**SUPPLEMENTAL STAFF REPORT**

**DATE:** April 26, 2022

**TO:** Pierce County Planning Commission

**FROM:** Sean Gaffney, Land Use and Environmental Review, Manager

**BY:** Dave Risvold, Shoreline Planning Supervisor

**SUBJECT:** Pierce County Code Title 18S, “Development Policies And Regulations – Shorelines” Locally Initiated Amendment: Additional Information and Revised Staff Recommendation Responding to Stakeholder Comments

**NOTICE:** Notice of the Planning Commission public hearings were published in the News Tribune on March 24, 2022 and April 13, 2022.

**SEPA:** A Determination of Nonsignificance (DNS) was issued on October 14, 2021 and a Revised DNS was issued on March 17, 2022 – Application No. 973001.

**ATTACHMENT:**
- Attachment A Residential Piers and Docks Restriction Map

**PURPOSE**

This Supplemental Staff Report:

- Provides a summary of the engagement with Indian Tribes,
- Addresses the concern that the proposed amendments decrease protections for the marine shoreline, and
- Identifies modifications to the staff recommendation described in the Pierce County Code Title 18S, “Development Policies And Regulations – Shorelines” Locally Initiated Amendment Staff Report (April 5, 2022).

**STAFF RECOMMENDATION**

Staff recommends approval of the proposal as described in the Staff Report and as modified in this Supplemental Staff Report.
SUMMARY OF ENGAGEMENT WITH TRIBES

At its April 5, 2022, Planning Commission presentation, County staff were asked to elaborate on its engagement with Indian Tribes. County staff referred to the notice provided to Tribes through the SEPA process. This notice included the Determination of Nonsignificance (DNS) issued in October 2021 and a revised DNS issued in March 2022. It is also important to note outreach occurred in July 2021 with the Tribes (Puyallup, Muckleshoot, Nisqually, and Squaxin).

Through this outreach, which occurred prior to presenting the proposal to the general public in October, Tribal staff representatives were provided with:

- The April 7, 2020 ESA memoranda,
- A preliminary draft staff report, and
- A presentation that provided a summary of a preliminary proposal.

Staff received a request from the Puyallup Tribe for a meeting, which was held on August 16, 2021.

In an April 1, 2022 letter to the Pierce County Executive and Council, the Puyallup Tribe of Indians stated that the County’s recommendation represents a reduction of shoreline protection. The Tribe contends that this reduction in protection does not align with the purpose of the Shoreline Master Plan in achieving no net loss of ecological function of the shoreline and questions our commitment to our Shoreline Master Program. In this same letter the Tribe requested a government-to-government consultation. The Pierce County Executive is honoring this request and meetings will be scheduled.

CONCERN OVER DECREASED PROTECTIONS

The Planning Commission received comments through both oral testimony and written correspondence expressing concern that proposed amendment #1 regarding dock prohibitions, proposed amendment #2 regarding aquaculture, and proposed amendment #4 regarding previously adopted Critical Area Ordinance (CAO) amendments reduce protections for marine shorelines.

Proposed Amendment #1 Docks and Piers
The County’s current Shoreline Master Program (SMP), in effect since October 2018, was approved by the State Department of Ecology and deemed consistent with the “no-net-loss” requirements of the Shoreline Management Act. The State has found no inadequacies with the County’s SMP or that additional dock restrictions are needed. The current proposal being considered in response to a directive from the County Council, provides a level of protection to the shoreline above and beyond what is currently provided through the County’s SMP. The concern over reduced protection reflects PPW’s recommendation that fewer miles of additional shoreline be included in the prohibition area than is recommended by our consultant. Regardless of the number of miles of restriction added, greater protection is being provided to the marine shoreline as compared to the existing regulations.

Proposed Amendment #2 Aquaculture
Current SMP requires commercial aquaculture operations and aquaculture activities for restoration or species recovery to follow the same application requirements. The proposed amendment acknowledges the two different types and would provide staff the authority to reduce permitting requirements for not for-profit restoration and enhancement aquaculture.
Several commenters have expressed concern that the proposed revisions would remove the existing prohibitions on net pens found in the SMP. There were discussions of changes to net pen prohibitions initially, and there remains a reference to that effect in the consultant’s February 21, 2020, memorandum (page 3 of 5). However, those changes were not pursued and no changes to existing net pen prohibitions are proposed.

Proposed Amendment #4 Critical Area Ordinances
The Pierce County Critical Area Ordinance (CAO) is incorporated into the Shoreline Master Program by reference. The SMP incorporates the CAO by referencing a specific edition. Reference to updated CAO regulations require a SMP amendment and must be approved by the Department of Ecology to be implemented within the Shoreline jurisdiction.

In review of comments, it appears that some stakeholders view amendment #4 as proposed changes to the regulations. Particular concerns were expressed over decreased protection of eelgrass. As stated in the original staff report, proposed amendment #4 addresses four revisions to the CAO that have already been adopted by the County Council, between 2018 and 2021. Two of these Ordinances, 2019-59 and 2020-49, were amendments to resolve a SMP appeal and have previously been approved by the Department of Ecology and the Growth Management Hearings Board. The reference to these ordinances in 18S does not decrease the protection of eelgrass or marine shoreline.

**Modifications to Original Staff Recommendation**

- Only those portions of the *Pierce County Code Title 18S, “Development Policies And Regulations – Shorelines” Locally Initiated Amendment Staff Report* that are proposed to be amended or necessary for context are shown. Remainder of text, maps, tables and/or figures is unchanged.

- Original staff report proposal text is shown as **added**/**added** (in shaded table) and **removed**. Supplemental Staff Report revisions are shown as **added** and **removed**.

**Definitions - Placement**

The proposal incorporates new definitions pertaining to Shoreline Master Plan provisions within Title 18 - Development Regulations – General Provisions. Title 18S - Development Policies And Regulations – Shorelines also includes definitions. 18S provides definitions for the terms used in this Title that are not defined in Title 18. PPW received a comment that questioned why definitions related to existing definitions in 18S and applied solely to provisions within 18S would be located within the Title 18. In review of this comment PPW staff agrees that it is appropriate to have the proposed new definitions located in PCC Title 18S.
Chapter 18.25
DEFINITIONS

18.25.030 Definitions.

“Aquaculture—Finfish restoration” means the cultivation of native fish species during a limited portion of their lifecycle for the sole purpose of restoration or enhancement of native stocks.

“Aquaculture—Shellfish restoration” means the cultivation of native shellfish species for the sole purpose of restoration or enhancement of native stocks.

Staff Report Attachment B. Add the following

Chapter 18S.70 – Appendix A Definitions, Acronyms and Abbreviations

“Aquaculture - Finfish restoration” means the cultivation of native fish species during a limited portion of their lifecycle for the sole purpose of restoration or enhancement of native stocks.

“Aquaculture - Shellfish restoration” means the cultivation of native shellfish species for the sole purpose of restoration or enhancement of native stocks.

INCORPORATION OF CRITICAL AREA ORDINANCE

The critical area regulations adopted in compliance with the State Growth Management Act, except for Flood Hazard Areas, are incorporated by reference into the Shoreline Master Program. When the County amends its critical area regulations it is required to update 18S and cite the appropriate ordinance(s). As commented by a stakeholder, WAC 173-26-191(2)(b) requires “a specific, dated edition.” While the original proposal does cite the appropriate ordinance, it does not identify the date in which the ordinance was adopted. PPW staff recommends including the date of adoption associated with Ordinance 2021-123s.

Staff Report Attachment B, page 1

18S.10.065 Procedural Guidance.

See Chapter 18S.60 PCC, Permits and Approvals, for shoreline permit review procedures. The purpose of this Section is to provide general guidance for use of this Title and to provide information on the process of shoreline development review.

B. Title 18E PCC, Development Regulations – Critical Areas. Critical area regulations adopted in compliance with the State Growth Management Act are contained in Title 18E PCC, Ordinance Nos. 2004-56s, 2004-57s, 2004-58s, 2006-103s, 2013-45s4, 2016-52 amended by Ordinance Number-2017-12s, 2018-68s, 2019-59, 2020-49 effective date April 15, 2017 and as amended by Ordinance No. 2021-90s, effective date December 31, 2021 for Chapter 18E.10 PCC, Chapter 18E.20 PCC, and Chapter 18E.120 PCC incorporated by reference into the Shoreline Master Program (with the exception of Chapter 18E.70 PCC, Flood Hazard Areas) and as amended by 2021-123s adopted on February 1, 2022. In the event that an
incorporated Section of Title 18E PCC is amended, the referenced edition will still apply in shoreline jurisdiction until revised through an approved Master Program amendment.

ECOLOGICAL PROTECTION – CLARIFICATION OF FLOOD HAZARD AREAS

Title 18 provides definitions for “floodplain” and “flood hazard areas.” A definition does not exist for “floodplain areas.” A stakeholder commented that a defined term should be used in the proposed provision addressing allowed development within Shoreline Buffer. In review of the relevant definitions and intent of the provision PPW staff recommends replacing “floodplain areas” with “flood hazard areas.”

Staff Report Attachment B, page 4

   a. Water dependent uses and public shoreline access are allowed within the standard shoreline buffer subject to applicable regulations of the Master Program.
   b. An unpaved access path from a residential dwelling to the shoreline is allowed if:
      (1) The path width is limited to 4 feet;
      (2) The length of the path is minimized by keeping the path at a right angle to the shoreline to the degree feasible; and
      (3) No trees are removed; and
      (4) No fill is placed in floodplain areas flood hazard areas.

PIERS/Docks Prohibition Map(s)

The proposal identifies specific criteria utilized to identify additional stretches of marine shoreline where residential piers and docks are to be prohibited. The proposal also references the addition of a new appendix J that would contain a series of maps that identify additional marine shorelines where residential piers and docks would be prohibited. A stakeholder commented that reference to the new map should be incorporated into the section that lists the criteria if the prohibition is intended to be applied to a static stretch of shoreline. In addition, the map should identify parcel “end points” to provide sufficient detail in regulating the proposed prohibition at a parcel level.

Through feedback during the public engagement process, it was also pointed out that a dock does currently exist along one of the three stretches of shorelines in which residential docks and piers are being proposed. PPW staff recommends incorporating the reference to the map with the related selection criteria and amending the map to remove the parcel with an existing dock and to identify “parcel” end points for each stretch of marine shoreline where residential docks and piers are proposed to be prohibited.
D. Regulations – Residential. The following regulations apply to residential water access facilities serving four or fewer parcels:

2. Residential properties may be served by one dock (including a pier, ramp and/or float). For purposes of this subsection, a residential dock may accommodate temporary floats and boat lifts. The following additional criteria shall apply to the number of water access facilities allowed:
   a. A parcel may have no more than one railway;
   b. A parcel may have no more than one mooring buoy or mooring piling except a second mooring buoy may be authorized to secure moorage when authorized by the Washington State Department of Natural Resources;
   c. Facilities attached to another facility (such as boat and jet ski lifts attached to docks) shall be considered permitted accessory uses.
   d. New residential piers and docks are prohibited on sections of marine shorelines as mapped in Appendix J. This map represents the following criteria:
      1. 1.5 miles or greater in length in the Conservancy and Residential Shoreline Environments;
      2. Where there are no existing overwater piers and docks present,
      3. With intact ecological functions as demonstrated by the presence of mapped, or field verified, fish and wildlife habitat areas or feeder bluffs;
      4. With significant recreational opportunities as demonstrated by the presence of access points to public tidelands, State and County Parks, marinas or public boat ramps, or County owned tax parcels; and
      5. With at least two of the following three attributes:
         A. Unstable slopes;
         B. Moderate/strong nearshore current;
         C. Shallow beach slope.

Staff Report Attachment C

Replace the Residential and Conservancy Marine Environments: Docks and Piers Prohibition Maps with the series of maps included with Attachment A of this supplemental staff report.
**AQUACULTURE PROVISIONS**

The proposal establishes regulatory language that distinguishes between commercial aquaculture and aquaculture proposed as restoration.

Staff discovered that 18S.60.030-1. Shoreline Permit Table fails to identify that a Shoreline Conditional Use Permit (CUP) may be required for shellfish aquaculture intended for enhancement or restoration. The table correctly identifies this potential requirement for finfish aquaculture, but not shellfish. The Permit Table has footnotes that clarify when a CUP may be required and those would be when the project “........ conflicts with public access, navigation, or adversely impacts critical saltwater or freshwater habitats” (footnote 9).

On that same topic, initial Department of Ecology comments point out that footnote 9 should inform that a CUP is required if the project *may* significantly conflict with public access, navigation, or adversely impacts critical saltwater or freshwater habitats. The addition of the word “may” is more restrictive and makes the language consistent with WAC 173-26-241(b)(i)(C).

*Staff Report Attachment B, page 9*

<table>
<thead>
<tr>
<th>Table 18S.60.030-1. Shoreline Permit Table</th>
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<tbody>
<tr>
<td>Uses, Modifications and Development</td>
</tr>
<tr>
<td>Shoreline Environment Designation (SED)</td>
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<tr>
<td>N</td>
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<tr>
<td>N=Natural, C=Conservancy, R=Residential, H=High Intensity, AF=Aquatic Freshwater, AM=Aquatic Marine</td>
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</tbody>
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**Agriculture** (See PCC 18S.40.030 for Agriculture Policies and Regulations)

- Low Intensity Agriculture
- All Other Agriculture

**Aquaculture** (See PCC 18S.40.040 for Aquaculture Policies and Regulations)

- Finfish aquaculture for the enhancement or restoration of native, anadromous stocks
- Shellfish aquaculture for the enhancement or restoration of native stocks
Table 18S.60.030-1. Shoreline Permit Table

<table>
<thead>
<tr>
<th>Uses, Modifications and Development</th>
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<tr>
<td></td>
<td>N</td>
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<tr>
<td>Natural, Conservancy, Residential, High Intensity, Aquatic Freshwater, Aquatic Marine</td>
<td></td>
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<tr>
<td>All Other Aquaculture</td>
<td>C (1)</td>
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</tbody>
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Notes:

1. Geoduck aquaculture requires an SD for planting, growing and harvesting of farm raised geoducks only when the project or practice causes substantial interference with normal public use of the surface waters.

2. Deleted.

3. Non water-oriented commercial uses are subject to PCC 18S.40.050 C.3. Criteria. See also PCC 18S.30.090. A change from an existing non water-oriented use to another non water-oriented use is permitted, without a Conditional Use Permit.

4. New non water-oriented uses are prohibited except in situations where the use doesn't conflict with or limit opportunities for water-oriented uses or when there is no direct access to the water's edge. See PCC 18S.30.090.

5. Commercial/Civic development is prohibited in Aquatic SEDs abutting the Natural SED.

6. Environmental restoration, mitigation and/or enhancement projects do not require a Conditional Use Permit.

7. Industrial development is prohibited in Aquatic SEDs abutting the Natural SED and Conservancy SED. Non water-oriented industrial development is prohibited in Aquatic SEDs abutting all SEDs except for High Intensity.

8. In Aquatic SEDs abutting the Natural SED only floats and buoys may be allowed.

9. A conditional use permit is required if the project significantly conflicts with public access, navigation, or adversely impacts critical saltwater or freshwater habitats.
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<td>(10)</td>
<td>At the discretion of the County, all or portions of the baseline information requirements of PCC 18S.70 – Appendix C - Aquaculture Application Requirements may be waived for enhancement or restoration aquaculture projects.</td>
</tr>
<tr>
<td>(11)</td>
<td>New residential docks and piers are prohibited on marine shoreline reaches identified in Chapter 18S.70 – Appendix J - Pier and Dock Restriction Descriptions.</td>
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</table>
Key Peninsula – West
This portion begins at the southeast corner of the parcel (0020211025) then travels south and east to the eastern edge of parcel 0020274021.

Key Peninsula – South
This portion begins on the north edge of parcel 0019021000 then travels south and east around the southern tip of Key Peninsula. The portion continues north on the eastern side of the peninsula to southern edge of parcel 0020362004.

Key Peninsula – East
This portion begins on the north edge of parcel 0020362004 then travels north to middle of parcel 5350000699.

18S.70 Appendix J – Residential and Conservancy Marine Environments: Docks and Piers Prohibition Maps

This map is a general illustration of Pierce County's shoreline. Refer to the GIS data when determining the Shoreline Environment Designation and sections that have pier and dock restrictions for a specific parcel.

Map Disclaimer: This is not a survey. Orthophotos and other data may not align. Pierce County assumes no liability for variations ascertained by actual survey. All data is expressly provided "as is" and with all faults.

Restrict Piers and Docks within Conservancy and Shoreline Residential Environments

Range Township
Municipal Area
Tax Parcels

T19N - R1W

Planning and Public Works
Data Printed: 4/15/2022
Key Peninsula – East
This portion begins on the north edge of parcel 0020362004 then travels north to middle of parcel 5356009069.

Key Peninsula – West
This portion begins at the southeast corner of the parcel (0020211025) then travels south and east to the eastern edge of parcel 0020724021.

Key Peninsula – South
This portion begins on the north edge of parcel 0019201008 then travels south and east around the southern tip of Key Peninsula. The portion continues north on the eastern side of the peninsula to southern edge of parcel 0020362004.
This map is a general illustration Pierce County’s shoreline.

Refer to the GIS data when determining the Shoreline Environment Designation and sections that have pier and dock restrictions for a specific parcel.

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18S.70 Appendix J – Residential and Conservancy Marine Environments: Docks and Piers Prohibition Maps

Restrict Piers and Docks within Conservancy and Shoreline Residential Environments

Fox Island
This portion begins on the north edge of parcel 0120124001 then travels sound and east around the southern tip of Fox Island. The portion continues north on the eastern side of the island to eastern edge of parcel 0220181006.

Key Peninsula – East
This portion begins on the north edge of parcel 0030562004 then travels north to middle of parcel 5350000069.

18S.70 Appendix J – Residential and Conservancy Marine Environments: Docks and Piers Prohibition Maps

Restrict Piers and Docks within Conservancy and Shoreline Residential Environments

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Restrict Piers and Docks within Conservancy and Shoreline Residential Environments

This map is a general illustration Pierce County’s shoreline. Refer to the GIS data when determining the Shoreline Environment Designation and sections that have pier and dock restrictions for a specific parcel.

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