



Shoreline Substantial Development Master Land Use Application

FOR OFFICE USE ONLY	Date Stamp
Received By: _____	
Date Paid: _____	
Total Fees: _____	
Receipt #: _____	
Case #(s): _____	
Required Reviews:	
<input type="checkbox"/> Archaeology	<input type="checkbox"/> Fire
<input type="checkbox"/> Building	<input type="checkbox"/> Engineering
<input type="checkbox"/> Flood	<input type="checkbox"/> Geo Hazards
<input type="checkbox"/> Health	<input type="checkbox"/> Watershed
<input type="checkbox"/> Wetland/HCA/Mitigation	<input type="checkbox"/> Zoning

Property Owner's Name _____

Mailing Address _____ City _____

State _____ Zip _____ Phone (____) _____

Fax (____) _____ Email _____

Applicant's Name _____

Mailing Address _____ City _____

State _____ Zip _____ Phone (____) _____

Fax (____) _____ Email _____

Agent/Representative Name _____

Mailing Address _____ City _____

State _____ Zip _____ Phone (____) _____

Fax (____) _____ Email _____

Assessor's Parcel Number _____

Site address or location description _____

Parcel size (acres or square feet) _____



1. **Project Proposal** - Include detailed information, such as scope of work, method of construction, timing/schedule, and any other details pertinent to the project (please use separate page if necessary):

2. **Existing Development** - Describe the existing site conditions and include details on any site improvements:

3. Total development cost or **fair market value***: _____

***Fair market value** of a development means the open market bid price for conducting the work, using the equipment and facilities, and purchase of the goods, services and materials necessary to accomplish the development. This would normally equate to the cost of hiring a contractor to undertake the development from start to finish, including the cost of labor, materials, equipment and facility usage, transportation and contractor overhead and profit. The fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials.



4. Land Disturbance Information – Please provide information on the existing and proposed building footprint area, and any grading associated with the project:

Building Footprint Area (sq. ft.):	Grading (cu. yds.):
Existing: _____	Excavation proposed: _____
Proposed: _____	Fill proposed: _____
Total sq. ft.: _____	Destination: _____

5. Preliminary Stormwater Information - Complete all blank spaces in the following table for all property subject to the proposed development:

A		B	C	D
		Area, square feet (NOTE: 43,560 square feet = 1 acre)		
Surface Type		Total Existing	Once the proposed project is complete, the total will be	Net Change (+ or -); Subtract Column B from Column C
Native Vegetation ⁽¹⁾				
Pasture				
Landscaping				
Roofs ⁽²⁾	Conventional			
	Green			
Sidewalks, trails, paths				
Porches, decks				
Roads, driveways, parking lots	Impervious			
	Pervious			
Grand Total		(3)	(3)	(4)
			(3) The two "Grand Total" values above should be the same, unless you are constructing a roof, porch, or deck over an existing hard surface or over native vegetation, pasture, or landscaping.	(4) Unless the "Grand Total" values in Columns B and C are different, the Grand Total value above will be 0.

Table Notes:

- (1) "Native Vegetation" means plant species typically found on an undeveloped marine shoreline that are indigenous to the Northern Puget Sound Lowland eco-region and suitable to the specific site conditions.
- (2) New untreated metal roofs qualify as pollution generating impervious surface areas. If that area is equal to or greater than 5,000 square feet, it will require stormwater treatment.



6. **Legal Substantiation** (*For repair, replacement, or expansion proposals only*) – The applicant must demonstrate that an existing nonconforming development is legal. A development is considered nonconforming if it was lawfully constructed or established prior to the effective date of this program (August 27, 1976), but no longer conforms to present regulations. Therefore, the applicant must show that the development was either constructed prior to August 27, 1976, or show that the development was constructed with an approved permit from Whatcom County.

- Constructed prior to August 27, 1976. **Date:** _____
Sufficient documentation (i.e. aerial photos, dated newspaper clippings, etc.) shall be enclosed with the application to lawfully establish the nonconformity of the existing development or use.

- Permitted. **Permit #:** _____ **Date:** _____



Shoreline Substantial Development Supplemental Application

- 1. Property Description** – Please provide a general description of the vicinity of the proposed project including identification of the adjacent uses, structures and improvements, intensity of development and physical characteristics:

- 2. Shoreline Designation Regulations** – Please demonstrate that the proposed development or use is allowed under the applicable shoreline designation:

- 3. Shoreline Designation Policies** – Please demonstrate that the proposed development or use is compatible with the policies of the applicable shoreline designation and the type of use or development activity:



4. **Shorelines of Statewide Significance** – For projects located on shorelines of statewide significance, please demonstrate that the proposed development or use adheres to the policies in [WCC 23.40](#):

5. **Cumulative Environmental Impact** – Please demonstrate that in the granting of this proposal, if other similar proposals were granted for other developments in the area where similar circumstances exist, the sum of the permitted actions would remain consistent with the policies of [RCW 90.58.020](#) and should not produce significant adverse effects to the shoreline ecological functions and processes or other users:



Guidelines For Finding Property Owners Necessary For Hearing Notices

It is the responsibility of the applicant to obtain a complete list of the property owners within 300 feet if within the UGA or 1,000 feet if outside of the UGA of the boundaries of the parcel, which is the subject of the application. This guide is intended to help applicants compile that list and assure proper notice as required by the ordinances. Failure to provide a complete list may result in a delay in the processing of the application or a continuance of a scheduled hearing.

The Whatcom County Assessor's Office is the source of the necessary information. The Assessor is located on the main floor of the County Courthouse.

The following procedure is recommended, as the most effective for finding the information you will need. The personnel in the Assessor's Office will help you find the maps and measure the proper distance.

1. Locate the parcel that is the subject of the application on the appropriate map.
2. Carefully measure 300' or 1,000' from each corner and line of that parcel and record the complete 12-digit Assessor's parcel number for each parcel within the proper distance specified above. It is best to make a separate list for these parcel numbers.
3. Using the assessment roll, find the owner of each parcel.
 - a. If the owner that is listed is a bank, savings and loan or other financial institution, also record the title owner's name and the loan number from the listing. If the loan number is provided, and there is no name other than the financial institution, or if an address for the title owner is unavailable, write down the address of the financial institution as they may be able to forward the hearing notice if they are given the loan number.
 - b. The printed assessment roll is updated approximately every six months. There is a computer master file that is always up-to-date. Use the computer to locate any names you may have questions about on the printout, such as for property that you suspect may have been recently sold.
4. Using the name and address master file, find the address of the parcel owners. Those not in the name index can be found through the telephone book, city directory, or other sources. This address is vitally important and must be complete and legible.

This list of property owners, the addresses, and parcel numbers must be submitted with your application. County ordinances and due process requirements make the provision of proper notices to nearby property owners mandatory. No permit can be granted if the notice is defective. The Hearing Examiner will require strict compliance with the notice provisions of the ordinances.

NOTE: The applicant shall submit typed self-adhering labels with the name and address of each property owner within the specified distance from the subject site. Properties located within the UGA shall notify property owners within 300-feet of the subject site. Properties located outside of the UGA shall notify property owners within 1,000-feet of the subject site.

WHATCOM COUNTY
Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
360-778-5900, TTY 800-833-6384
360-778-5901 Fax



Mark Personius, AICP
Director

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Fee Responsibility

Venue and Jurisdiction: The parties hereto recognize and agree that the venue of any action involving their rights or obligations related to this application shall be in Whatcom County, and the parties' rights and obligations hereunder shall be determined, in accordance with the laws of the State of Washington.

Fee Guaranty: Notwithstanding that this application has been submitted in the name of a company, I personally guarantee payment of fees accrued according to the terms listed in the Whatcom County Unified Fee Schedule and that my personal guarantee is part of the consideration for review of the application.

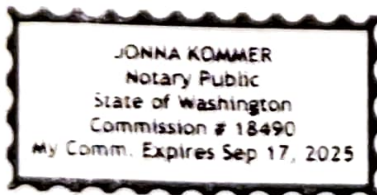
I/we Stephen Seymour hereby certify that the above statements and the information contained in any papers or plans submitted herewith are true and accurate to the best of my knowledge, and that the list of surrounding property owners is complete and current.

Stephen Seymour
Signature of Applicant

Signature of Owner

I certify that I know or have satisfactory evidence that Stephen Seymour is/are the person(s) who appeared before me, and said person(s) acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in this instrument.

Dated Jan 24, 2022



Jonna Kommer
Notary Public Signature
Jonna Kommer
Notary Public Printed Name
Notary Public in and for the State of Washington
Residing at Blaine WA
My appointment expires: 9, 17, 2025

Attachment to
Substantial Shoreline Development Permit Application
Drayton Harbor Oyster Company Floating Array

1. Project Proposal - Include detailed information, such as scope of work, method of construction, timing/schedule, and any other details pertinent to the project (please use separate page if necessary):

The project involves installing a floating oyster growing array similar to the oyster grow systems used in areas along the east coast e.g. Butterfield Shellfish Farms and Marlborough Oysters Ltd in New Zealand More detail can be found at FlipFarm Systems Ltd, 283 Middle Renwick Rd, RD 1, Blenheim 7271 New Zealand. In full build out 6600 1' x 3' floating mesh baskets holding 10 dozen oysters each will be deployed over an 8.75-acre area. Three hundred (300) floating baskets, 400 feet of 1 "poly line, 3/5 nylon anchor line, two helical anchors, two surface buoys and two mid line floats comprise a single line array. When in full production 22 lines will be deployed within the 8.75-acre site. Figure 2. At full build out, 6600 baskets will cover an estimated 18,000 ft² (0.4 acres) of water surface or 4.6% of the project area.

The purpose of the floating array is to develop an alternate oyster growing site in Drayton Harbor which:

- Reduces farm impacts to native eel grass
- Provides farming in cleaner marine waters
- Reduces vessel traffic during night hours
- Reduces use of plastics
- Reduces impacts associated with sea level rise
- Reduces impacts associated with biofouling

2. Existing Development – Describe the existing site conditions and include details on any site improvements:

Property is currently undeveloped open water. A large floating breakwater, two marinas, commercial wharf are within the 3,300 feet of the project site.

The owners of Drayton Harbor Oyster Company have farmed Pacific Oysters on a 30 acre WADNR lease (#22-077340) in Drayton Harbor since 1985. The area being proposed to be leased is an 8.75-acre deep water site (10-12' deep at MMLW) located approximately 4,000 feet SE of DHO current lease. A bottom survey completed in 2019 by Fairbanks Environmental Consulting (and reverified in September 2021 by Drayton Harbor Oyster Biologist / divers) describes the bottom sediment as silt with a uniform covering of periphyton. The closest eelgrass or macroalgae were observed approximately 500 feet shoreward of the project site. Incidental observation during the surveys included:

- Dungeness crab (*Metacarcinus magister*)
- Sea pen (*Ptilosarcus gurneyi*) (Photo 2)
- Bay ghost shrimp burrows (*Neotrypnea* spp.) (Photo 3)

- Mud shrimp burrows (*Upogebia pugettensis*)
- Clam shell: cockle (*Clinocardium* spp.) and macoma (*Macoma* spp.)
- Sea star (unidentified)

Shoreline Designation Policies – Please demonstrate that the proposed development or use is compatible with the policies of the applicable shoreline designation and the type of use or development activity:

1. Aquaculture is a water-dependent use and, when consistent with control of pollution and avoidance of adverse impacts to the environment and preservation of habitat for resident native species, is a preferred use of the shoreline (WAC [173-26-241\(3\)\(b\)](#)).
2. Potential locations for aquaculture activities are relatively restricted because of specific requirements related to water quality, temperature, oxygen content, currents, adjacent land use, wind protection, commercial navigation, and salinity. The technology associated with some forms of aquaculture is still experimental and in formative states. Therefore, some latitude should be given when implementing the regulations of this section; provided, that potential impacts on existing uses and shoreline ecological functions and processes should be given due consideration.
Comments: DHO's floating array meets these guidelines. The site has been selected for improved water quality, wind protection, little interference with commercial, Tribal, or recreation navigation and fishing/ harvest, minimal benthic and SAV impacts.
3. Preference should be given to those forms of aquaculture that involve lesser environmental and visual impacts and lesser impacts to native plant and animal species. In general, projects that require no structures, submerged structures or intertidal structures are preferred over those that involve substantial floating structures. Projects that involve little or no substrate modification are preferred over those that involve substantial modification. Projects that involve little or no supplemental food sources, pesticides, herbicides or antibiotic application are preferred over those that involve such practices. **Comments: Water quality and minimizing impacts to eel grass drives the selection of this site. DHO floating array uses minimal floating structures made of durable synthetic material, anchored with embedded anchors, spaced such that total floating coverage is less than 0.5 acres for the 8.75-acre array. Line spacing, water depth, currents, lack of SAV and the use of no feed, chemicals, pesticides, or herbicides leave this project benign to impacts to native plants and animals.**
4. Aquaculture activities should be designed, located and operated in a manner that supports long-term beneficial use of the shoreline and protects and maintains shoreline ecological functions and processes. **Comments: Oyster production has a 100-year-old history in Drayton Harbor and has operated continuously, except for the water quality closure in the 1990's. This history of shellfish production has been the primary driver for the "clean up" of the bay and today is a source of pride to the Blaine community. Restoring the bay has been an ongoing 20 year, 30-million-dollar effort supported by city, county, state and federal resources and hundreds of volunteers. As explained above, the array is sited in the cleaner part of the bay and utilizes a growing system benign to shoreline processes. Establishing another farm site will help ensure the**

community stays focused on the bay's water quality to insure long term beneficial use of the shorelines. Aquaculture should not be permitted where it would result in a net loss of shoreline ecological functions; adversely affect the quality or extent of habitat for native species including eelgrass, kelp, and other macroalgae; adversely impact other habitat conservation areas; or interfere with navigation or other water-dependent uses. **Comments: See 3 above.**

5. Aquaculture that involves significant risk of cumulative adverse effects on water quality, sediment quality, benthic and pelagic organisms, and/or wild fish populations through potential contribution of antibiotic resistant bacteria, or escapement of nonnative species, or other adverse effects on ESA-listed species should not be permitted.

Comments: Oysters filter considerable water and, in the process, remove fine sediment, plankton, nitrogen, phosphates, and carbon leading to a net improvement in water quality. DHO's farm will raise Pacific Oysters, the species of oysters farmed in the bay since their introduction early last century.

6. The county should actively seek substantive comment on any shoreline permit application for aquaculture from all appropriate federal, state and local agencies; the Lummi Nation, Nooksack Tribe, and other affected tribes; and the general public regarding potential adverse impacts. **Comments: The project will need to obtain permits from the WADOE and USCOE which provide ample opportunities for Tribes and the public to comment. Comments of nearby residents or property owners directly affected by a proposal should be considered and evaluated, especially regarding use compatibility and aesthetics. The array is located considerable distance from shore (3000') reducing the visual impact viewed from shore to a single horizontal line at the water's surface. Views from residences located on the hillside at the south end of the bay will appear as a series of horizontal lines off in the distance. Other than DHO, commercial vessel operation in the vicinity of the array is nonexistent. Recreation boating is limited to a few months in the summer when water and air temperatures attract a few water skiers and paddlers to the vicinity of the proposed.**
7. The rights of treaty tribes to aquatic resources within their usual and accustomed areas should be addressed through the permit review process. Direct coordination between the applicant/proponent and the tribe should be encouraged. **Comments: As stated above, the State and Federal permit process engages the local treaty tribes in the project planning and permit activities. The Lummi and Nooksack Tribes seasonally harvest extensive quantities of manila clams from the beaches shore ward of the array site. The offshore location of the project has no impact on the Tribes access to these beaches. Commercial salmon fishery on the small runs of fish destined for Dakota and California creeks currently do not exist in Drayton Harbor nor is one contemplated in the future. The small recreation salmon fishery typically fishes shore ward of the array.**
7. Consideration should be given to both the potential beneficial impacts and potential adverse impacts that aquaculture development might have on the physical environment; on other existing and approved land and water uses, including navigation; and on the aesthetic qualities of a project area. **Comments : Addressed in early comments**

8. Legally established aquaculture enterprises, including authorized experimental projects, should be protected from incompatible uses that may seek to locate nearby. Use or developments that have a high probability of damaging or destroying an existing aquaculture operation may be denied. **Comments: The current owners of DHO have been the sole shellfish farmers in the bay since the mid 1980's. dba Neptune Aquafarms, Drayton Harbor Oyster Co INC, Drayton Harbor Community Oyster Farm and Drayton Harbor Oyster Company LLC.**
9. Experimental aquaculture projects in water bodies should be limited in scale and should be approved for a limited period of time. Experimental aquaculture means an aquaculture activity that uses methods or technologies that are unprecedented or unproven in the state of Washington. **Comments: DHO is proposing to use a farming technique developed in New Zealand and deployed on the east coast and lately in Willapa Bay. The FlipFarm system was designed to be a durable, labor saving, environmentally friendly growing system. DHO will continue to farm Pacific Oysters, a species farmed along the west coast for 100 years for more.**

B. Regulations.

1. Site Design and Operation.

a. Aquaculture activities proposed within shorelines of statewide significance shall be subject to, first, the policies contained in Chapter [23.40](#) WCC, Shorelines of Statewide Significance, and, second, the policies and regulations contained in this section. 23.40.030 Policies for shorelines of statewide significance.

The statewide interest should be recognized and protected over the local interest in shorelines of statewide significance. To ensure that statewide interests are protected over local interests, the county shall review all development proposals within shorelines of statewide significance for consistency with RCW 90.58.030 and the following policies:

A. Redevelopment of shorelines should be encouraged where it restores or enhances shoreline ecological functions and processes impaired by prior development activities. **Comments: DHO project is designed to minimize impacts to sensitive eel grass habitats, grow product in cleaner water less impacted from urbanizing watershed, reduce use of plastics, reduce need for structure, while continuing the legacy of shellfish production which continues to be the primary driver to preserve the bays water quality.**

B. The Washington Departments of Fish and Wildlife and Ecology, the Lummi Nation, the Nooksack Tribe, and other resources agencies should be consulted for development proposals that could affect anadromous fisheries. **Comments: The tribes have been contacted and asked for comments. Both tribes will have ample opportunity to review project under the federal permits.**

C. Where commercial timber cutting takes place pursuant to WCC 23.90.110 and RCW 90.58.150, reforestation should take place as soon as possible. **Comments: Residential**

development along the southern shore has led to deforestation of the hillside and somewhat unmanaged stormwater treatments, erosion and sediments reaching the bay.

D. Activities that use shoreline resources on a sustained yield or non consuming basis and that are compatible with other appropriate uses should be given priority over uses not meeting these criteria. **Comments: DHO's project produces one of the most sustainable food products available.**

E. The range of options for shoreline use should be preserved to the maximum possible extent for succeeding generations. Development that consumes valuable, scarce or irreplaceable natural resources should not be permitted if alternative sites are available. **Comments: As the longest tenant farming oysters in Drayton Harbor since 1908, DHO's owners have farmed oysters in the bay since 1985. Poor water quality closed the bay (and our business) in 1990. The owners of DHO working with the Puget Sound Restoration Fund, the city, county, and state lead the earlier effort to restore Drayton Harbor's water quality. The farms presence today continues to be a major driver behind city, state and county monitoring and restorative actions. Water quality continues to threaten the future of this legacy activity which is the reason DHO is considering developing an alternate site to farm oysters in Drayton Harbor. As discussed earlier, the site was chosen for it's water quality history, protection from storms, lack of eel grass and macro algae, limited use by recreational boaters, and sport and commercial harvesters. Farming shellfish is likely the most non consumptive, sustainable food producing use of this aquatic resources. As a point of reference, the Semiahmoo marina permitted in the late 1970's permanently removed 30 acres of prime recreational and commercial naturally reproducing shellfish bed from the landscape of Drayton Harbor. The municipal sewer outfall discharging into Semiahmoo Bay lead to the closure of 250 acres of recreational shellfish beds in a Whatcom County Public Park. Urbanization of the watershed continues to threatened approximately the remaining 700 acres of shellfish ground in Drayton Harbor which supports commercial, Tribal, and recreational harvest.**

F. Potential short-term economic gains or convenience should be measured against potential long-term and/or costly impairment of natural features. **Comments: It can be demonstrated that DHO's presence in the bay has kept the public focus on the water quality issues impacting the bay and likely is the main driver to keeping the bay certified for recreational and commercial harvest. .**

G. Protection or enhancement of aesthetic values should be actively promoted in design review of new or expanding development. **Comments:**

H. Resources and ecological systems of shorelines of statewide significance should be protected. Shorelands and submerged lands should be protected to accommodate current and projected demand for economic resources of statewide importance such as commercial shellfish beds. **Comments: Project is continuing the legacy of shellfish farming in a environmentally sensitive practice.**

I. Those limited shorelines containing unique, scarce and/or sensitive resources should be protected to the maximum extent feasible. **Comments:** NA

J. Erosion and sedimentation from development sites should be controlled to minimize adverse impacts on ecosystem processes. If site conditions preclude effective erosion and sediment control, excavations, land clearing, or other activities likely to result in significant erosion should be severely limited. **Comments:** NA

K. Public access development in extremely sensitive areas should be restricted or prohibited. All forms of recreation or access development should be designed to protect the resource base upon which such uses in general depend **Comments:** Little recreation currently occurs in the vicinity of the project site

L. Public and private developments should be encouraged to provide trails, viewpoints, water access points and shoreline-related recreation opportunities whenever possible. Such development is recognized as a high priority use. **Comments:** DHO may be open to planting Blaine's public beaches with oyster seed for community harvest.

M. Development not requiring a waterside or shoreline location should be located inland so that lawful public enjoyment of shorelines is enhanced.

N. Lodging and related facilities should be located inland and provide for appropriate means of access to the shoreline. (Ord. 2009-13 § 1 (Exh. 1)).

b. Aquaculture that involves little or no substrate modification shall be given preference over those that involve substantial modification. The applicant/proponent shall demonstrate that the degree of proposed substrate modification is the minimum necessary for feasible aquaculture operations at the site. **Comments:** No modifications to substrate required

c. The installation of submerged structures, intertidal structures, and floating structures shall be allowed only when the applicant/proponent demonstrates that no alternative method of operation is feasible. **Comments :** The site has been selected because it has historically cleaner water and will not impact recreational or native American shellfish harvest, and submerged aquatic vegetation .

d. 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, eelgrass beds or habitat conservation areas.

e. Aquaculture activities, which would have a significant adverse impact on natural, dynamic shoreline processes or which would result in a net loss of shoreline ecological functions, shall be prohibited.

f. Aquaculture practices shall be designed to minimize use of artificial substances and shall use chemical compounds that are least persistent and have the least impact on plants and animals.

g. Commercial salmon net pen facilities shall not be located in Whatcom County waters, except for limited nonprofit penned cultivation of wild salmon stocks during a limited portion of their lifecycle to enhance restoration of native stocks when such activities involve minimal supplemental feeding and no use of chemicals or antibiotics. **Comments: NA**

h. Aquaculture uses and facilities shall be located at least 600 feet from any national wildlife refuge lands; except that: **Comment: NA**

i. If uncertainty exists regarding potential impacts of a proposed aquaculture activity, and for all experimental aquaculture activities, baseline and periodic operational monitoring by a county-approved consultant (unless otherwise provided for) may be required, at the applicant's/proponent's expense, and shall continue until adequate information is available to determine the success of the project and/or the magnitude of any probable significant adverse environmental impacts. Permits for such activities shall include specific performance measures and provisions for adjustment or termination of the project at any time if monitoring indicates significant, adverse environmental impacts that cannot be adequately mitigated.

j. Aquaculture developments approved on an experimental basis shall not exceed five acres in area (except land-based projects and anchorage for floating systems) and three years in duration; provided, that the county may issue a new permit to continue an experimental project as many times as is deemed necessary and appropriate.

k. The county shall reserve the right to require aquaculture operations to carry liability insurance in an amount commensurate with the risk of injury or damage to any person or property as a result of the project. Insurance requirements shall not be required to duplicate requirements of other agencies.

l. 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. **Comments: DHO use of public docks and boat ramps is very limited**

m. New aquatic species that are not previously cultivated in Washington State shall not be introduced into Whatcom County saltwaters or freshwaters without prior written approval of the Director of the Washington State Department of Fish and Wildlife and the Director of the Washington Department of Health. In saltwaters, the county shall not issue permits for projects that include the introduction of such organisms until it has also received written comment from the Marine Resources Committee, the Lummi Nation and the Nooksack Tribe; provided, that such comment is received in a timely manner. This regulation does not apply to Pacific, Olympia, Kumamoto, Belon or Virginia oysters; Manila, Butter, or Littleneck clams; or Geoduck clams. **Comments: DHO raises only Pacific oysters, manila and native little neck clams**

n. Unless otherwise provided in the shoreline permit issued by the county, repeated introduction of an approved organism in the same location shall require approval by the county only at the time the initial aquaculture use permit is issued. Introduction, for purposes of this section, shall mean the placing of any aquatic organism in any area within the waters of Whatcom 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 Whatcom County.

o. 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 three 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. 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.
Comments: No storage of farm equipment is anticipated on the site

p. 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. All other processing and processing facilities shall be located on land and shall be subject to the policies and regulations of WCC [23.100.070](#), Industrial and port development, in addition to the policies and regulations in this section. **Comments: 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, will occur in or over the water.**

q. Aquaculture wastes shall be disposed of in a manner that will ensure strict compliance with all applicable governmental waste disposal standards, including but not limited to 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.

r. Predator control shall not involve the killing or harassment of birds or mammals. Approved controls include, but are not limited to, double netting for seals, overhead netting for birds, and three-foot-high fencing or netting for otters. The use of other nonlethal, nonabusive predator control measures shall be contingent upon receipt of written approval from the National Marine Fisheries Service and/or the U.S. Fish and Wildlife Service, as required.

s. Fish net pens and rafts shall meet the following criteria in addition to the other applicable regulations of this section:

i. Fish net pens shall meet, at a minimum, state-approved administrative guidelines for the management of net pen cultures. In the event there is a conflict in requirements, the more restrictive requirement shall prevail.

ii. Fish net pens shall not occupy more than two surface acres of water area, excluding booming and anchoring requirements. Anchors that minimize disturbance to substrate, such as helical anchors, shall be employed. Such operations shall not use chemicals or antibiotics.

iii. Aquaculture proposals that include net pens or rafts shall not be located closer than one nautical mile to any other aquaculture facility that includes net pens or rafts; provided, that a

lesser distance may be authorized if the applicant/proponent can demonstrate that the proposal will be consistent with the environmental and aesthetic policies and objectives of this program. If a lesser distance is requested, the burden of proof shall be on the applicant/proponent to demonstrate that the cumulative impacts of existing and proposed operations would not be contrary to the policies and regulations of this program.

iv. Net cleaning activities shall be conducted on a frequent enough basis so as not to violate state water quality standards. When feasible, the cleaning of nets and other apparatus shall be accomplished by air drying, spray washing, or hand washing.

v. In the event of a significant fish kill at the site of a net pen facility, the fin fish aquaculture operator shall submit a timely report to the Whatcom County environmental health division and the Whatcom County planning and development services department stating the cause of death and shall detail remedial action(s) to be implemented to prevent reoccurrence.

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

u. 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) through the permit review process.

v. 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. Where any structure might constitute a potential hazard to the public in the future, the county shall require the posting of a bond commensurate with the cost of removal or repair. The county may abate an abandoned or unsafe structure, following notice to the owner, if the owner fails to respond in 30 days and may impose a lien on the related shoreline property or other assets in an amount equal to the cost of the abatement. Bonding requirements shall not duplicate requirements of other agencies.

10.

Shorelines of Statewide Significance – For projects located on shorelines of statewide significance, please demonstrate that the proposed development or use adheres to the policies in WCC 23.40

Cumulative Environmental Impact – Please demonstrate that in the granting of this proposal, if other similar proposals were granted for other developments in the area where similar circumstances exist, the sum of the permitted actions would remain consistent with the policies of RCW 90.58.020 and should not produce significant adverse effects to the shoreline ecological functions and processes or other users: