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STAFF REPORT
and
INFORMATION FOR THE HEARING EXAMINER

Report Date: August 16, 2010
Hearing Date: August 26, 2010

Application Submittal Date: March 15, 2010
Application Complete Date: March 18, 2010

Project: Washington State Geoduck Wildstock Fishery Harvest in Kitsap County

This staff report was prepared by Lisa Lewis –Shoreline Administrator - and was based on information available up until the time the report was prepared. New information relevant to review of this application may become available prior to the hearing or at the hearing. Staff may wish to change their analysis based upon that new information, and reserves the right to do so.

Project Summary: The Washington State Department of Natural Resources (DNR) proposes to conduct Washington State subtidal wildstock geoduck harvests in state owned subtidal aquatic lands in the Hood Canal Geoduck Management Regions (Coon Bay, Port Gamble and Vinland) and the Central Puget Sound Management Regions (Apple Cove Point North and Blake Island North) within Kitsap County (Maps 1-3).

The subject sites total approximately 830 acres in size and consist of five geoduck tracts. The harvest would be of existing wildstocks of geoduck. No tubes, netting or planting of geoducks is proposed. No structures or facilities are proposed. Harvest boats would be required to remain seaward of a line 200 yards seaward to a point no greater than 70 feet deep. Divers during commercial harvest would use a hand held water jet to loosen the substrate immediately around the exposed geoduck siphon allowing it to be easily removed from the substrate. Divers would operate from boats anchored over the tracts. Pumps and compressors on the boats would be used to pump ambient water to the water jets and supply air to the divers respectively. DNR would implement a new closed circuit communication requirement for noise abatement in diver-to-tender communication. Compressor and pump noise would be experienced during hours allowed under the harvest contract, specifically no earlier than 7:30 a.m. and no later than 4:30 p.m., Monday through Friday, and not on State holidays. Noise levels would be monitored and required to be below 50 decibels at 200 yards at all times. As proposed, DNR would implement a new requirement for noise abatement in diver-to-tender communication and DNR enforcement personnel would monitor the harvest during all hours of operation to ensure compliance with all aspects of the harvest. Harvest vessels would not be allowed on tract prior to, or after, harvest hours.

Wildstock geoduck tracts are harvested on a rotational basis according to a jointly agreed State and Tribal Geoduck Harvest Management Plan. These tracts are also actively harvested by the Treaty Tribes. The harvestable pounds are calculated as a sustainable yield limited to the available commercial biomass. When a tract has reached a predetermined density it receives a scientific biological survey and is placed into recovery status where it is not fished until it returns to a pre fishing biomass. This recovery occurs through natural processes with wild geoduck spawn.

As stated by the applicant, the Wildstock Geoduck Fishery is jointly managed by the State (Washington State Department of Natural Resources and Washington State Department of Fish and Wildlife), and the Puget Sound Treaty Indian Tribes (Tribes). The State and Tribes each have a right to fish up to 50 percent of the available sustainable quota of geoducks (United States v. Washington, 873 F. Supp. 1422 W.D. Wa 1994 and United States v. Washington, 898 F. Supp. 1453 W.D. Wa 1995). The State and the Tribes are responsible for estimating geoduck population size, determining sustainable yield and ensuring that adverse effects to the environment are kept to a minimum. DNR has proprietary rights over the State's half of the harvest and auctions the right to harvest geoducks to private companies. Revenue received by the State pays for the scientific management of the resource and on site enforcement during harvest, as well as other public benefits such as public access and habitat restoration and enhancement.

Application Number: 10 88642

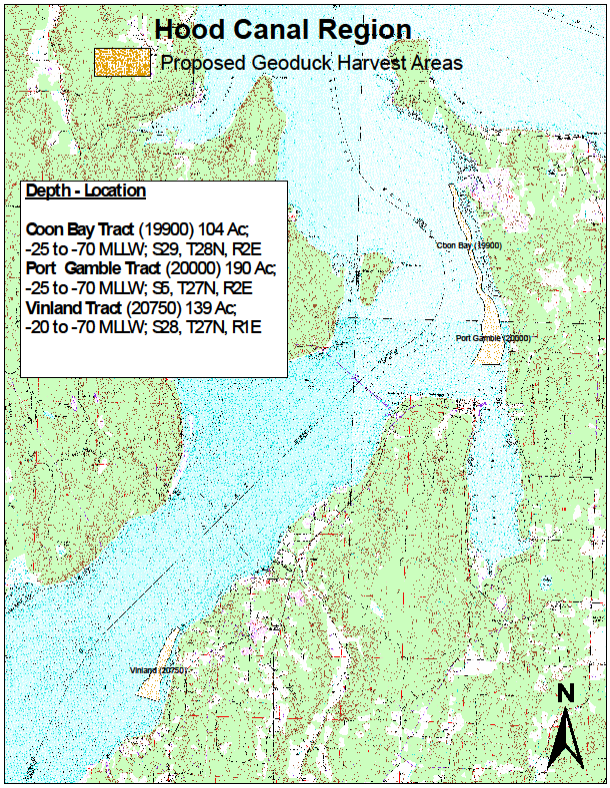
Type of Application: Shoreline Conditional Use Permit (SCUP)

Project Location: The five geoduck tracts are located in Hood Canal Geoduck Management Region located on the Northwest side of the Kitsap Peninsula at T27N, R2E, W.M., and in the Central Puget Sound Geoduck Management Region located on the Northeastern side and Central area of the Kitsap Peninsula at T24N, R2E, W.Ml, and T27N, R2E, W.M. (Maps 1-3).

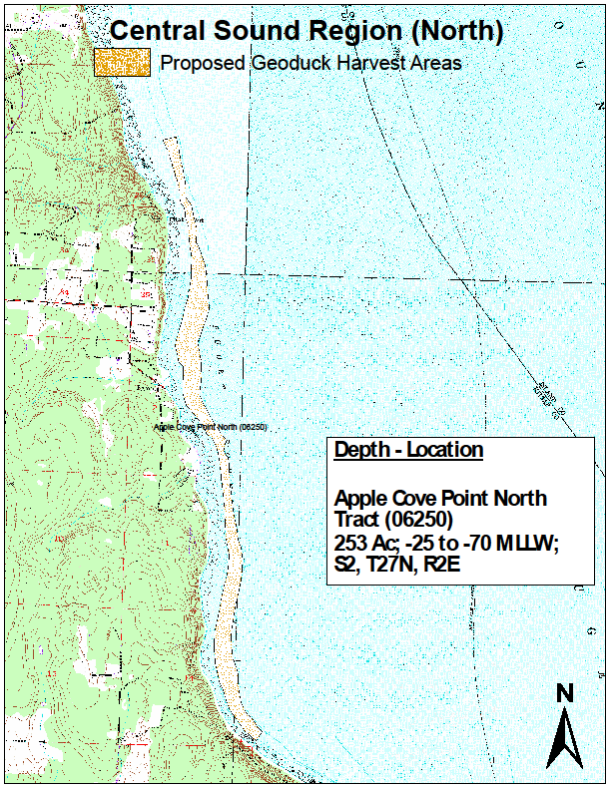
<u>The five wildstock geoduck harvest tracts include:</u>

1. The *Coon Bay geoduck tract* is a subtidal area located along the northeastern shoreline of Hood Canal, in the Hood Canal Geoduck Management Region (Map 1). The tract is located south of and adjacent to the Foulweather 2 geoduck tract and north of and adjacent to the Port Gamble (#20000) geoduck tract.

2. The *Port Gamble geoduck tract* is a subtidal area (between the -25 to -70 foot water depth contours, corrected to MLLW) along the northeastern shoreline of Hood Canal at the mouth of Port Gamble Bay, in the Hood Canal Geoduck Management Region (Map 1. The south end of the tract starts approximately 1165 yards northerly of the geographic landmark Point Julia and continues northerly approximately 5405 yards. The commercial tract area is deeper than, and seaward of, the -25 foot (MLLW) water depth contour to provide for herring spawning habitat buffer.



Map 1. Coon Bay, Port Gamble and Vinland Tracts

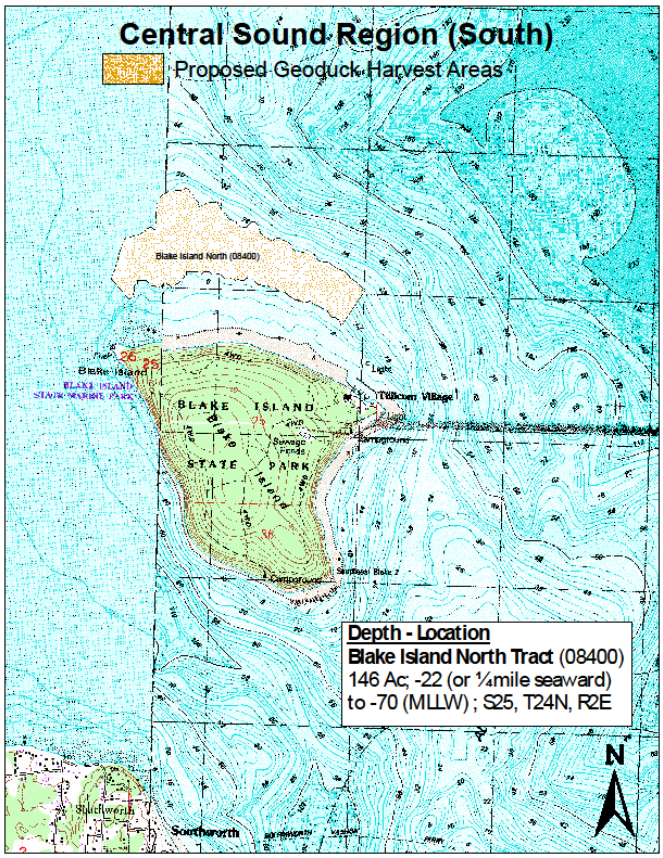


Map 2. Apple Cove Point North Tract

3. The *Vinland geoduck tract* is located along the eastern shoreline of northern Hood Canal, south of Navigation Marker #9 and south of the Lofall geoduck tract (Map 1). The tract begins about 8000 yards southerly of the Hood Canal Bridge and continues southwesterly for about 2200 yards. The commercial tract area is deeper than and seaward of the minus 20 foot (MLLW) depth contour, to provide a buffer between eelgrass beds found at a maximum depth of –18 ft (MLLW) and geoduck harvest. Harvest vessels must remain seaward of a line 200 yards seaward and parallel to the ordinary high tide (OHT) line during harvest. The tract includes two portions that are constrained by the 200 yard restriction at the northern and southern ends of the tract.

4. The *Apple Cove Point North geoduck tract* is a subtidal area located along the eastern shoreline of the Kitsap Peninsula, in the Central Puget Sound Geoduck Management Region (Map 2). The tract is located south of and adjacent to the Pilot Point geoduck tract and north of and adjacent to an un-surveyed "X-bed."

5. The surveyed area of the *Blake Island North geoduck tract* is a subtidal area located along the northern shoreline of Blake Island in the Central Puget Sound Geoduck Management Region (Map 3). The Blake Island North tract is northeast of the West Blake Island geoduck tract and is northwest of the East Blake Island geoduck tract.



Map 3. Blake Island North Tract

Assessor's Account #: The project area is located in state owned subtidal aquatic lands in the subtidal zone between water depths of -18 feet corrected to mean lower low water (MLLW) seaward to a point greater than 70 feet deep. As such, there are no associated assessor numbers.

Applicant/Owner of Record:
Washington Department of Natural Resources
PO Box 47027
Olympia, WA 98504-7027

Project Representative:
Washington Department of Natural Resources
Attn: Ms. Celia Barton
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State Environmental Policy Act (SEPA) Status:
Pursuant to WAC 197-11-926, Washington State Department of Natural Resources (DNR) is the lead agency under SEPA. An Environmental Impact Statement for the Puget Sound Commercial Geoduck Fishery was completed in 1985 by the Washington Department of

Fisheries (now known as the Washington Department of Fish and Wildlife (WDFW)). DNR as lead agency, in a joint effort with WDFW updated the original EIS in 1999 to include all research on the potential environmental impacts of the fishery since 1985 through the development of a Draft Supplemental Environmental Impact Statement (DSEIS). Accordingly, public comments on the DSEIS were solicited during the following time periods:

1. Scoping Notice: April 20 – May 20, 1999.
2. First public comment period: November 23, 1999 – February 4, 2000.
3. Second public comment period: January 22 – February 23, 2001.

DNR issued a Final Supplemental Impact Statement (FSEIS) with a Determination of Significance on May 23, 2001 (Exhibit 2).

Property Characteristics:

1. The 104 acre Coon Bay geoduck tract is a subtidal area along the northeastern shoreline of Hood Canal and is bounded by a line projected from a point on the -25 foot Mean Lower Low Water (MLLW) water depth contour then westerly to a point on the -70 feet MLLW water depth contour. The -70 foot MLLW water depth contour was used for the deep water boundary, and the -25 foot MLLW contour was used for the shallow boundary due to herring spawning habitat nearshore of the tract. The predominant surface substrate within this tract is sand.
2. The 190 acre Port Gamble geoduck is a subtidal area along the northeastern shoreline of Hood Canal at the mouth of Port Gamble Bay. The south end of the tract starts approximately 1165 yards northerly of the geographic landmark of Point Julia and continues northerly approximately 5404 yards. The tract area is deeper than and seaward of the -25 foot MLLW water depth contour, to provide for herring spawning habitat buffer. The predominant surface substrates within this tract are sand, mud or mixtures of these substrate types.
3. The 139 acre Vinland geoduck tract is subtidal acres located along the eastern shoreline of northern Hood Canal. The tract begins about 8000 yards southerly of the Hood Canal Bridge and continues southwesterly for about 2000 yards. The tract area is deeper than and seaward of the -20 foot MLLW depth contour, to provide a buffer between eelgrass beds found at a maximum depth of -18 feet MLLW and geoduck harvest. The predominant surface substrates within this tract are sand, mud or mixtures of these substrate types.
4. The 253 acre Apple Cove Point North geoduck tract is a subtidal area located along the northeastern shoreline of the Kitsap Peninsula in the Central Puget Sound Geoduck Management Region: The predominant surface substrates within this tract are sand and mud. Other substrate types observed are shell and wood debris.
5. The 146 acre Blake Island North geoduck tract is located along the northern shores of Blake Island. The surface substrates within this tract are highly variable, with sand and mixtures of sand and mud predominant.

Shoreline Environment Designations:

1. Coon Bay geoduck tract: Semi-Rural
2. Port Gamble geoduck tract: Semi-Rural
3. Vinland geoduck tract: Rural
4. Apple Cove Point North geoduck tract: Rural and Conservancy
5. Blake Island North geoduck tract: Natural

Comprehensive Plan Designation and Zoning:
The property is subtidal; therefore, there is no comprehensive plan or zoning designation for the subtidal harvest regions. However:

1. The Coon Bay geoduck tract: The closest land area has a zoning designation of Rural Residential (1 dwelling unit per 5 acres).
2. The Port Gamble geoduck tract: The closest land area has a zoning designation of Rural Residential (1 dwelling unit per 5 acres) and Tribal Lands.
3. The Vinland geoduck tract: The closest land area has a zoning designation of Rural Residential (1 dwelling unit per 5 acres) and Military.
4. The Apple Cove Point North geoduck tract: The closest land area has a zoning designation of Rural Residential (1 dwelling unit per 5 acres) and Rural Protection (1 dwelling unit per 10 acres).
5. The Blake Island North geoduck tract: The closest land area has a zoning designation of Rural Residential (1 dwelling unit per 5 acres).

Surrounding Land Use:
The five geoduck tracts are abutted primarily by residences. Other surrounding lands include Tribal, Washington State Park and military.

Public Utilities and Services: Not applicable.

Important Notes

1. Four of the five project areas are currently being used as commercial geoduck tracts. In the Hood Canal Geoduck Management Region, the Vinland Tract has been harvested by the State, Port Gamble Tract is currently being harvested by the State and Treaty Tribes and Coon Bay Tract has not been harvested yet. In the Central Puget Sound Geoduck Management Region, the Apple Cove Point North Tract has only been harvested by the Treaty Tribes and the Blake Island North Tract is currently being harvested by both the State and Treaty Tribes.

2. Subtidal geoduck tracts are jointly managed by DNR, WDFW, and Puget Sound Treaty Indian Tribes. The portion harvested by the State requires a Shoreline Conditional Use Permit; the portion harvested by the Tribes does not. Tribes are sovereign nations and have treaty rights. The fact that the State and Tribes harvest on the same tracts can make it confusing as to who is doing what, where and when. However, DNR does have a telephone contact list they make available to the public which includes both State and Tribal contacts (including personnel on boats).

3. On February 19, 1991, DNR applied to Kitsap County for a shoreline substantial development permit to harvest subtidal geoducks county-wide basis. The application contained maps and legal descriptions showing the sequence and location of five phases of proposed harvesting encompassing approximately 2,509 acres of aquatic lands containing approximately 29.1 million pounds of harvestable geoducks. A portion of this application was severed from the proposal and transferred to the newly incorporated City of Bainbridge Island which assumed jurisdiction for shoreline substantial developments located on aquatic lands surrounding Bainbridge Island. Kitsap County offered to allow DNR the opportunity to conduct a demonstration harvest so that Kitsap County citizens could become familiar with harvesting and so DNR could demonstrate its ability to manage the harvest without any of the issues documented with geoduck harvesting activity in Hood Canal in the late 1970's and early 1980's. This offer was not adopted when the Department of Ecology made it clear that a separate shoreline permit would be required for the demonstration harvest. Kitsap County ultimately denied the permit application on July 25, 1991. DNR appealed the denial of its permit application to the Shoreline Hearings Board (SHB). After two weeks of hearings in March 14 of 1992, the SHB decided to overturn the County's denial of the permit application. They remanded back to the County with instructions to grant the permit application.

4. DNR applied to Kitsap County in March 1997 for a substantial development permit (SDP) to harvest subtidal geoduck clams. The permit was remanded to DNR in December 1998 for development of a supplemental environmental impact statement (SEIS). DNR released final SEIS in the fall of 2001 and asked Kitsap County to reactivate the permit application. A Kitsap County hearings examiner ultimately denied DNR's permit, and the Kitsap County Board of Commissioners affirmed the hearings examiner's final denial. DNR filed a petition for review with the SHB, and the WDFW intervened as a co-petitioner. DNR moved for partial summary judgment on issues of SEPA compliance and adequacy of the programmatic SEIS. The Shorelines Hearings Board ruled in favor of DNR on these points, finding that DNR's participation as the lead agency on the SEIS did not create a conflict of interest, that the SEIS had received independent review during the drafting process, that DNR was not required to pay for an independent review of the application materials, that it was not proper to deny the shoreline permit application in the absence of another independent review, that Kitsap County had participated in the review of the SEIS and was now bared from challenging the adequacy of the programmatic SEIS, and that the use of the programmatic SEIS for this particular application adequately addressed the potential environmental impacts of geoduck harvest on the five geoduck tracts identified in the permit application.

Policies and Regulations Most Applicable to the Subject Proposal:

1. Kitsap County Comprehensive Plan, Adopted May 7, 1998 (Amended December 11, 2006.

The Growth Management Act of the State of Washington, RCW 36.70A, requires that the County adopt a Comprehensive Plan, and then implement that plan by adopting development regulations. The development regulations must be consistent with the

Comprehensive Plan. The Comprehensive Plan process includes public involvement as required by law, so that those who are impacted by development regulations have an opportunity to help shape the Comprehensive Plan which is then used to prepare development regulations.

Kitsap County Comprehensive Plan
Adopted May 7, 1998 (Amended December 11, 2006)

The following Comprehensive Plan policies are most relevant to this application:

9.4.2. Shoreline Use
Policy SH-2 Encourage and support shoreline diversity through planned and coordinated development, which gives preference to water-dependent uses, traditional and historic use patterns, resource values, and environmental protection.

9.4.3. Water Quality
Policy SH-3 Uses and activities along shorelines and in the waters of Kitsap County should not have a significant adverse affect on water quality.

Policy SH-4 Kitsap County shall safeguard shoreline resources by only allowing development that is compatible with sensitive shoreline areas.

Policy SH-5 Kitsap County shall encourage the use of Best Management Practices (BMPs) in the use of herbicides and pesticides near surface waters and drainage conveyances.

Policy SH-6 Minimize sedimentation and turbidity in fresh and marine waters of the state through measures that control stormwater runoff and reduce stream and shoreline erosion.

9.4.4. Economic Development
Policy SH-7 Encourage and support water related and water dependent commercial uses that are environmentally compatible.

Policy SH-8 Land use activities shall be sited and designed to minimize conflicts with and impacts on the shoreline environment.

Relevant Documents Consulted in the Analysis:
A complete index of exhibits is located in the project file. To date, the index to the record consists of Exhibits 1 - 40.

Applicant Submittals:

Document	Exhibit	Date or Date Received
Appendices to the Final SEIS	1	March 2001
Final SEIS	2	March 23, 2001
Responsiveness Summary Public Comment	3	March 23, 2001
The Effect of Commercial Geoduck, etc. in Hood Canal	4	August 2007
Habitat Conservation Plan	5	July 2008

Commercial Wildstock Geoduck Fishery Management Plan	6	August 2008
Geoduck Harvesting Agreement & Contract of Sale	7	August 2008
Federal Services ESA Analysis	8	December 2008
Wildstock Geoduck Fishery Harvest SEPA-DOS Document	15	December 18, 2009
JARPA Application	22	March 8, 2008
WDFW Environmental Assessments	24	March 15, 2010
Affidavit of Publication by DNR	29	May 14, 2010

Staff Communications:

Document	Exhibit	Dated
Written Summary of the Pre-Application Meeting	14	December 7, 2009
Letter from Chris Waldbillig, DFW	16	January 8, 2010
Email from Joe Burcar, Department of Ecology (DOE)	17	January 14, 2010
Letter from Kristin Swenddal, DNR	18	January 28, 2010
Letter from Blaine Reeves, DNR	19	March 1, 2010
Email from Geoff Tallent, DOE	20	February 2010
Revised Written Summary of the Pre-Application Meeting	21	March 4, 2010
Letter from Celia Barton	23	March 11, 2010
Notice of Complete Application	26	March 16, 2010
Email from Timothy Westcott, U.S. Coast Guard	27	April 22, 2010
Email from Jan French, Pt. Orchard Independent	28	April 29, 2010
Email from Celia Barton, DNR	30	June 15, 2010
Letter from Tom Clingman, DOE	31	July 1, 2010
Email from David Greetham, Kitsap County	32	July 9, 2010
LIS Editor Note for Noticing	33	July 14, 2010
Notice of Application	34	July 15, 2010
Settlement Agreement	36	December 16, 2003
Interested Parties & Response from DNR	37	July 24, 2010

Public comments:
Comments received on this proposal are located within the case file and are available for inspection and copying during regular business hours. The County has been contacted by five parties (public) expressing opposition to and/or raising questions regarding the proposal. After contact has been received, the County forwarded such information to DNR. DNR has been responding directly to all parties that have contacted the County.

Notice was mailed to approximately 450 citizens, and to date five responded. A summary of the concerns includes: recreational conflicts; potential impact to crab beds; noise impacts from diesel engines; compressors; loudspeakers and obscenities; turbidity; harvest is not sustainable; disturbs aquatic vegetation; activity leaves divots in the substrate; disruption to the fragile environment; and increased sedimentation.

Notice was mailed to 17 governmental entities. None provided comments. Notice was mailed to 4 Advisory Councils. No comments were received. Notice was mailed to 11 tribal entities. No comments were received.

Analysis:

KCC Title 22.24.010 Principles and development guidelines.

The Shoreline Management Act of 1971 designated certain shoreline areas as shorelines of statewide significance. Shorelines thus designated are important to the entire state. Because these shorelines are major resources from which all people in the state derive benefit, Kitsap County's master program must give preference to uses which favor public and long-range goals. Accordingly, Kitsap County's master program shall give preference to uses which meet the principles outlined below in order of preference.

G. Shoreline Areas of Kitsap County Designated as Shorelines of Statewide Significance.
1. Marine Shorelines.
b. Puget Sound – areas lying waterward of Extreme Low Tide (including Hood Canal).

Staff comment: The deepest part of the proposed wildstock geoduck harvest is located at -20 to a point on the -70 feet MLLW water depth contour; thus, the Shoreline Management Master Program identifies this area as a shoreline of statewide significance.

A. Recognize and Protect the Statewide Interest Over Local Interest.
1. Development Guidelines.
a. Solicit comments and opinions from groups and individuals representing statewide interests by circulating the master program, master program amendments and requests for substantial development permits on shorelines of statewide significance to state agencies, adjacent jurisdictions, citizen's advisory committees and local officials, and statewide interest groups.
b. Recognize and take into account state agencies' policies, programs and recommendations in developing and administering use regulations.
c. Solicit comments, opinions and advice from individuals with expertise in ecology, oceanography, geology, limnology, aquaculture, and other scientific fields pertinent to shoreline management.

Staff comment: The proposal is consistent with the above guidelines.

B. Preserve the Natural Character of the Shoreline.
1. Development Guidelines.

a. Designate environments and use regulations to minimize man-made intrusions on shorelines.
b. Where intensive development already occurs, upgrade and redevelop those areas to reduce their adverse impact on the environment and to accommodate future growth rather than allowing high intensity uses to extend into low intensity use or underdeveloped areas.
C. Result in Long-Term Over Short-Term Benefit.
1. Development Guidelines.
a. Emphasize the preservation of shorelines for future generations. For example, actions that would convert resources into irreversible uses or detrimentally alter natural conditions

characteristic of shorelines of statewide significance, should be severely limited.
b. Evaluate the short-term economic gain or convenience of developments in relationship to long-term and potentially costly impairments to the natural environment.
c. Actively promote aesthetic considerations when contemplating new development, redevelopment of existing facilities, or for the general enhancement of shoreline areas.

Staff comment: Since 1969, Washington State Department of Natural Resources (DNR) has had the statutory authority to harvest wildstock geoduck. Managing the geoduck resource is dynamic due to changes in market demand, resource economics, and new information on geoduck biology and population dynamics. As the managers, DNR and WDFW enforce civil and criminal state laws, regulations and contract conditions that apply to the state's fishery.

Goals for the State's Geoduck Program
— Encourage a stable and orderly harvest;
— Provide maximum benefits of geoduck resources to the citizens of the state;
— Minimize adverse impacts to shoreline residents; and
— Ensure effective enforcement of the state harvest.

D. Protect the Resources and Ecology of the Shorelines.
1. Development Guidelines.
a. Leave undeveloped those areas which contain a unique or fragile natural resource.
b. Prevent erosion and sedimentation that would alter the natural function of the water system. In areas where erosion and sediment control practices will not be effective, excavations or other activities which increase erosion are to be severely limited.
c. Restrict or prohibit public access onto areas which cannot be maintained in a natural condition under human uses.

Staff comment: No shoreline riparian and habitat features would be affected by the proposed project. DNR has developed a "Low Effect" Habitat Conservation Plan (HCP) to ensure that geoduck harvest activities under the state's management are in compliance with the Endangered Species Act (ESA), and that the harvests are conducted in a manner that protects threatened and endangered species. The HCP covers the harvest of naturally occurring geoduck on state-owned beds under marine waters; geoduck raised and harvested under aquacultural practices are not included.

E. Increase Public Access to Publicly Owned Areas of the Shorelines.
1. Development Guidelines.
a. Give priority to developing paths and trails to shoreline areas, linear access along the shorelines, and to developing upland parking.
b. Locate development inland from the ordinary high water mark so that access is enhanced.

Staff comment: The project is water dependent; thus, no land based activities are considered within this proposal.

F. Increase Recreational Opportunities for the Public on the Shorelines.
1. Development Guidelines.
a. Plan for and encourage development of facilities for recreational use of the shorelines.
b. Reserve areas for lodging and related facilities on uplands well away from the shorelines with provisions for nonmotorized access to the shorelines.

Staff comment: Not applicable to this proposal.

KCC 22.16.050 Natural Shoreline Environment Designation. (Blake Island)
The purpose of the natural environment is to preserve and restore natural systems existing relatively free of human influence. To maintain the integrity of this environment, severe restrictions on the intensities and types of uses permitted in such areas are required. A natural environment is an area having a unique asset or feature considered valuable for its natural or original condition which is relatively intolerant of intensive human use.

Such areas may be identified by one or more of the following:
(1) Areas best representing undisturbed natural conditions or natural systems;
(2) Areas providing critical habitats;
(3) Areas playing an important part in maintaining the ecological balance of the region's natural systems; and
(4) Areas possessing high values for scenic and passive recreational or educational uses.

Management Policies. The following policies should be applied to any permissible uses occurring in the natural environment:
(1) Because natural environments are intolerant of human use, they should remain relatively free of human influence;
(2) When human influence and development are permitted, the impacts should be capable of easy restoration to the original natural condition;
(3) Any activity which would bring about a change in the existing situation should be allowed only if the change would contribute to the preservation of the existing character.
(4) Those uses which enhance access for passive recreational use should be encouraged so long as they do not adversely impact the integrity of the natural system and environment.

KCC 22.16.060 Conservancy Shoreline Environment Designation.
(Portion of Apple Cover Point North Tract)
The purpose of the conservancy environment is to protect, conserve and manage existing natural resources and valuable historic and cultural areas in order to ensure a continuous flow of recreational benefits to the public and to achieve sustained resource utilization. Another purpose is to protect fish and wildlife habitat and environmentally sensitive areas. A conservancy environment is an area intended to protect, conserve and maintain its existing character. Non-consumptive uses which can utilize resources on a sustained-yield basis while minimally reducing opportunities for future uses are preferred.

Such areas may be identified by one or more of the following:

(a) Areas that can be managed on a sustained-yield basis while minimally reducing opportunities for other future uses of the resources of the area.
(b) Areas presenting severe biophysical limitations. Typical biophysical limitations include steep slopes, biological wetlands, areas prone to flooding, areas prone to landsliding, and areas with inadequate water supply or sewage disposal capabilities.
(c) Areas which present potential for current or future community recreational needs and are located near existing or potential population centers.
(d) Areas important to regional ecological balance, such as areas rich in quality and quantity of life forms, areas important to the maintenance of natural water quality and flow, or areas important to maintaining the food chain process such as estuaries, riparian corridors, and wetlands.

The following policies should be applied to any permissible uses occurring in the conservancy environment:
(a) Uses of a non-permanent nature which do not substantially degrade the existing character of the areas should be encouraged.
(b) Non-consumptive uses should be encouraged.
(c) Development should be limited to those proposals which demonstrate preservation of environmentally sensitive features.

KCC 22.16.070 The rural environment designation.
(Vinland Tract and portions of the Apple Cove Point North Tract)
The purpose of the rural environment is protect agricultural land from urban expansion, restrict intensive development along undeveloped shorelines, function as a buffer between urban areas, and maintain open spaces and opportunities for recreational uses compatible with agricultural and forestry uses. A rural environment is an area having low residential densities, limited access to utilities such as sewer and water, open space, and areas modified from their natural vegetative cover and surface drainage patterns but generally supporting low intensity development, and areas possessing valuable mineral deposits.

The following policies should be applied to any permissible uses occurring in the rural environment:
(1) New developments in rural environments should reflect the character of the surrounding area by limiting residential density, providing permanent open space, and providing substantial setbacks from shorelines; and
(2) Public recreation facilities are encouraged, including water access, pedestrian trails and recreational viewing areas with minimal impact to the natural environment.
(3) Sensitive shorelines should be protected through vegetation management, maintenance and erosion control regulations.
(4) Developments should be compatible with uses and activities in adjacent environments.

KCC 22.16.080 The Semi-Rural Shoreline Environment Designation.
(Coon Bay and Port Gamble Tracts)
The purpose of the semi-rural environment is to promote the utilization of an area by multiple human uses on a scale between that of the rural and urban environments. In

conjunction with these uses, however, it is intended that certain aspects of the natural environment be retained. The semi-rural environment is an area where the predominant feature is the modification of the environment by the action of man but which still possesses some rural character. The semi-rural environment is distinguished from the urban environment by having primarily moderate residential uses.

The following policies should be applied to any permissible uses occurring in the semi-rural environment:

(1) Modifications to the environment should harmonize, whenever possible, with pre-existing natural conditions.
(2) Development patterns and specific uses and activities should retain significant existing natural features.
(3) Active recreational facilities should be encouraged.
(4) To the maximum extent possible, with respect to human utilization, development within shoreline areas should strive to maintain, preserve or enhance natural shoreline characteristics.

Staff comment: Staff finds that the proposal is consistent with the Natural, Conservancy, Rural and Semi-Rural Shoreline Environments. With regards to the Natural Environment, the State has conducted extensive environmental review of geoduck harvesting. Impacts are temporary. The geoduck is proposed for human consumption. The State finds that the site has high qualities for geoduck harvesting. The environmental documents adopted by the County (referenced earlier in this report) were authored by agencies with substantial experience on impacts to fish and wildlife. They find the proposal is acceptable. The County defers to their expertise. Navigation would not be restricted. The operation would be visible and impact the aesthetics of the area. However, impacts would be temporary in nature, occur only during daylight, and not on weekends. No structures would be involved.

The County's development regulations are contained within the Kitsap County Code (KCC). The following development regulations are most relevant to this application:

Section 22.08.010 of the Kitsap County Shoreline Management Master Program provides that no substantial development shall be undertaken on the shoreline of the state without first obtaining a substantial development permit (SDP). A "substantial development" shall mean any development of which the total cost or fair market value exceeds two thousand five hundred dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state. More recently, State law increased the fair market value level to $5,718.00. For the purposes of the proposed project, the January 4, 2007 Attorney General's Opinion (AGO), coupled with the Department of Ecology's consideration of DNR's Final Supplemental EIS (Exhibit 2) and Commercial Geoduck Fishery Management Plan (Exhibit 6), DNR's proposed wildstock fishery does not appear to constitute "development." The AGO (2007, No. 1) statement below illustrates clear distinction between "development" related to clam "harvest" versus "development" considering all of the activities (i.e. planting, raising) associated with an aquaculture operation:

"We find no indication that the Shoreline Management Act (SMA) has ever treated clam harvesting, alone, as development. Moreover, it would lead to a burdensome and apparently unintended consequence where substantial development permits would be required for all significant clam beds, both commercial and recreational." (AGO 2007 No. 1, p.8)

Based on the above AGO findings the County has been advised by the Department of Ecology that a shoreline substantial development permit is not be applicable for this proposal.

Under KCC 22.28.020, Unidentified use activities, however, shoreline use activities not specifically identified and for which policies and regulations have not been developed will be evaluated on a case-by-case basis and will be required to satisfy the goals and general development policies of the master program, the policy of the Shoreline Management Act and shall be consistent with the management policy and character of the shoreline environment in which they propose to locate and shall require a conditional use permit.

KCC 22.08.020 Conditional use permit.
"Conditional use" means a use, development, or substantial development which is classified as a conditional use or is not classified within the master program (WAC 173-27-160). Requests for deviating from the permitted uses in a shoreline area require a conditional use permit. Such requests shall be evaluated using the criteria set forth in WAC 173-27-160. The applicant must supply whatever evidence, information, or agreements that are necessary to evaluate the proposal. Shorelines conditional use permits shall be granted only after the applicant can demonstrate all of the following:
(1) That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;
(2) That the proposed use will not interfere with the normal public use of public shorelines;
(3) That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the Comprehensive Plan and Shoreline Management Master Program;
(4) That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
(5) That the public interest suffers no substantial detrimental effect.
All applications for shoreline conditional use permits shall be forwarded to the Department of Ecology pursuant to WAC 173-27-200, for final approval, approval with conditions, or denial. No approval or disapproval shall be considered final until it has been acted upon by the Department of Ecology.

Staff Comment: The proposal has been reviewed for consistency with the above criteria, and has been found to be in conformance with the requirements to process as a Shoreline Conditional Use permit.

Further analysis under KCC 22.28.020 and 22.08.020: This fishery is unique for the high degree of scientific management of the resource. The WDFW determines allowable

harvest, and establishes measures to protect the environment. DNR manages the harvest and ensures the harvesters are in the right place, harvesting the right way, and that all geoducks harvested are accounted for.

The boundaries of the harvest area are marked with buoys. In addition, DNR has a monitor vessel on site at all times, and monitors the location of each harvest with GPS technology. Further, DNR divers regularly dive the site to make sure the harvest has been conducted properly. DNR vessel regularly monitors noise levels to ensure they are in compliance with regulations. Above-water noise levels from compressors and communication devices from the State commercial geoduck fishery are limited to less than 50 decibels at 200 yards. Most vessels usually run their diesel engines at idle and run a power take off from the engine for air to the dive. Compressors are not usually utilized by most vessels unless it is a back-up. Diver breathing noise is eliminated by utilizing a non-loudspeaker system which eliminates the broadcast conversations and breathing noises. The Tribes still utilize the traditional loudspeaker systems. Pump intakes are screened and the water-jets fully comply with County regulations. How the harvest boats get to the tract, and what they do after harvest, is generally considered a regular "navigation and commerce" use of public waters. They are required to leave the tract after harvest. DNR does control where harvesters offload the geoduck, and it must be approved by DNR and included in the Plan of Operations, which is part of the harvest contract. In terms of notice, DNR does another SEPA notice for each auction which is site and timeframe specific, and includes the Invitation to Bid and Environmental Assessments for each harvest site. The notice DNR gives to upland property owners is in the Legal Notices section of a newspaper with circulation for that area. That SEPA also goes to County and State entities, Tribes, and Coast Guard. They also post the information on their website. This all occurs two (2) months ahead of the harvest.

Waters surrounding the five geoduck tracts are used by recreational, commercial and U.S. Navy vessels. The waters in closest proximity to the tracts are used by smaller vessels. Due to the shallow nature of geoduck harvesting, this fishery should not result in any significant navigational conflicts. U.S. Coast Guard regulations, including notices of security zones, will be reviewed by DNR prior to beginning a round of harvesting. DNR will notify the local boating community of the presence of the geoduck boats.

According to the applicant, this is perhaps the most scientifically and closely-managed fishery in Puget Sound. Wild geoducks are harvested in the same manner, and with the same habitat impact, throughout Puget Sound and the Straits. The State voluntarily requested a review of their management of the fishery from the Federal Agencies charged with the protection of environmentally sensitive species and the habitat they depend on. A Habitat Conservation Plan (HCP) was submitted to the National Marine Fisheries Service (NMFS) and United States Fish and Wildlife Service (USFWS) collectively known as the Federal Services, who in the *Consultation Biological Opinion* determined that "For this proposed action, the underlying activities have inherently low impacts on the affected species' distribution, abundance, and the habitats they depend upon. Finally, issuing the Incidental Take Permit (ITP) based on the proposed HCP would contribute to the long-term survival of the covered species."

This fishery has also received an "Endangered Species Act – Section 7 Consultation Biological Opinion, Conference Opinion, Unlisted Species Analysis, Section 10(a)(2)(B) Findings and Magnuson-Stevens Fisheries Conservation and Management Act Essential Fish Habitat Consultation, dated December 15, 2008" from the Federal Services on the State's management of the fishery. The use has been approved and two permits have been issued; Permit 1608 from NMFS and Permit PRT-TE 187810-0 from USFWS. These are dynamic documents, which require annual reports and meetings with both federal agencies to discuss the past and current year's fishery.

In addition, the State (DNR and WDFW) have produced several programmatic and site specific environmental documents regarding the impacts and management of this fishery:

- The *Final Supplemental Environmental Impact Statement (FSEIS)* in 2001 with Appendices, including a sediment study
- The *Fishery Management Plan,* updated in 2008.
- The *Habitat Conservation Plan* created in 2008.
- *The Effect of Commercial Geoduck (Panopea abrupta) Fishing on Dungeness Crab (Cancer magister) Catch Per Unit Effort in Hood Canal, Washington* , Published in 2007
- Environmental Assessments for each active tract, and re-evaluated each year.
- Maps of each active tract.

The 2009 Washington State Department of Fish and Wildlife (WDFW) site specific Environmental Assessment for these tracts can be found in Exhibit 24. In general, wildstock geoduck beds are generally devoid of rocky outcroppings and other relief features that attract and support fish, such as rockfish and lingcod. The bottoms are relatively flat and composed of soft sediments which provide few attachments for macroalgae, which also is associated with rockfish and lingcod.

WDFW marine fish managers were asked of their concerns of any possible impacts on groundfish and baitfish that geoduck fishing would have. Greg Bargmann from the Fish Management Program, in a letter dated April 3, 1992, stated that geoduck fishing would have no long-term detrimental impacts and may have some short term benefits to flatfish populations by increasing the availability of food. Dan Penttila of the WDFW Fish Management Program, in a memo dated October 31, 1995, recommended that eelgrass beds within harvest tracts should be preserved for any spawning herring.

WDFW and DNR have studied the effects of geoduck harvest on the population of Dungeness crab at Thorndyke Bay in Hood Canal. The results of 4.6 years of study have shown no adverse effects on crab populations due to geoduck fishing. Dungeness crab is found in the five tracts in low to moderate numbers.

The major impact of harvest would be the creation of small holes where the geoducks are removed. The holes fill in within a few days to several weeks and have no long-term

effects. The substrate holes refill in areas with strong water currents much faster than in areas with weak currents. Water currents are moderate to strong at the five geoduck tracts.

In the FSEIS, "a semi-empirical technique relating sediment grain size, wave height, and wave period to the likelihood of beach deposition shows that depositions of fine suspended sediment in the intertidal zone on Puget Sound beaches is highly unlikely." This study also shows that "fine grained marine sediment regains most of its sheer strength within 1-2 days of deposition. Presumably within a few days of deposition, this re-deposited sediment will be no more susceptible to erosion than the original substrate." Muddy substrate is likely a result of hydrogeology, not geoduck harvest.

The reference to "divots in the mud" may be attributed to feeding grey whales. In the WDFW Environmental Assessment "Several species of marine mammals; including seals, sea lions, and harbor porpoise; are observed in the vicinity of this geoduck tract. There have also been sporadic reports of gray whales feeding in northern Hood Canal."

Coon Bay and Port Gamble geoduck tracts:

These tracts were most recently surveyed in 2008 and 2009 by WDFW and the biomass estimate for the 190 acre harvest area (Port Gamble) and 104 acre harvest area is 4,771,000 and 3,294,000 pounds respectively.

There are Pacific herring spawning grounds along the northeastern shoreline of Hood Canal in the vicinity of the Coon Bay Tract. Along the shorelines in the vicinity of Port Gamble and Coon Bay, herring spawning timing is reported to occur between mid January through mid April. Based on a nearshore tract boundary of -25 feet (MLLW), geoduck fishing on these two tracks should have no detrimental impacts to herring.

Sand lance have been documented near these tracts. There is substantial vertical separation between sand lance spawning (+5 feet to mean higher high water) and geoduck harvest activity (-18 feet to -70 feet, MLLW). Geoduck fishing on these tracts should have no detrimental impacts on sand lance spawning.

An eelgrass dive survey done on these tracts in 2008 by WDFW divers swimming the entire shoreward boundary of the tracts and eelgrass was documented at a maximum depth of -18 feet MLLW. The shoreward boundary of these tracts will be no shallower than -25 feet MLLW water depth contour, which should provide sufficient buffer for any eelgrass beds in the vicinity of the tracts.

Vinland geoduck tract:

The 139 acre Vinland tract has a biomass estimate of 3,422,000 pounds.

The Vinland Tract is not located within documented herring spawning grounds and sand lance were not reported.

An aquatic dive survey done on this tract by WDFW documented a nearly continuous band of eelgrass extending to -18 feet water depth. The shallow boundary of geoduck harvest is set at least two vertical feet deeper and seaward of the deepest occurrence of eelgrass to protect all eelgrass from harvest activity. The shoreward boundary of the Vinland Tract will be no shallower than the -20 foot depth contour (MLLW).

Apple Cove Point North geoduck tract
The 253 acre Vinland tract has a biomass estimate of 2,405,000 pounds.

There are no documented Pacific herring spawning grounds along the eastern shoreline of Kitsap Peninsula in the vicinity of the Apple Cove Point North Geoduck Tract.

Sand lance have been documented near this tract and were also observed during the geoduck surveys. There is substantial vertical separation between sand lance spawning (+5 feet to mean higher high water) and geoduck harvest activity (-18 feet to -70 feet, MLLW). Geoduck fishing on this tract should have no detrimental impacts on sand lance spawning.

A 1997 WDFW eelgrass dive survey documented to a maximum depth of -23 feet MLLW. The nearshore tract boundary will be along the -25 foot MLLW water depth to provide a vertical buffer between the eelgrass beds and the geoduck harvest.

Blake Island North geoduck tract
The 146 acre Vinland tract has a biomass estimate of 1,290,000 pounds.

There are no documented Pacific herring spawning grounds along the northern shoreline of Blake Island in the vicinity of the Blake Island North Geoduck Tract. Surf smelt spawning has been identified in the vicinity of Manchester, but not along this tract. Pacific sand lance have been documented along the northwestern shoreline of Blake Island. There is substantial vertical separation between sand lance spawning (+5 feet to mean higher high water) and geoduck harvest activity (-18 feet to -70 feet, MLLW). Geoduck fishing on this tract should have no detrimental impacts on Pacific herrings, sand lance, or surf smelt spawning.

A 1996 WDFW eelgrass dive survey documented eelgrass along this tract to a maximum depth of -20 feet MLLW. A 2 foot vertical buffer will be established between the observed eelgrass and the shoreward boundary of this tract. Geoduck harvest will be no shallower than the -22 foot water depth, which should provide sufficient buffer for any eelgrass beds in the vicinity of the Blake Island North tract.

Staff Evaluation of Decision Criteria:
1. The Hearing Examiner has review authority for this Shoreline Conditional Use Permit application under KCC, Sections 17.421.020 and 21.04.030. The Kitsap County Commissioners have determined that this application requires review and approval of the Hearing Examiner. The Hearing Examiner may approve, approve with conditions or deny a Conditional Use Permit. The Hearing Examiner may also continue the hearing to

allow for additional information necessary to make the proper decision. The powers of the Hearing Examiner are at KCC, Chapter 2.10.

2. The proposal is consistent with the comprehensive plan.

3. The proposal complies with or will comply with requirements of Title 17 and complies with or will comply with all of the other applicable provisions of the KCC and all other applicable regulations, including all applicable development standards and design guidelines, through the imposed conditions outlined in this report.

4. The proposal will not be materially detrimental to uses or property in the immediate vicinity.

5. The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing character, appearance, quality or development, and physical characteristics of the immediate vicinity.

Recommendation:
Based upon the information above, the Department of Community Development recommends that the Shoreline Conditional Use permit request for the Washington State Geoduck Wildstock Fishery Harvest be approved, subject to the following conditions:

Conclusions:
1. The Hearing Examiner has review authority for this Shoreline Conditional Use Permit application under the Kitsap County Code (KCC), Sections 21.04.03 and Sections 22.08.070.

2. Based on above analysis and findings, Staff recommends **APPROVAL** of the Shoreline Conditional Use Permit application for the Washington State Geoduck Wildstock Fishery Harvest in Kitsap County. The wildstock geoduck harvests would not significantly impact or threaten the surrounding environment, the natural character or nearby wildlife. The public interest would suffer no substantial detrimental effect and the proposed project would not pose a significant threat to the health and safety of nearby residents either. The public and environmental health, safety and well being are well protected by the previously described regulatory framework, by ongoing monitoring and by reporting processes which aid in preventing any long term negative impacts from occurring.

Staff Conditions:
1. All State and Federal permits shall be obtained and conditions of those permits are incorporated into this local permit.

2. The wildstock geoduck fishery harvest shall be maintained and operated in a neat and orderly manner.

3. The adjoining neighbors shall be informed of upcoming harvest activities at least five days in advance.

4. Noise from pumps, generators, and other mechanical devices, radios, etc., should be minimized and be consistent with Kitsap County and State of Washington noise standards. Allowable noise thresholds should consider the potential for harvest noise to affect nearby residences.

5. Upon final permit issuance, construction will commence within two years of the effective date of the Shoreline Conditional Use Permit as defined by WAC 173-27-090 (3), provided that the Kitsap County Hearing Examiner may authorize a single extension for a period not to exceed one year based on reasonable factors if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the Department of Ecology. Permit authorization to harvest wildstock geoduck will terminate five years after the effective date of the Shoreline Conditional Use Permit as defined by WAC 173-27-090 (3), provided that the Kitsap County Hearing Examiner may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the Department of Ecology. No exceptions are allowed unless provided for by law.

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