emergency exemption procedures in WAC 173-27-040(2)(d).

19.150.320 Endangered Species Act (ESA) - a federal law intended to protect any fish or wildlife species that are threatened with extinction throughout all or a significant portion of its range.

19.150.325 Enhancement: to improve the ecological functions at the site or landscape scale. This includes physical, biological and chemical processes which contribute to the maintenance of the aquatic and terrestrial environments.

This should be “improve the *natural* ecological functions, if any still exist, or to attempt to recreate natural ecological functions”

19.150.330 Environmental Limitations: limiting factors to new modifications or development, such as floodplains or unstable slopes.

19.150.335 Excavation: the mechanical removal of earthen material.

19.150.340 Exemptions: uses and development, set forth in WAC 173-27-040 and RCW 90.58.030 (3)(e), 90.58.140(9), 90.58.147, 90.58.355, and 90.58.515, that are not required to obtain a Substantial Development Permit, but which must otherwise comply with applicable provisions of the Act and this Program. Certain exemption developments must obtain a letter of exemption (see Section 19.500.100(C)(4)).

19.150.345 Existing Lots: lots, tracts, parcels, sites or other fractional part of divided land that was legally established in accordance with local and state subdivision requirements prior to the effective date of this Program.

19.150.350 Existing Structures: structures that were legally constructed prior to the effective date of this Program in accordance with the requirements in effect at the time of construction.

19.150.355 Existing Uses: uses that were legally established prior to the effective date of this Program in accordance with the applicable regulations at the time established.

19.150.360 Facilities: defined per 19.600.115(3)

19.150.365 Feasible: an action, such as a development project, mitigation, or preservation requirement, that meets all of the following conditions:

- A. The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;
- B. The action provides a reasonable likelihood of achieving its intended purpose; and
- C. The action does not physically preclude achieving the project's primary intended legal use.

The burden of proving infeasibility is on the applicant. In determining infeasibility, the reviewing agency may weigh the action's relative public costs and public benefits, considered in the short- and long-term

time frames.

19.150.370 Fill: the addition or redistribution of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the OHWM, within a one-hundred year floodplain; or within an important habitat, lake, pond, stream, wetlands, or shorelands (and their associated buffers) in a manner that changes the elevation or creates dry land. Large woody debris or other native materials approved as a part of a habitat restoration project shall not be considered fill.

Based on aerial photos of sediment flow from geoduck harvest operations, there should be a definition of “sediment dispersal” from aquaculture operations such as geoduck harvesting. Sediment so disrupted cannot be kept off of adjoining neighbor tidelands. This would be unacceptable for upland properties.

19.150.375 Float: an anchored (not directly to the shore) floating platform THAT IS FREE TO RISE AND FALL WITH WATER LEVELS AND IS USED for water-dependent recreational activities such as boat mooring, swimming or diving. Floats may stand alone with no over-water connection to shore or may be located at the end of a pier or ramp.

19.150.380 Forage Fish: small, schooling fishes that are key prey items for larger predatory fish and wildlife in a marine food web. Puget Sound species include, but are not limited to, Pacific herring, surf smelt, Pacific sand lance and northern anchovy. Each species has specific habitat requirements for spawning, such as sediment grain size, tidal heights, or vegetation types. Known spawning and holding areas have been mapped by the Department of Fish and Wildlife.

19.150.385 Forest Practices: any activity conducted on or directly pertaining to forestland and relating to growing, harvesting or processing timber, including, but not limited to:

- A. Road and trail construction;
- B. Harvesting, final and intermediate;
- C. Pre-commercial thinning;
- D. Reforestation;
- E. Fertilization;
- F. Prevention and suppression of diseases and insects;
- G. Salvage of trees; and
- H. Brush control.

Forest practices shall not include preparatory work such as tree marking, surveying and road flagging; or removal or harvest of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms and other products which cannot normally be expected to result in damage to forest soils, timber or public resources.

19.150.390 Groin: barrier-type structures extending waterward from the back shore across the beach to interrupt and trap sand movement.

19.150.395 Guidelines (WAC): those standards adopted by the Department of Ecology pursuant to

RCW 90.58.200 to assist in the implementation of Chapter 90.58 RCW for the regulation of shorelines of the state. The standards may be referenced at WAC 173-26 and 173-27.

19.150.400 Hard Surface: An impervious surface, a permeable pavement, or a vegetated roof.

19.150.405 Impervious Surface: A non-vegetated surface area which either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development. A non-vegetated surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled, macadam or other surfaces which similarly impede the natural infiltration of stormwater.

19.150.410 Industrial, Industrial Development: facilities for processing, manufacturing, and storing finished or partially finished goods; heavy vehicle dispatch and maintenance facilities; and similar facilities.

This definition should be labeled “Industrial Facilities” rather than “Industrial Development” which has an entirely different meaning than “Facilities.”

If this topic is indeed about “Industrial Development,” it should include commercial aquaculture, which is an industrial development on the tidelands.

19.150.415 In-lieu Fee (Fee In-Lieu): a fee paid to a sponsor (e.g., Thurston County,) to satisfy compensatory mitigation requirements when mitigation is precluded from being completed on-site due to site development or physical constraints, is part of a habitat conservation plan, or when the permitting agencies determine that ILF is more environmentally preferable over proposed permittee responsible mitigation.

This should include references to “no net loss” on a site-specific basis. Some examples here are needed. There needs to be a definition of what is “preferable.” This provision seems particularly susceptible to corrupt practices.

19.150.420 Invasive exotics/non-native vegetation: see Chapters 17.10.010 RCW and WAC 16-750-003

19.150.425 In-stream Structure: structure placed by humans within a stream or river waterward of the ordinary high water mark that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. In-stream structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, fish habitat enhancement, or other purpose.

19.150.430 Jetty: barrier-type structures designed to modify or control sand movement and usually placed at inlets to improve a navigable channel.

19.150.435 Kelp: a plant generally attaching to bedrock or cobbles in shallow waters, especially in areas with moderate to high waves or currents. Kelp beds generally require high ambient light levels. Kelp includes both floating and non-floating species. Where kelp beds are disputed as a critical saltwater habitat, appropriate state agencies and co-managing tribes shall be consulted in order to assist with the determination.

A clear definition related to “disputed kelp bed” is needed.

19.150.440 Landscaping/Landscape materials:

19.150.445 Land-disturbing Activity: Any activity that results in a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to clearing, grading, filling, and excavation. Compaction that is associated with stabilization of structures and road construction shall also be considered a land disturbing activity. Vegetation maintenance practices, including landscape maintenance and gardening, are not considered land-disturbing activity. Stormwater facility maintenance is not considered land disturbing activity if conducted according to established standards and procedures.

Land disturbance examples should include commercial geoduck and other aquaculture on the tidelands that utilizes unnatural structures, such as PVC tubes (43,500 per acre equaling about 7 miles of PVC weighing approximately 16 tons) as well as non-natural oyster and clam bags.

19.150.505 Limited Area of More Intense Rural Development (LAMIRD): locally designated rural areas authorized to accept more intense, urban-like development under RCW 36.70A.070(5)(d) and Title 20 TCC.

19.150.510 Live Aboard: use of a vessel as a residence, meaning full time occupancy in a single location, for an uninterrupted period exceeding 60 days in any calendar year.

19.150.515 Lot: a fractional part of divided lands having fixed boundaries, being of sufficient area and dimension to meet minimum zoning requirements for width and area. The term shall include tracts, or parcels. Where the context so indicates, lots, tracts or parcels may refer to subdivided lands not conforming to, or in violation of, zoning or subdivision regulations.

19.150.520 Lot Coverage: the percent or square footage of a lot that will be covered by a modification to impervious or hardened surfaces.

19.150.525 Low Impact Development (LID): a stormwater management strategy that that strives to mimic pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation, and transpiration by emphasizing conservation, use of on-site natural features, site planning, and distributed stormwater management practices that are integrated into a project design.

19.150.530 Low-intensity: activities which do not adversely alter natural ecosystem functions.

Examples should be given.

19.150.535 Macroalgae: Marine algae visible to the naked eye, such as kelp or other seaweeds.

19.150.540 Marina: a public or private water dependent wet moorage and/or dry boat storage facility for 10 or more pleasure craft and/or 10 or more commercial craft, and generally including goods or services related to boating. Marinas also include wet moorage facilities where boat moorage slips may be leased or rented to individuals who are not a member owner of an associated residential development.

Launching facilities may also be provided. Marinas may be open to the general public or restricted on the basis of property ownership or membership.

19.150.545 Marine rail system: a pair of sloping tracks which extends into the tidelands, used for the purpose of placing watercraft in and out of the water.

19.150.550 May: a permissive term that means the action is acceptable, provided it satisfies all other provisions of this Program.

19.150.555 Mining: the removal of sand, soil, minerals, and other naturally occurring materials from the earth for commercial or economic use.

19.150.560 Mitigation Sequencing: Mitigation actions associated with development proposals impacting critical areas shall adhere to the following mitigation sequence:

- A. Avoiding the impact altogether by not taking a certain action or parts of an action;
- B. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
- C. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- D. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
- E. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or

Compensatory mitigation seems to allow for a “no net gain” in ecological function of the marine and shoreline environment. What areas would be included or excluded in the definition of “environments”? Where does this language come from?

Does the County have a plan for actual improvement of the shoreline environment and if so, where is it articulated?

The “Shoreline Restoration Plan” is Appendix C which is not yet published to our knowledge.

- F. Monitoring the impact and taking appropriate corrective measures.

Please define “monitoring the impact” and give examples of “appropriate corrective measures.”

19.150.565 Modification: those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike, breakwater, pier, weir, dredged basin, fill, bulkhead, or other structure. They can include other actions, such as clearing, grading, or application of chemicals.

The PVC pipes and nets used in geoduck aquaculture have been defined as “structures.” This should be included in the examples of “modification.”

https://protectourshoreline.org/thurston/SDP/110121_ThurstonCnty_HearingExaminer_Order_SDP.pdf

MR: Will look up 1990 plan definition of “modification.”

19.150.570 Mooring Structures: includes piers, docks, floats and buoys and their associated pilings, ramps, lifts and railways, as well as modifications that support boating facilities and marinas. Any mooring structure or grouping of structures that provide docking space for 10 or more boats is considered

a marina.

19.150.575 Mudflats: a low-lying land of fine sediments and silt that is exposed at low tide and covered at high tide.

19.150.580 Must: a mandatory term that means an action is required.

19.150.585 Natural hydrographic conditions: the natural conditions for a particular time of year of water delivery and movement through a system.

19.150.590 No Net Loss: the maintenance of the aggregate total of the County's shoreline ecological functions. The no net loss standard requires that the impacts of shoreline development and/or use, whether permitted or exempt, be identified and prevented or mitigated such that there are no resulting adverse impacts on ecological functions or processes. Each project shall be evaluated based on its ability to meet the no net loss requirement. The no net loss standard applies at multiple scales, starting at the project site. Compensatory mitigation standards include sequencing guidelines to ensure the most appropriate mitigation type and site are selected, as close to the impacted location as possible.

This definition of "No Net Loss" seems to be an actual "No Net Gain" provision. The definition of "Compensatory mitigation" allows for mitigation in unrelated areas. For example, I want to do development on an acre of tideland. The owner of an unrelated tideland removes a bulkhead as compensatory mitigation. There is no gain in ecological function as the benefits of the bulkhead removal are lost to the new development.

If one of the main compensatory mitigation strategies is restoration in an area of Puget Sound in Thurston County, this would mean that taxpayers would be paying for "No net loss." While the shoreline development is for someone's financial or personal benefit, taxpayers would be subsidizing that financial or person benefit. This is an example of "robbing Peter to pay Paul."

19.150.595 Normal Maintenance: those usual acts necessary to prevent a decline, lapse or cessation from a lawfully established condition.

19.150.600 Normal Repair: to restore a development to a state comparable to its original condition, including, but not limited to, its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to a shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment.

19.150.605 Noxious Weeds: see Chapters 17.10.010 RCW and WAC 16-750-003.

19.150.610 Ordinary High Water Mark (OHWM): the mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition existed on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by the County or Ecology provided, that in any area where the OHWM cannot be found, the OHWM adjoining salt water shall be the line of mean higher high tide and the OHWM adjoining fresh water shall be the line of mean high water.

19.150.615 Pervious Surface: Any surface material that allows stormwater to infiltrate into the ground.

Examples include lawn, landscape, pasture, native vegetation areas, and permeable pavements.

19.150.620 Pier: a rigid structure built over the water and typically constructed on piles, attached to the shore and used as a landing place for marine transport or for recreational purposes.

19.150.625 Platted: land that has been divided following the applicable laws for divisions of land under Title 18 TCC, including land subject to a current application for such division.

19.150.630 Predator Exclusion: an object or activity used to implement pest management in aquaculture practices with the intent of deterring or excluding predators such as moon snails, sea star, crabs, diving ducks, burrowing shrimp or sand dollars. Common methods include, but are not limited to, large canopy nets, mesh, PVC tubes with net caps, flexar plastic tunnels, oyster bags and suspended culture systems.

“Predator Exclusion” is shellfish industry concept. “Predator exclusion” is an environmentally disruptive process of excluding wildlife from certain aquaculture installations. Such an industry definition has no place in a governmental regulation that is specifically designed to protect and preserve natural ecological conditions. It should also be noted that “predator exclusion” almost certainly includes endangered, sensitive, and/or threatened species.

Further, the use of language including “Predator Exclusion” is a way of normalizing concepts that are abnormal and favors the viewpoint of a specific industry rather than the citizens of Thurston County. Are we to take our children down to the beach and see starfish and crabs and explain to them that they are “bad” because they are predators of the commercially grown geoduck? Enshrining this in county documents is unacceptable and counter-productive.

“Predator Exclusion” is not a term that ordinary people use. It is a term that comes directly from the shellfish industry. It does not belong in the Thurston County SMP that is presumably written for the citizens of Thurston County and not simply to benefit the shellfish industry.

The term should be changed to “Wildlife Exclusion.” This more accurately defines the meaning.

19.150.635 Principle Building: the primary structure on a lot closest to the ordinary high water mark excluding accessory structures.

19.150.640 Priority Species: species requiring protective measures and/or management guidelines to ensure their persistence at genetically viable population levels. Priority species are those that meet any of the criteria listed below.

- A. State-listed or state proposed species. State-listed species are those native fish and wildlife species legally designated as endangered (WAC 232-12-014), threatened [WAC 232-12-011(1)], or sensitive (WAC 232-12-011). State proposed species are those fish and wildlife species that will be reviewed by the Washington Department of Fish and Wildlife (POL-M 6001) for possible listing as endangered, threatened, or sensitive according to the process and criteria defined in WAC 232-12-297.
- B. Vulnerable aggregations. Vulnerable aggregations include those species or groups of animals susceptible to significant population declines, within a specific area or statewide, by virtue of their inclination to congregate. Examples include heron colonies, seabird concentrations, and marine mammal congregations.

Examples should include wild salmon and orca whales.

Please provide references to the meaning of this term in WAC's, RCW's, Handbooks, etc.

- C. Species of recreational, commercial, and/or tribal importance. Native and nonnative fish, shellfish, and wildlife species of recreational or commercial importance and recognized species used for tribal ceremonial and subsistence purposes that are vulnerable to habitat loss or degradation.

Species of "commercial" importance should not be included in this list because there is frequently a habitat conflict between "commercial" species and native species. Changing the balance of native species (such as in Willapa Bay and Grays Harbor) by introducing non-native species will inevitably lead to disruption of the ecosystem.

Non-native fish and shellfish should not be included in this list. For example, would non-native Atlantic salmon be included in this list? An argument could be made that they are commercially important. But another argument can be made that allowing Atlantic salmon is a flawed strategy, outlawed in California and Alaska.

- D. Species listed by the National Marine Fisheries Service or the U.S. Fish and Wildlife Service under the federal Endangered Species Act as either proposed, threatened, or endangered.

19.150.645 Prohibited: not permitted to occur in a particular designation.

19.150.650 Public Access: the ability of the general public or, in some cases, a specific community, to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations.

19.150.655 Qualified Professional or Qualified Consultant: in accordance with WAC 365-195-905(4), a qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, soil science, engineering, environmental studies, fisheries, geology, geomorphology or related and relevant field to the subject in question, have related work experience and meet the following criteria:

- A. A qualified professional for wetlands must have a degree in biology, ecology, soil science, botany, or a closely related field and a minimum of five years of professional experience in wetland identification and assessment associated with wetland ecology in the Pacific Northwest or comparable systems.
- B. A qualified professional for habitat management plans or shoreline mitigation plans must have a degree in wildlife biology, ecology, fisheries, or closely related field and a minimum of five years professional experience related to the subject species/habitat type.

Shoreline mitigation requires professional expertise in marine biology independent from industry interests.

MR: In ECY Guidelines – WACs.

- C. A qualified professional for geologically hazardous areas, geotechnical and hydrogeological reports must be a professional engineering geologist or geotechnical engineer, licensed in the state of Washington. In designing soft armoring techniques, a qualified professional may also have similar qualifications as that required for habitat management plans.

- D. A qualified professional for critical aquifer recharge areas means a Washington State licensed hydrogeologist, geologist, or an engineer qualified in experience and training in aquifer recharge.

There should be disclosure requirements for any possible conflict of interest. This would include taking compensation from an interested party to render an opinion, or working for a company or organization which has taken compensation for an affected project or similar projects.

19.150.660 Ramp (or gangway): a structure between a pier and float which adjusts its angle based on the tidal elevation, allowing access to the float at all times.

19.150.665 Recreation: the use and enjoyment of the shoreline by the public, including but not limited to fishing, hiking, swimming and viewing.

19.150.670 Recreational Development: development that provides opportunities for the use and enjoyment of the shoreline by the public, including but not limited to fishing, hiking, swimming and viewing. This includes both commercial and public recreational facilities.

19.150.675 Residential Development: development for the purpose of human habitation. Residential development includes the construction or modification of one- and two-family detached structures, multi-family structures, condominiums, townhouses, mobile home parks, and other similar group housing, together with accessory dwelling units, accessory uses and structures common to residential uses. Residential development also includes the creation of new residential lots through the subdivision of land. Residential development does not include hotels, motels, bed and breakfasts, or any other type of overnight or transient housing or camping facilities.

19.150.680 Resource-based Uses: low-intensity uses, which may include agriculture, aquaculture, forestry, recreation and designated open-space.

The term “low-intensity” is not defined. Aquaculture, particularly geoduck aquaculture using tons of PVC along with nets on the tideland is not “low intensity.” The tidelands are the “nurseries” of Puget Sound and industrial aquaculture on the tidelands has a high intensity impact.

19.150.685 Restoration: the reestablishment or upgrading of impaired ecological shoreline processes and functions. This may be accomplished through measures including, but not limited to, revegetation, removal of intrusive shoreline structures and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.

There should be a more comprehensive definition of “restoration”. For example, activities which negatively impact native wildlife species should not be included as a restoration activity. Additional restoration activity in one area should be the basis for justifying development in another location. Restoration should stand alone as just that—restoration.

19.150.690 Revision: the modification or change to a permit authorized under this Program.

19.150.695 Setback: the distance a use or development must be from the edge of a buffer to prevent construction and other activities from intruding into the buffer.

19.150.700 Shall: a mandatory term that means an action is required.

19.150.705 Shellfish Beds: a general area of shoreline, both intertidal and subtidal, where shellfish

congregate. This includes natural subsistence, recreational and commercial beds. Shellfish include, but are not limited to, abalone, hardshell clam, subtidal clam, dungeness crab, geoduck clam, manila clam, oysters, razor clam, pandalid shrimp and red urchin. Where disputed as a critical saltwater habitat, appropriate state agencies and affected tribes shall be consulted in order to assist with the determination.

In the case of disputed critical saltwater habitat, wouldn't the Army Corps of Engineers also be consulted? Also EPA, NMFS and other federal agencies?

Definition of "shellfish beds" should not combine definitions of natural and commercial shellfish beds. There should be two separate definitions: "shellfish beds natural" and "shellfish beds commercial." Commercial/industrial shellfish and net-pen aquaculture cannot be equated with natural processes.

This definition does not appear to be in any WAC's.

19.150.710 Shorelands: those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of ecology.

19.150.715 Shoreline Management Act (Act): the Washington State Shoreline Management Act, Chapter 90.58 RCW.

19.150.720 Shoreline Stabilization: actions taken to address erosion impacts to property and dwellings, businesses, or structures caused by natural processes, such as current, flood, tides, wind or wave action.

These actions include structural and nonstructural methods. Nonstructural methods, for example, include approaches such as building setbacks, structure relocation, groundwater management, and land use planning. Structural methods can be "hard" or "soft". "Hard" structural stabilization measures refer to those with solid, hard surfaces, such as concrete bulkheads, while "soft" structural measures rely on less rigid materials, such as bioengineering vegetation measures or beach enhancement. "Hybrid" structures are a composite of both soft and hard elements along the length of the armoring. Generally, the harder the construction measure, the greater the impact on shoreline processes including sediment transport, geomorphology, and biological functions.

It is important to note that the harder the construction measure, the more impact on the environment and biological functions. This principle should also be applied to development and structures applied to the tidelands.

For example, 16 tons of PVC pipe per acre, shellfish industry tractors on the tidelands are "hard" structural methods on the tidelands.

There are a range of measures for shoreline stabilization, varying from soft to hard that include, but are not limited to:

- A. Soft
 1. Vegetation enhancement;
 2. Beach enhancement;
 3. Bioengineering measures;
 4. Anchor logs and stumps; and

5. Gravel placement/beach nourishment.

B. Hard

1. Rock revetments;
2. Gabions;
3. Groins;
4. Bulkheads; and
5. Seawalls.

19.150.725 Shoreline Structure Setback Line: the closest distance measured on a horizontal plane between the ordinary high water mark and the building line.

19.150.730 Shorelines of the State: includes all “shorelines” and “shorelines of statewide significance” within the state, as defined in RCW 90.58.030.

19.150.735 Shorelines: means all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (i) shorelines of statewide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes;

19.150.740 Shorelines of Statewide Significance: shorelines in Thurston County designated as shorelines of statewide significance are:

- A. Nisqually Delta – from DeWolf Bight to Tatsolo Point, between the ordinary high water mark and the line of extreme low tide, together with shorelands associated therewith per RCW 90.58.030(2)(f)(vi).
- B. Puget Sound – seaward from the line of extreme low tide.
- C. Lakes, whether natural or artificial, or a combination thereof, with a surface acreage of one thousand acres or more measured at the ordinary high water mark.
- D. Natural rivers or segments thereof downstream of a point where the mean annual flow is measured at one thousand cubic feet per second or more.
- E. Shorelands and wetlands associated with A through D above.

19.150.745 Should: a term that means a particular action is required unless there is a demonstrated, sufficient reason, based on a policy of the Act or this Program, for not taking the action.

19.150.750 State Environmental Policy Act (SEPA): An environmental review process designed to work with other regulations to provide a comprehensive review of a proposal. Most regulations focus on particular aspects of a proposal, while SEPA requires the identification and evaluation of probable impacts for all elements of the environment. See Chapter 197-11WAC.

19.150.755 Streams: means those areas of Thurston County where surface waters flow sufficiently to produce a defined channel or bed. A "defined channel or bed" is an area which demonstrates clear evidence of the passage of water and includes but is not limited to bedrock channels, gravel beds, sand and silt beds and defined-channel swales. The channel or bed need not contain water year-round. This

definition is not meant to include irrigation ditches, canals, storm or surface water runoff devices or other entirely artificial watercourses unless they are used by salmon or used to convey streams naturally occurring prior to construction.

"Stream and water body types" means as follows:

1. **Type S waters** include all aquatic areas inventoried as "shorelines of the state," in accordance with Chapter 90.58 RCW, including segments of streams where the mean annual flow is more than twenty cubic feet per second, marine shorelines and lakes twenty acres in size or greater.
2. **Type F waters** include all segments of aquatic areas that are not type S waters and that contain fish or fish habitat including waters diverted for use by a federal, state or tribal fish hatchery from the point of diversion for one thousand five-hundred feet or the entire tributary if the tributary is highly significant for protection of downstream water quality.
3. **Type N waters** include all segments of aquatic areas that are not type S or F waters and that are physically connected by an above-ground channel system, stream or wetland to type S or F waters.

19.150.760 Stormwater Facility: A constructed component of a stormwater drainage system designed or constructed to perform a particular function, or multiple functions. Stormwater facilities include, but are not limited to, pipes, swales, ditches, culverts, street gutters, detention ponds, retention ponds, constructed wetlands, infiltration devices, catch basins, oil/water separators, and biofiltration swales. An engineered or natural dispersion area that is dedicated to stormwater use is also considered a stormwater facility for purposes of this Program.

19.150.765 Structure: a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except vessels.

Permanently moored vessels would meet this criteria, so we question the purpose of the exclusion of vessels. The definition of vessels should be modified to "except vessels moored or anchored less than seven days."

PVC pipes with nets for geoduck aquaculture have been defined as a "structure." See 2011 ruling of Judge Thomas Bjorgen which defines a geoduck operation as a "structure" and a development under the SMA.

https://protectourshoreline.org/thurston/SDP/110121_ThurstonCnty_HearingExaminer_Order_SDP.pdf

19.150.770 Substantial Development: any development of which the total cost or fair market value exceeds five thousand dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state. The dollar threshold must be adjusted for inflation every five years, as defined in WAC 173-27-040(2). On September 15, 2012, the amount was increased to six thousand four hundred and sixteen dollars (\$6,416).

See 2011 ruling of Judge Thomas Bjorgen which defines a geoduck operation as a "structure" and a development under the SMA.

https://protectourshoreline.org/thurston/SDP/110121_ThurstonCnty_HearingExaminer_Order_SDP.pdf

Please include a definition for the term, "materially interferes."

19.150.775 Substantial Development Permit: a permit for any substantial development.

19.150.780 Transportation: systems for automobiles, public transportation, pedestrians, and bicycles. This includes, but is not limited to, roads, parking facilities, bridges, sidewalks and railroads.

19.150.785 Urban Growth Area (UGA): those areas designated by Thurston County pursuant to RCW 36.70A.110 for urban development.

19.150.790 Use: the end to which a land or water area is ultimately employed.

19.150.795 Utilities: services and facilities that produce, convey, store or process electric power, gas, sewage, water, communications, oil, stormwater, and waste. This includes drainage conveyances and swales.

19.150.800 Variance: granting relief from specific bulk, dimensional or performance standards set forth in this Master Program and not a means to vary a use of a shoreline.

19.150.805 Vascular Plants: all seed-bearing plants that have vascular tissue (xylem and phloem).

19.150.810 Vegetation, Native: Vegetation comprised of plant species, other than noxious weeds, that are indigenous to the coastal region of the Pacific Northwest and which reasonably could have been expected to naturally occur on the site. Examples include, but are not limited to, trees such as Douglas Fir, western hemlock, western red cedar, alder, big-leaf maple, and vine maple; shrubs such as willow, elderberry, salmonberry, and salal; and herbaceous plants such as sword fern, foam flower, and fireweed.

What is the time frame for the definition of “indigenous”?

19.150.815 WAC: Washington Administrative Code.

19.150.820 Water-Dependent Use: a use or portion of a use that cannot exist in a location that is not adjacent to the water and that is dependent on the water by reason of the intrinsic nature of its operations.

19.150.825 Water-Enjoyment Use: a recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

The last sentence is overly restrictive. A boat launch may have a primary use of allowing recreational boats to launch on Puget Sound waters, but may have a secondary use of allowing kayakers, paddleboarders, canoers, and others to also access the sound.

19.150.830 Water-Oriented Use: a use that is water dependent, water-related, or water-enjoyment, or a combination of such uses.

19.150.835 Water-Related Use: a use or portion of a use that is not intrinsically dependent on a waterfront location, but whose economic viability is dependent upon a waterfront location because:

- A. The use has a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or

- B. The use provides a necessary service supportive of the water-dependent uses and the proximity of the use to its customers makes its services less expensive and/or more convenient.

19.150.840 Weir: a structure that impounds, diverts or uses water for hydraulic generation and transmission, flood control, irrigation, water supply, recreational or fisheries enhancement.

19.150.845 Wetlands: areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands.