

Adopted: 12/11/13

SNOHOMISH COUNTY COUNCIL

Effective:

SNOHOMISH COUNTY, WASHINGTON

ORDINANCE NO. 13-098

AN ORDINANCE RELATING TO THE REGULATION OF AQUACULTURE ACTIVITIES,  
AMENDING PORTIONS OF THE SNOHOMISH COUNTY SHORELINE MANAGEMENT PROGRAM,  
CHAPTERS 30.44, 30.67 AND 30.91A SCC AND RESOLVING AN APPEAL OF THE COUNTY'S  
SHORELINE MANAGEMENT PROGRAM

WHEREAS, Washington's Shoreline Management Act (SMA) (Chapter 90.58 RCW) was adopted by the public in a 1972 referendum "to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines"; and

WHEREAS, the Snohomish County Shoreline Management Master Program (SMMP) was adopted by County resolutions on September 25, 1974, and September 30, 1974; and

WHEREAS, in 1995, the Washington State Legislature directed the Washington State Department of Ecology (Ecology) to adopt updated shoreline master program guidelines (Guidelines) (Chapter 173-26 WAC (Part III)) consistent with SMA policy. The Guidelines, effective January 17, 2004, establish minimum standards for local shoreline master programs and require integration of shoreline and growth management plans and regulations; and

WHEREAS, the state adopted further updates to the Guidelines addressing aquaculture activities within shorelines of the state (WAC 173-26-241(3)(b)) on February 11, 2011; and

WHEREAS, the updated SMMP, now known as the Snohomish County Shoreline Management Program (SMP), was adopted by the County Council via Amended Ordinance No. 12-025 on June 6, 2012, and approved by Ecology on July 13, 2012; and

WHEREAS, a timely appeal was filed with the Washington State Growth Management Hearings Board (GMHB) on September 26, 2012, under Case No. 12-3-0009, by the Pacific Coast Shellfish Growers Association (PCSGA) appealing Ecology's approval of the County's SMP, specifically addressing concerns about shoreline regulations related to commercial shellfish aquaculture activities; and

WHEREAS, with the concurrence of the GMHB, the County agreed to work with Ecology and PCSGA to revise the SMP regulations related to commercial shellfish aquaculture to achieve better alignment with the state's newly adopted Guidelines addressing aquaculture; and

WHEREAS, the County Council desires by this legislative action to amend certain shoreline regulations to better reflect the state's vision of aquaculture as expressed in the Washington Shellfish Initiative announced by former Governor Gregoire on December 9, 2011, and to resolve the appeal of the County's Shoreline Master Program that is currently pending before the GMHB;

NOW, THEREFORE, BE IT ORDAINED:

**Section 1.** The foregoing recitals are incorporated herein as findings of fact as if set forth in full.

**Section 2.** The County Council makes the following additional findings of fact:

- A. Adoption of this ordinance is necessary to fulfill the settlement agreement with Ecology and the PCSGA resolving the PCSGA's appeal to the GMHB, Case No. 12-3-0009, and to make the County's aquaculture regulations consistent with the Washington Shellfish Initiative.
- B. The proposal to allow commercial shellfish aquaculture within critical saltwater habitats subject to shoreline conditional use permit standards and requirements is consistent with the SMA, the Guidelines, and the Washington Shellfish Initiative, and the policies in the SMP.
- C. The proposal to amend Chapters 30.44, 30.67 and 30.91A SCC is necessary to modify existing regulations to establish procedures and standards for the review, conditioning and approval of shoreline conditional use permits for commercial shellfish aquaculture to satisfy SMA requirements to protect critical saltwater habitats and achieve no net loss of shoreline ecological functions.
- D. This matter is exempt from Snohomish County Planning Commission review pursuant to SCC 30.73.040(2)(d) and RCW 36.70A.130(2)(b).
- E. The County issued a SEPA addendum on November 6, 2013, for the purpose of disclosing any additional environmental impacts from the adoption of amendments to Title 30 SCC.
- F. The County Council held a public hearing on December 11, 2013.

**Section 3.** The County Council makes the following conclusions:

- A. The amendments adopted by this ordinance are consistent with the GMACP.
- B. The amendments adopted by this ordinance are consistent with the SMA.
- C. The amendments adopted by this ordinance are consistent with the SMP and with the procedures adopted in Chapter 30.44 SCC for review, conditioning and issuance of shoreline permits.
- D. The County complied with state and local public participation requirements under the GMA and Chapter 30.73 SCC.
- E. The County Council considered the entire hearing record, written testimony received during the public comment period and oral testimony given during a public hearing before the County Council.

**Section 4.** The County Council bases its findings and conclusions on the entire record, including all testimony and exhibits. Any finding which should be deemed a conclusion and any conclusion which should be deemed a finding is hereby adopted as such.

**Section 5.** A new section is added to Chapter 30.44 of the Snohomish County Code to read:

**30.44.145 Additional review criteria for shoreline conditional use permits – Aquaculture**

In addition to the shoreline permit requirements and review criteria in chapter 30.44 SCC, shoreline conditional use permits for aquaculture activities are subject to the requirements in SCC 30.67.510.

**Section 6.** Snohomish County Code Section 30.67.430, adopted by Amended Ordinance No. 12-025 on June 6, 2012, is amended to read:

**30.67.430 Allowed and conditional uses and modifications.**

(1) The shoreline uses and shoreline modifications identified in Table 1 are either permitted, conditionally allowed or prohibited within the specific shoreline environment designation as indicated by the following:

- (a) "P" indicates that the use or modification is permitted;
- (b) "C" indicates that the use is allowed subject to a shoreline conditional use permit;
- (c) "P or C" indicates that the overwater portion of the use or modification is permitted in the Aquatic shoreline environment designation where permitted in the adjacent upland environment, subject to a shoreline conditional use permit in the Aquatic shoreline environment designation where conditional in the adjacent upland environment and prohibited in the Aquatic shoreline environment designation where prohibited in the adjacent upland environment; and
- (d) A blank cell in the table indicates that the use or modification is prohibited in that specific shoreline environment.

(2) Compliance with chapters 30.22 and 30.23 SCC is also required.

(3) Uses and modifications identified in Table 1 are subject to the shoreline use and modification development standards in Part 500 of this chapter. If there is a conflict between the information in SCC 30.67.430, Table 1, and the specific use and modification regulations in SCC 30.67, Part 500, the requirements of SCC 30.67, Part 500 shall prevail.

(4) The department may condition shoreline permits or approvals for uses or modifications as necessary to ensure compliance with:

- (a) Chapter 90.58 RCW and the provisions in this chapter;

(b) The policies in the *Shoreline Management Program: Shoreline Environment Designations, Policies and Regulations*; and

(c) Any other applicable federal, state and local rules and regulations.

(5) Uses or modifications not listed in SCC 30.67.420 or 30.67.430(1), Table 1, must obtain a shoreline conditional use permit even though the use or modification may not require a shoreline substantial development permit.

30.67.430 - Table 1: Shoreline Use and Modification Matrix

Land use or modification	Shoreline Environment Designation						
	Urban	Urban Conservancy	Rural Conservancy	Resource	Municipal Watershed Utility <sup>1</sup>	Natural	Aquatic <sup>2</sup>
<b>Agricultural activities</b> <sup>3</sup>	P	P	P	P		C	C
Manure lagoons	C		P	P			
Livestock flood sanctuaries	P	C	P	P			
<b>Aquaculture</b> <sup>4,12</sup>							
Non-Commercial Activities (non-processing) <sup>36</sup>	P	P	P	P	P <sup>35</sup>	P	P
Commercial Activities (non-processing)	((P)) C		C	C			C <sup>37</sup>
Processing <sup>7</sup>	((P)) C		((P)) C	((P)) C	P <sup>35</sup>		P <sup>7</sup>
<b>Boating Facilities:</b> <sup>4, 13</sup>							
Marina	P		C				C
Yacht / boat club	P		C				C
Boat launch facility	P		P	P			P or C
- Boat launch facility (boat ramp only)	P	C	P	P	P	C	P or C
Dock (private)	P	C	P	C			P or C

Boathouse (private)	P		P	C			P or C
Dock / pier / boathouse (public, commercial)	P		P	C			C
Floats, mooring buoys	P	C	P	P			P or C
<b>Breakwaters, jetties, groins, other in-water structures</b> <sup>4, 5, 14</sup>	C, P	P	C, P	C, P	P	C	C, P
<b>Commercial</b> <sup>10, 15</sup>	P		P	P			C
<b>Dredging</b> <sup>4, 16</sup>					C		C
<b>Dredge spoil disposal</b> <sup>4, 16</sup>	C	C <sup>b</sup>	C	C	C	C <sup>b</sup>	C
<b>Fill</b> <sup>4, 17</sup>	P	C, P <sup>b</sup>	P	P	P	C, P <sup>b</sup>	C, P <sup>b</sup>
<b>Flood protection:</b> <sup>4, 18</sup>							
Non-structural	P	P	P	P	P	P	C, P <sup>b</sup>
Structural <sup>11</sup>	P	P <sup>b</sup>	P	P	P		C, P <sup>b</sup>
<b>Forestry</b> <sup>8, 19</sup>	P, C	P, C	P, C	P, C	P, C	P, C	C <sup>30</sup>
<b>Industrial and Ports</b> <sup>10, 20</sup>	P		P	P			C
<b>Institutional uses</b> <sup>21</sup>	P		P	C			C
<b>Mining</b> <sup>6, 22</sup>	C	C	C	C, P <sup>9</sup>	C, P <sup>9</sup>	C	C
<b>Pedestrian access</b> <sup>23</sup>							
Trails	P	P	P	P	P	P	
Elevated or Floating walkways <sup>4</sup>	P	P	P	P			P
Stairways, trams	P	C	P	P			
<b>Recreation</b> <sup>24</sup>	P	P	P	P	P	P	P
<b>Residential</b> <sup>25</sup>							
SFR, MH	P	P	P	P		C	
Duplex	P	C	P	P			
MF, townhouse, Single-Family Detached Units	P						
Mobile home park	P	C	C	C			
Houseboat, Live-aboard vessel							P <sup>31</sup>
Floating Home							

<b>Shoreline / bank stabilization:</b> <sup>4, 26</sup>							
Nonstructural	P	P	P	P	P	C	C, P <sup>b</sup>
Structural <sup>5, 11</sup>	C, P	P	C, P	C, P	C, P		C, P
<b>Shoreline habitat restoration or enhancement</b> <sup>27, 34</sup>	P	P	P	P	P	P	P
- Mitigation Banks <sup>34</sup>	C	C	C	C			C
<b>Transportation facilities</b> <sup>28</sup>							
Bridges	P	C	P	P	C, P <sup>32</sup>		C, P <sup>32</sup>
Roads	P	C	P	P	C, P <sup>32</sup>		
Parking (incidental to use only)	P	C	P	P	C	C	
<b>Utility facilities</b> <sup>29</sup>							
Electromagnetic transmission and receiving facilities (generally)	P	C	C	C	C		
Transmission wires, pipes, supports (generally)	P	C	P	P	P	C	C
- transmission wires or pipes when suspended from bridge or other similar structures (specifically)	P	P	P	P	P	P	P
Dams, power plants and associated uses			C	C	C		C
All other utility facilities	P		C	C	C		C

**Section 7.** Snohomish County Code Section 30.67.440, adopted by Amended Ordinance No. 12-025 on June 6, 2012, is amended to read:

**30.67.440 Reference notes for shoreline use and modification matrix.**

(1) Uses in Municipal Watershed Utility are limited to utility uses associated with the hydroelectric project, reservoir water storage, forest practices and recreation as limited by the utility purveyor's Federal Energy Regulatory Commission (FERC) license. This area is zoned exclusively as Forestry (F).

(2) Only those water-dependent portions of the use that require an over-water or in-stream location are allowed in the Aquatic shoreline environment designation. Unless otherwise specified in SCC 30.67, Part 500, such uses are allowed in the Aquatic shoreline environment designation only if the use is allowed in the adjacent upland shoreline environment designation(s).

(3) Agricultural uses are subject to the requirements in SCC 30.67.505.

(4) Uses or modifications are not allowed in critical salt water habitat (~~((other than existing commercial shellfish beds,))~~) unless in conjunction with ecological restoration or enhancement projects, except as otherwise provided in SCC 30.67.510.

(5) Shoreline modifications are permitted only when in conjunction with ecological restoration or enhancement projects located outside of the Natural and adjacent Aquatic environments.

(6) Mining activities within shoreline jurisdiction are limited to the activities allowed pursuant to SCC 30.67.560(1)(a). Mining within the Aquatic shoreline environment designation is also subject to the conditions in SCC 30.67.530 - Dredging. Mining for the sole purpose of removing mineral resources for commercial sales or processing is prohibited in shoreline jurisdiction.

(7) Aquaculture processing in the Aquatic shoreline environment is limited per the requirements in SCC 30.67.510(2)(g)(iii).

(8) A conditional use permit is required for timber harvest exceeding 30 percent of the timer volume within 200 feet landward of the ordinary high water mark of shorelines of statewide significance pursuant to SCC 30.67.545(1)(a)(iii).

(9) Mining activities related to forest practices as defined in SCC 30.67.560(1)(a) are permitted in the Resource or Municipal Watershed Utility shoreline environment designations when over 200 feet from the OHWM and outside of the channel migration zone. Removal of mineral resources deposited within the previous 12-month period on designated farmlands due to recent flood events is permitted in the Resource shoreline environment designation under SCC 30.67.540(2)(d).

(10) Non-water dependent commercial and industrial uses within shoreline jurisdiction shall be strictly limited under SCC 30.67.525(1)(b) and 30.67.550(1)(b).

(11) Structural flood protection and structural shoreline or bank stabilization measures are allowed only when non-structural measures would be inadequate as documented by a geotechnical report required pursuant to SCC 30.67.540(1) or 30.67.575(1). If a flood protection structure is in or near the water, it must also meet the requirements for shoreline stabilization.

(12) Aquaculture uses are subject to the requirements in SCC 30.67.510.

- (13) Boating facilities are subject to the requirements in SCC 30.67.515.
- (14) Breakwaters, jetties, groins, other in-water structures are subject to the requirements in SCC 30.67.520.
- (15) Commercial uses are subject to the requirements in SCC 30.67.525.
- (16) Dredging and spoil disposal are subject to the requirements in SCC 30.67.530.
- (17) Fill is subject to the requirements in SCC 30.67.535.
- (18) Flood protection measures are subject to the requirements in SCC 30.67.540.
- (19) Forestry is subject to the requirements in SCC 30.67.545.
- (20) Industrial uses and ports are subject to the requirements in SCC 30.67.550
- (21) Institutional uses are subject to the requirements in SCC 30.67.555.
- (22) Mining is subject to the requirements in SCC 30.67.560.
- (23) Pedestrian access is subject to the requirements in SCC 30.67.330.
- (24) Recreation is subject to the requirements in SCC 30.67.565.
- (25) Residential uses are subject to the requirements in SCC 30.67.570.
- (26) Shoreline and bank stabilization measures are subject to the requirements of SCC 30.67.575.
- (27) Shoreline habitat restoration and enhancement are subject to the requirements of SCC 30.67.580. Notwithstanding SCC 30.67.430(2), shoreline habitat restoration or enhancement projects do not have to be identified on the use matrices in chapter 30.22 SCC to be permitted in shoreline jurisdiction.
- (28) Transportation facilities are subject to the requirements of SCC 30.67.590.
- (29) Utility facilities are subject to the requirements of SCC 30.67.595.
- (30) Timber removal from the Aquatic shoreline environment designation is subject to the requirements in SCC 30.67.545(2)(c).
- (31) Moorage of houseboats used as a primary residence and live-aboard vessels are permitted only in marinas or in waters of the state subject to a lease or permission from the state Department of Natural Resources. See SCC 30.67.570(2)(g).

(32) Roads and bridges constructed for forest practices in accordance with Title 222 WAC are permitted in the Municipal Watershed Utility environment. Bridges constructed for forest practices in accordance with Title 222 WAC are permitted in the Aquatic environment except when the adjacent environment is designated Natural.

(33) Bridges are conditionally permitted in the Aquatic environment provided they are permitted or conditionally permitted in the adjacent upland environment.

(34) Mitigation banks are subject to the requirements in SCC 30.62A.550. Notwithstanding SCC 30.67.430(2), mitigation banks do not have to be identified on the use matrices in chapter 30.22 SCC to be permitted in shoreline jurisdiction. Restoration, enhancement, mitigation activities and mitigation banks are allowed within the channel migration zone per SCC 30.67.060(2)(f).

(35) Aquaculture activities on Spada Lake are limited per the requirements in SCC 30.67.510(2)(e).

(36) Non-commercial aquaculture harvest activities, as defined in SCC 30.91A.255, are allowed in all shoreline environments and are not required to obtain shoreline permits.

(37) Commercial aquaculture activities in the Aquatic shoreline environment are limited per the requirements in SCC 30.67.510(2)(g)(ii).

**Section 8.** Snohomish County Code Section 30.67.510, adopted by Amended Ordinance No. 12-025 on June 6, 2012, is amended to read:

**30.67.510 Aquaculture.**

Aquaculture is defined in SCC 30.91A.255. Non-commercial aquaculture activities, as defined in SCC 30.91A.255, are allowed in all shoreline environments and are not required to obtain shoreline permits.

(1) The following general regulations apply to new commercial aquaculture activities and processing in shorelines:

(a) The location for new aquaculture activities shall be limited as follows:

(i) New shellfish aquaculture activities shall not be located in ((nearshore critical saltwater habitats except for in existing commercial shellfish beds, nor in accretion areas such as sandflats, mudflats, and)) pocket estuaries as identified in the Washington State Coastal Atlas as maintained by the Washington State Department of Ecology, unless the proposal will not adversely impact the estuary's ecological functions.

(ii) New shellfish aquaculture activities may be located in nearshore critical saltwater habitats provided that a critical area study is submitted per SCC 30.62A.140 documenting that ecological impacts can be avoided or minimized and mitigated to meet the standards in SCC 30.62A.310(3);

(iii) New commercial aquaculture should only be allowed where sediments, topography, land and water access support aquaculture operations without significant clearing or grading;

(iv) New finfish aquaculture shall not be located in nearshore critical saltwater habitats nor in accretion areas such as sandflats, mudflats, and pocket estuaries; and

(v) Aquaculture shall not be permitted in areas where it would result in a net loss of shoreline ecological function.

~~(b) Aquaculture activities ((must)) shall be designed to avoid ((loss of shoreline ecological functions and avoid impeding)) significant conflicts with navigation and other water-dependent uses.~~ When a new aquaculture activity is proposed, mitigation sequencing for shoreline ecological impacts shall be required per SCC 30.62A.310(3)(a);

~~(c) ((Over-water structures for aquaculture operations shall not extend beyond the mean low water mark a distance greater than the average length beyond the ordinary low water mark of all preexisting over-water structures within the 300 feet in either direction along the same shoreline. Where no preexisting structures exist within this range, over-water structures may extend beyond the mean low water mark the minimum distance necessary to accommodate the aquaculture activity provided that navigation is not impeded;))~~

~~((d))~~ No aquatic organism shall be introduced into Snohomish County without the prior written approval of the Director of the Washington State Department of Fish and Wildlife ~~((or the appropriate regulatory agency for the specific organism))~~ when required. If county approval is required for the initial introduction of an aquatic species, such approval shall not be required for repeated introductions. Introduction, for purposes of this section, shall mean the placing of any aquatic organism in any area within the waters of Snohomish County regardless of whether it is a native or resident organism within the county and regardless of whether it is being transferred from within or without the waters of Snohomish County;

(d) Permitted accessory structures typically associated with aquaculture shall be subject to the following:

(i) ((e)) Permitted accessory structures typically associated with aquaculture may include: rafts, floats, nets, net pens, access docks, piers, pilings, boat launches and upland storage structures ((-));

(ii) Jetties, groins, bulkheads, fill, shoreline stabilization measures, flow diversions, and breakwaters are not allowed in conjunction with aquaculture;

(iii) For accessory structures, the county may require a visual impact analysis. (See the Department of Ecology's "Aquaculture Siting Study" 1986, or more recent studies, for general approach). Depending on the size and complexity of the proposal, such analysis may be prepared by the applicant/proponent, without professional assistance, provided that it includes an adequate assessment of impacts;

(iv) For aquaculture projects using over-water structures, storage of necessary tools and apparatus waterward of the ordinary high water mark shall be limited to containers of not more than 3 feet in height, as measured from the surface of the raft or dock; provided that, in locations where the visual impact of the proposed aquaculture structures will be minimal, the county may authorize storage containers of greater height. In such cases, the burden of proof shall be on the applicant/proponent;

(v) Materials which are not necessary for the immediate and regular operation of the facility shall not be stored waterward of the ordinary high water mark;

(vi) Over-water structures for aquaculture operations shall not extend beyond the mean low water mark a distance greater than the average length beyond the ordinary low water mark of all preexisting over-water structures within 300 feet in either direction along the same shoreline. Where no preexisting structures exist within this range, over-water structures may extend beyond the mean low water mark the minimum distance necessary to accommodate the aquaculture activity provided that navigation is not impeded;

(vii) Aquaculture structures and equipment shall be of sound construction and shall be so maintained. Abandoned or unsafe structures and/or equipment shall be removed or repaired promptly by the owner. The county may abate abandoned or unsafe structures or equipment, following notice to the owner, if the owner fails to respond in thirty (30) days and the county may impose a lien on the related shoreline property or other assets in an amount equal to the cost of the abatement;

(viii) Construction materials that come in direct contact with the water shall not be treated or coated with toxic materials. Untreated wood, precast concrete, plastic or nontoxic alternatives shall be used unless the project proponent demonstrates and the county determines that there is no feasible alternative to toxic construction materials that will provide the structural characteristics necessary for the project;

(ix) Finish treatments, including but not limited to paint, stain, waterproofer, pest preventatives and preservatives used on over-water structures or on structures within 25 feet of the ordinary high water mark shall not result in adverse impacts to water quality;

~~((f) Aquacultural processing shall be governed by the regulations in SCC 30.67.550. Commercial sales of aquacultural products shall be governed by the regulations in SCC 30.67.525;))~~

(x) ~~((g))~~ Floating, submerged and intertidal aquacultural structures and other similar structures ~~((shall))~~ should be located and designed to avoid significantly impacting navigation and other water-dependent uses. ~~((, including navigational access to waterfront property, pedestrian circulation along beaches, and navigation between such structures.))~~ Approval of such structures may include the following conditions ~~((to protect the public use and access to the water))~~:

(A) ~~((i))~~ Clustering or spacing of rafts to allow for small boat traffic within or through the facilities;

(B) ~~((ii))~~ Directional signage;

(C) ~~((iii))~~ Buoys marking the extent of the operation; ~~((and))~~

(D) ~~((iv))~~ Limits on the type, number, location and size of the facility and any accessory structures; and

(E) All floating and submerged aquaculture structures and facilities in navigable waters shall be marked in accordance with U.S. Coast Guard requirements;

(e) Aquacultural processing shall be governed by the regulations in SCC 30.67.550. Commercial sales of aquacultural products shall be governed by the regulations in SCC 30.67.525. No processing of any aquaculture product, except for the sorting or culling of the cultured organism and the washing or removal of surface materials or organisms after harvest, shall occur in or over the water unless specifically approved by permit and subject to the conditions in SCC 30.67.510(2)(g)(iii). All other processing and processing facilities shall be located above the ordinary high water mark;

(f) ~~((h))~~ In order to demonstrate no net loss of shoreline ecological functions, ~~((When))~~ when a ~~((federal, state or))~~ local permit is required for aquaculture activities, the department ~~((shall attach permit conditions requiring that aquaculture operators periodically monitor and report on))~~ may require monitoring and reporting for noise, odor, water quality, aquatic and benthic organism types and densities, current patterns and flows, flushing rates, prevailing storm wind conditions, impacts to wetlands and fish and wildlife habitats and other relevant environmental conditions as appropriate ~~((to the department))~~ on a schedule specified by the approving authority ~~((approving))~~ that issues the shoreline permit relating to the aquacultural activity. Monitoring shall not be

required for commercial aquaculture activity located in commercial shellfish beds except as may be necessary to ensure the protection of other critical saltwater habitats as defined in SCC 30.91C.362. Adverse impacts to other critical saltwater habitats shall be mitigated according to the mitigation sequence described in WAC 173-26-201(2)(e). The permit may be revoked by the approving authority for failure to monitor when required or if monitoring reveals unanticipated impacts that cannot be mitigated;

~~(( (i) Structures, equipment, wastes and material other than boats shall not be stored, disposed of or abandoned within shoreline jurisdiction;~~

~~((j) Construction materials that come in direct contact with the water shall not be treated or coated with toxic materials. Untreated wood, precast concrete, plastic or nontoxic alternatives shall be used unless the project proponent demonstrates and Snohomish County determines that there is no feasible alternative to toxic construction materials that will provide the structural characteristics necessary for the project; and~~

~~((k) Finish treatments, including but not limited to paint, stain, waterproofer, pest preventatives and preservatives used on over-water structures or on structures within 25 feet of the ordinary high water mark shall not result in adverse impacts to water quality.-))~~

(g) Aquaculture activities proposed within shorelines of statewide significance shall be subject to, first, the policies contained in SMP section 1.2.2, Shorelines of Statewide Significance, and, second, the policies and regulations contained in SMP section 3.2.5.2;

(h) The applicant/proponent shall demonstrate that the degree of proposed substrate modification is the minimum necessary for feasible aquaculture operations at the site;

(i) Aquaculture proposals that involve substantial substrate modification or sedimentation through dredging, trenching, digging, mechanical clam harvesting, or other similar mechanisms, shall not be permitted in areas where the proposal would adversely impact existing kelp beds or other macroalgae, and eelgrass beds;

(j) Permits for aquaculture operations approved on an experimental basis may include conditions reasonably limiting their size and duration; provided that the county may issue a new permit to continue the operations as many times as is deemed necessary and appropriate;

(k) Where aquaculture activities are authorized to use public facilities, such as boat launches or docks, the county shall reserve the right to require the applicant/proponent to pay a portion of the cost of maintenance and any required improvements commensurate with the use of such facilities;

(l) Aquaculture operations shall comply with all applicable federal and state regulations governing waste control, including but not limited to applicable provisions of the Federal Clean Water Act, Section 401, and the Washington State Water Pollution Control Act (chapter 90.48 RCW). No garbage, wastes or debris shall be allowed to accumulate at the site of any aquaculture operation;

(m) Predator control shall not involve the intentional killing or harassment of birds or mammals;

(n) In addition to the permit requirements contained in chapter 30.44 SCC, conditional use permit application submittal requirements for new commercial aquaculture and processing activities may also include the following:

(i) A narrative description and timeline for all anticipated planting and harvesting activities;

(ii) A baseline ecological survey of the proposed site to allow consideration of the ecological effects;

(iii) Measures to achieve no net loss of ecological functions consistent with the mitigation sequence described in SCC 30.62A.310(3)(a);

(iv) Management practices that address impacts from mooring, parking, noise, lights, litter, and other activities associated with planting and harvesting operations;

(v) Monitoring and reporting plan to verify that aquaculture operations are in compliance with shoreline limits and conditions set forth in conditional use permits and to support cumulative impacts analysis;

(vi) Information demonstrating that the proposed aquaculture activities will not significantly conflict with navigation and other water-dependent uses;

(vii) Existing public opportunities for gathering wild stock aquatic resources on public lands shall be addressed in any application for aquaculture on public shorelines. Mitigation for loss of public access to public aquatic resources may be required;

(viii) Information demonstrating that the proposed activity will be compatible with surrounding existing and planned uses by addressing the following:

(A) Aquaculture activities shall comply with all applicable noise, air, and water quality standards. All projects shall be designed, operated and maintained to minimize odor and noise; and

(B) Aquaculture facilities shall not significantly impact the aesthetic qualities of the shoreline unless there is a compelling public safety reason requiring otherwise. Safety

concerns for birds and wildlife may also be considered when evaluating impacts on the aesthetic qualities of the shoreline; and

(ix) Other pertinent information deemed necessary by the county.

(o) Where permit submittal requirements identified in SCC 30.67.510(1)(n) have already been submitted in compliance with other federal, state or local permit requirements, the department will accept the documentation submitted to other permitting agencies provided the applicant clearly identifies which documents, or parts of documents, are intended to meet which specific county requirement;

(p) The rights of treaty tribes to aquatic resources within their usual and accustomed areas shall be addressed through direct coordination between the applicant/proponent and the affected tribe(s);

(q) Consistent with, and in addition to the requirements in chapter 30.70 SCC, the applicant shall provide public notice to:

(i) All property owners within the prescribed distance from the proposed project boundary;

(ii) Tribes with usual and accustomed fishing rights to the area; and

(iii) The applicable local marine resources committee(s).

(2) In addition to the general regulations contained in SCC 30.67.510(1), the following shoreline environment designation-specific regulations for new aquaculture activities in shorelines apply:

(a) Urban:

(i) Non-commercial ((Aquaculture)) aquaculture is permitted((-) ; and

(ii) Commercial aquaculture and processing are conditionally permitted.

(b) Urban Conservancy:

(i) Non-commercial aquaculture is permitted; and

(ii) Commercial aquaculture and processing are prohibited.

(c) Rural Conservancy:

(i) Non-commercial aquaculture is permitted; and

(ii) Commercial aquaculture and processing are conditionally permitted.

(d) Resource:

- (i) Non-commercial aquaculture ~~((and processing are))~~ is permitted; and
- (ii) Commercial aquaculture and processing are ~~((is))~~ conditionally permitted. ~~((; and~~
- ~~(iii) Aquaculture processing is permitted;))~~

(e) Municipal Watershed Utility: Commercial aquaculture is not permitted on Spada Lake. Non-commercial aquaculture along with any associated processing activities on Spada Lake are limited by the utility purveyor's Federal Energy Regulatory Commission (FERC) license.

(f) Natural.

- (i) Non-commercial aquaculture is permitted; and
- (ii) Commercial aquaculture and processing are prohibited.

(g) Aquatic.

- (i) Non-commercial aquaculture is permitted;
- (ii) Commercial aquaculture is conditionally permitted only when the adjacent upland environment is Urban, Rural Conservancy or Resource; and
- (iii) No processing of any aquacultural product, except for the sorting or culling of the cultured organism and the washing or removal of surface materials or organisms, shall be permitted water-ward of the ordinary high water mark unless fully contained within a tending boat or barge.

(3) When new commercial aquaculture activities are allowed subject to conditional use permits per SCC 30.67.510(2), in addition to the criteria required in chapter 30.44 SCC, all of the following criteria shall apply to the conditional use permit:

- (a) All subsequent cycles of planting and harvest shall not require a new conditional use permit;
- (b) A single conditional use permit may be submitted for multiple sites within an inlet, bay or other defined feature, provided the sites are all under control of the same applicant and within the same shoreline permitting jurisdiction. Expansion in area or operational intensity at individual locations, or to new sites, that was not considered and approved in the original conditional use permit will require a new conditional use permit; and

(c) In order to avoid or limit impacts from aquaculture siting and operations and achieve no net loss of ecological functions, review of the conditional use permit will take the following into account:

(i) Commercial aquaculture workers oftentimes need to accomplish on-site work during low tides, which may occur at night or on weekends. Work must be allowed during low tides but may require limits and conditions to reduce impacts, such as noise and lighting, to adjacent existing uses;

(ii) Conditional use permits should be reviewed using the best scientific and technical information available;

(iii) Best management practices should be applied to accomplish the intent of the limits and conditions;

(iv) The practice of placing nursery tanks or holding pools or other impervious materials directly on the intertidal sediments;

(v) Use of motorized vehicles, such as trucks, tractors and forklifts below the ordinary high water mark;

(vi) Specific periods when limits on activities are necessary to protect priority habitats and associated species. The need for such measures should be identified in the baseline ecological survey conducted for the site;

(vii) Alterations to the natural condition of the site, including significant removal of vegetation or rocks and re-grading of the natural slope and sediments;

(viii) Installation of property corner markers that are visible at low tide during planting and harvesting;

(ix) Mitigation measures such as buffers between commercial aquaculture and other fish and wildlife habitat conservation areas as necessary to ensure no net loss of ecological functions;

(x) Use of predator exclusion devices with minimal adverse ecological effects and requiring that they be removed as soon as they are no longer needed for predator exclusion;

(xi) Use of the best available methods to minimize turbid runoff from the water jets used to harvest shellfish;

(xii) Number of barges or vessels that can be moored or beached at the site as well as duration limits;

(xiii) Public rights to navigation over the surface of the water;

(xiv) Good housekeeping practices at aquaculture sites, including worker training and regular removal of equipment, tools, extra materials, and all wastes; and

(xv) Where the site contains existing public access to publicly owned lands, consider recommendations from the department of natural resources or other landowning agencies regarding protection of the existing public access.

**Section 9.** Snohomish County Code Section 30.91A.255, adopted by Amended Ordinance No. 12-025 on June 6, 2012, is amended to read:

**30.91A.255 Aquaculture.**

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

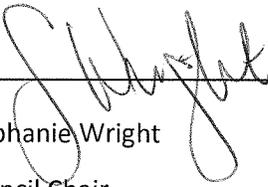
*This definition applies only to "Shoreline" regulations in chapters 30.44 and 30.67 SCC.*

**Section 10. Severability and savings.** If any section, sentence, clause or phrase of this ordinance shall be held to be invalid by the GMHB, or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance. Provided, however, that if any section, sentence, clause or phrase of this ordinance is held to be invalid by the GMHB or court of competent jurisdiction, then the section, sentence, clause or phrase in effect prior to the effective date of this ordinance shall be in full force and effect for that individual section, sentence, clause or phrase as if this ordinance had never been adopted.

**Section 11. Effective date and implementation.** The effective date of this ordinance shall be fourteen days after the date on which the Washington State Department of Ecology approves the amendments to the SMP as provided by RCW 90.58.090. The Department of Planning and Development Services is authorized to take such actions as may be necessary to implement this ordinance on its effective date.

PASSED this 11<sup>th</sup> day of December, 2013.

SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

  
\_\_\_\_\_  
Stephanie Wright  
Council Chair

ATTEST:

  
\_\_\_\_\_  
Asst. Clerk of the Council

- APPROVED
- EMERGENCY
- VETOED

DATE: 12-16-13, 2013

  
\_\_\_\_\_  
John Lovick  
Snohomish County Executive

D-9

